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No. 331PA21

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

COMMUNITY SUCCESS)
INITIATIVE, et al.,)
))
Plaintiffs,)
v.)
TIMOTHY K. MOORE, *in his*)
official capacity of Speaker of the)
North Carolina House of)
Representatives, et al.,)
))
Defendants.)
)

From Wake County
No. 19 CVS 15941
From Court of Appeals
P22-153

REPLY BRIEF OF LEGISLATIVE DEFENDANTS

INTRODUCTION

Plaintiffs’ response fails to remedy the fundamental defect at the heart of their case—they have challenged North Carolina’s statute for *re-enfranchising* felons, when what they really are complaining about is the North Carolina Constitution’s provision for *disenfranchising* felons. North Carolina’s re-enfranchisement statute is the product of civil rights reformers of the 1970s, not any racial discrimination.

Plaintiffs’ choice of the wrong target permeates the case. Plaintiffs cannot have standing to challenge a law that has never hurt them because it does not disenfranchise anyone, and the Superior Court’s injunction exceeded its authority by

usurping the General Assembly's constitutionally granted authority to prescribe the method for re-enfranchising felons. On the merits, Plaintiffs' claim that Section 13-1 was racially motivated hinges upon tying Section 13-1 to racial animus that they contend surrounded the effort to add felon disenfranchisement to the North Carolina constitution in 1876 and codify that policy in statute in 1877. What Plaintiffs cannot escape, however, is that the *re-enfranchisement* statute—the predecessor to Section 13-1 that Plaintiffs challenge—was *not* amended in the 1870s but rather retained the form it had taken since 1840—before African Americans had the right to vote. Therefore, even if Plaintiffs theoretically could succeed by tarring the civil rights reformers who enacted the 1970s reforms with what came before (and they cannot), such a gambit would not work here. A re-enfranchisement law enacted before African Americans had the right to vote cannot possibly have been motivated by discrimination against African Americans. Plaintiffs also cannot escape that *every* amendment to the felon re-enfranchisement law since 1840 has been in the direction of greater liberalization, and the form Section 13-1 takes today is the result of reform efforts by civil rights stalwarts. Once the focus is on re-enfranchisement, rather than disenfranchisement, Plaintiffs' claims of discrimination fall apart.

Accepting Plaintiffs' other arguments for invalidating Section 13-1 would require this Court to find that felons have a fundamental right to vote, that elections without them are not "free," and that insisting felons pay their debt to society before rejoining the electorate is the equivalent of a poll-tax or property qualification. No such findings are possible because the North Carolina Constitution itself

disenfranchises felons, subject to any re-enfranchisement law the General Assembly may in its discretion enact. Absent action by the General Assembly, felons in North Carolina would be disenfranchised for life by direct operation of the Constitution. Felon voting in North Carolina is a matter of legislative choice, not constitutional right.

The re-enfranchisement scheme the General Assembly has enacted is automatic and the simplest and easiest system North Carolina has ever had for re-enfranchising felons. It was passed at the behest of African American reformers with the goals of making restoration easier and removing the possibility for bias. It affects all felons the same, regardless of race. All it requires is that felons complete the sentences for the offenses that caused them to be disenfranchised before rejoining the electorate. That is perhaps the most rational policy for re-enfranchising felons, and it certainly is one the General Assembly was entitled to adopt. The Superior Court's judgment must be reversed.

ARGUMENT

I. Plaintiffs Do Not Have Standing.

Plaintiffs argue they have standing to challenge Section 13-1 because it "is the law that prevents people from registering and voting as long as they are on felony probation, parole, or post-release supervision." Br. of Pls.-Appellees' 57 (Aug. 17, 2022) ("Pls.' Br."). That is not accurate. Plaintiffs cannot vote because they lost their right to vote as part of their felony conviction. *See* N.C. CONST. art. VI, § 2, cl. 3. Plaintiffs have not challenged that provision of the North Carolina Constitution;

therefore, their harm is not traceable to the law they challenge, and they lack standing. *See, e.g., Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 599–600, 853 S.E.2d 698, 728 (2021). Plaintiffs claim that Section 13-1 is “implementing legislation” for this constitutional provision, Pls.’ Br. 58, but there too they are mistaken. Article VI, § 2, cl. 3 needs no implementing legislation—by itself it disqualifies felons from voting. Plaintiffs state that the provision “has *always* been accompanied by implementing legislation,” Pls.’ Br. 58, but Plaintiffs have pointed to no statute on the books *today* that declares individuals who are convicted of felonies thereby lose the right to vote—and they certainly have not challenged any such statute in this litigation. Plaintiffs also have cited no cases where any court has found that felons in North Carolina lose the right to vote by operation of a statute that implements this constitutional command. Rather, for more than one hundred years, courts (including this Court) that have considered the issue have found that the Constitution directly disenfranchises voters with no reference to implementing legislation. *See, e.g., Robertson v. Jackson*, 183 N.C. 695, 110 S.E. 593, 596 (1922); *Wilson v. Goodwyn*, 522 F. Supp. 1214, 1216 (E.D.N.C. 1981). What Plaintiffs apparently mean is that Article VI, § 2, cl. 3 has never existed without a statute providing a method for felons to be “restored to the rights of citizenship in the manner prescribed by law.” But that is of no use to them, because the restoration law does not cause the harm that they allege gives rise to standing.

Plaintiffs claim that, if the Court finds they lack standing, that would mean “the General Assembly could enact a statute restoring voting rights only to White

men . . . or only to landed gentry, or only to people convicted on a Tuesday.” Pls.’ Br. 59. That is false. Legislative Defendants are not claiming a right to operate with impunity. Take the “White men only” example. Any such re-enfranchisement statute would plainly constitute unconstitutional racial discrimination and presumably would be immediately challenged and enjoined by the courts of this State. But the result of such an injunction would be that *no* felons could be re-enfranchised unless and until the General Assembly enacted a constitutional re-enfranchisement statute. That is because the Constitution provides that no felons may be re-enfranchised unless they are “first restored to the rights of citizenship in the manner *prescribed by law.*” N.C. CONST. art. VI, § 2, cl. 3 (emphasis added). The courts of this state lack the power to make law. And here, Plaintiffs are not actually seeking to *enjoin* enforcement of Section 13-1 but rather to have the courts rewrite it to suit their policy preferences to re-enfranchise *additional* felons beyond what has been prescribed by the General Assembly.

Finally, Plaintiffs lack standing because their injury cannot be redressed by a favorable decision. Plaintiffs deride this argument as “nonsensical,” and urge Legislative Defendants to “stop advancing” it because it “may have the unfortunate consequence of intimidating voters.” Pls.’ Br. 59–60. But they cite no authority for the proposition that enforcement officials who are not bound by the Superior Court’s injunction would be prevented thereby from instituting prosecutions under N.C.G.S. § 163-275(5), a statute that is not its subject. *But see* N.C. R. CIV. P. 65(d) (“Every order granting an injunction . . . is binding only upon the parties to the action, their

officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise.”). That is a fundamental problem with their case.

II. The Trial Court Exceeded Its Authority.

Plaintiffs also dispute that the Superior Court exceeded its authority in this case, but they fail to grapple with what the Superior Court actually did. Again, 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, cl. 3 (emphasis added). As Plaintiffs do not dispute, neither the Superior Court nor this Court have law-making authority. That means that neither the Superior Court nor this Court may authorize anyone to vote in a manner inconsistent with the restoration law, *i.e.*, Section 13-1. But that is exactly what the Superior Court did by authorizing felons with undischarged sentences, who may not register and vote under Section 13-1, to register and vote. Thus, the Superior Court supplanted “the manner” for restoration as “prescribed by” the General Assembly with a manner for restoration prescribed by the Superior Court. In other words, the court impermissibly wielded law-making authority, because that is the only way to rule for Plaintiffs here.

It is no answer to point, as Plaintiffs do, to courts’ broad equitable authority. That authority is not broad enough to eclipse the separation of powers. Nor is it relevant that courts in other equal-protection cases have effectively expanded the reach of statutes by striking down impermissible distinctions within those statutes.

None of those cases, *see* Pls.’ Br. 62, dealt with a situation where *the Constitution* denies a right unless and until *the legislature* restores that right. In such a situation, the court cannot change statutory distinctions without stepping into the legislature’s constitutional role.

As a result, the Superior Court did not comply with the Constitution simply by leaving other parts of Section 13-1 “operative.” *Id.* at 63. Even if all arguments about Section 13-1’s constitutionality failed, the only remedial option consistent with the constitutional disenfranchisement provision would be to enjoin Section 13-1 entirely—leaving all convicted felons disenfranchised until the General Assembly enacts a new restoration law. The Court cannot assume the General Assembly’s role by creating a new restoration regime itself.

III. Section 13-1 Does Not Violate Equal Protection.

Plaintiffs argue that Section 13-1 violates the North Carolina Constitution’s equal protection clause in three¹ ways: (1) by discriminating against African Americans, (2) by denying individuals on felony supervision the fundamental right to vote, (3) and by discriminating against indigents. As Legislative Defendants have repeatedly emphasized, none of this is true and in fact none of it *can* be true, because

¹ Plaintiffs have also argued that Section 13-1 denies African Americans substantially equal voting power, but they do not assert a separate equal protection claim based on this theory. Plaintiffs’ arguments and evidence about Section 13-1’s alleged impact on African Americans is therefore discussed here as it relates to their claim of intentional discrimination. At any rate, a group’s voting rights cannot be greater than the individuals who make up that group, and therefore declining to re-enfranchise individuals who lack the right to vote cannot possibly deprive any group of equal voting rights.

Section 13-1 does not operate to deny anyone the right to vote but instead offers the path to rights restoration for North Carolina felons.

A. Section 13-1 Does Not Discriminate Against African Americans in Either Intent or Effect.

To show an equal protection clause violation based on racial discrimination, Plaintiffs bear the burden of showing that discriminatory intent was a motivating factor in the passage of Section 13-1, either by showing direct evidence of that intent or circumstantial evidence regarding Section 13-1's impact, legislative process and history, and historical background. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977); *see also Holmes v. Moore*, 270 N.C. App. 7, 17, 840 S.E.2d 244, 255 (2020). This Court must begin with the presumption that the legislature acted in good faith when it passed Section 13-1 and Plaintiffs' evidence must be "strong enough to overcome [that] presumption of legislative good faith." *Abbott v. Perez*, 138 S. Ct. 2305, 2329 (2018). Plaintiffs cannot meet this burden.

1. Legislative Process and History

Plaintiffs first focus on the statutes that they claim are the historical predecessors of today's Section 13-1. They inappropriately begin, however, with an 1877 law that they say "remains on the books today" as Section 13-1 though subject to "some revisions." Pls.' Br. 1–2. But the 1877 law is not related to Section 13-1. The 1877 law Plaintiffs cite says, in relevant part,

The following classes of persons shall not be allowed to register or vote in this state, to-wit: . . . Persons who, upon conviction or confession in open court, shall have been adjudged guilty of a felony or other crime infamous by the laws of this state . . . unless they shall have been legally restored to the rights of citizenship in the manner prescribed by law.

1876–77 Sess. Laws 519–20, App. 7–8. This language *is* very similar to an existing North Carolina law, but not Section 13-1. It is a felony under North Carolina law for a felon “to vote at any primary or election 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). And even if this statute did not exist, the law ultimately would be the same because starting in 1876 the North Carolina Constitution has disenfranchised felons subject to legislative re-enfranchisement. But as Legislative Defendants have repeatedly noted, Plaintiffs have not challenged N.C.G.S. § 163-275(5) (or the constitutional provision reflected in this policy) but rather the method for restoring rights under the law.

It is easy to understand why Plaintiffs would prefer to rely on the historical record for a different law than Section 13-1. Plaintiffs reference lynchings, Black Codes, and former Confederate officers to cast a picture of the 1877 law as irredeemably racist and motivated by a desire to suppress the African American vote. Pls.’ Br. 13. But at the time the 1877 law was enacted the “method provided by law” for re-enfranchisement—the real historical predecessor to Section 13-1—had been the law in North Carolina for 37 years. *See* 1840 Sess. Law ch. 36, App. 2–3. The predecessor statute was enacted in 1840, *thirty years* before the Fifteenth Amendment to the United States Constitution was ratified in 1870, and it could not possibly have been enacted to suppress African American voting in a period when African Americans were not allowed to vote. Furthermore, *every single time* the law regulating the re-enfranchisement of felons has been amended, up to and including

the passage of the current version of Section 13-1, it has been amended in a way to make it easier for felons to regain the right to vote. *See id.*; 1899 Sess. Laws 139, ch. 44, at Leg. Defs.-Appellants' Opening Br. App. 4 (July 18, 2022) ("Leg. Defs.' Br."); 1933 Sess. Laws 370 ch. 243, App. 33; N.C.G.S. § 13-1 (1971), at Leg. Defs.' Br. App. 10; N.C.G.S. § 13-1 (1973), at Leg. Defs.' Br. App. 11. In light of this history, and contrary to Plaintiffs' characterization of their arguments, *see* Pls.' Br. 33-34, Legislative Defendants certainly do maintain that the Superior Court's conclusion that Section 13-1 was "rooted in discrimination against African Americans" was clearly erroneous. It was based upon the history of unrelated statutes.

Just like its predecessors, the modern version of Section 13-1 was not enacted to discriminate against African Americans. The modern Section 13-1 is the result of a reform effort during the 1971 and 1973 legislative sessions which was spearheaded by the African American members of North Carolina's General Assembly and the NAACP. (R p 504). Senator Henry M. Michaux, one of the reformers, described the goals he and Representatives Joy Johnson and Henry Frye—together, all of the African American legislators in North Carolina in 1973—had for the current Section 13-1 in his deposition. When discussing the 1971 reform effort, which itself significantly liberalized the process for granting restoration, he noted that Representative Johnson felt it "didn't quite accomplish what he really wanted to accomplish with that bill" because the law still required a hearing for a felon to be reinstated to his rights, so "we started work on the '73 legislation." Dep. of Sen. Henry

M. Michaux, Jr., 74:1–15, App. 37. With the 1973 law, Senator Michaux said that what the legislators

wanted was a—I guess what you might call a legislative pardon, a full pardon, without having to go through any—for instance, in the '71 legislation, you still had to have a hearing, and it depended on too many folks to approve that right of citizenship. And what [Representative Johnson] was looking for, in my estimation, particularly *in the bill that he introduced*, was a flat-out pardon, where *once all sentence had been completed*, that the citizenship rights were automatically restored without any—without them having to do anything.

Id. at 74:15–75:2, App. 37 (emphasis added). The modern Section 13-1 accomplishes that goal. It was, as Senator Michaux said, a “victory” for reformers. (R p 291). There is no basis for holding that discriminatory intent motivated the passage of the law Plaintiffs have challenged when the record shows exactly the opposite.

Plaintiffs claim that Legislative Defendants’ trial counsel “conceded at trial that Plaintiffs offered ‘irrefutable’ proof of racism” in the legislative history of Section 13-1. Pls.’ Br. 34 n.5. But that is simply not true. Legislative Defendants’ counsel noted in his closing argument that Plaintiffs had “presented a lot of evidence” that was “troubling and irrefutable,” but that evidence was on the general topic of the “shameful history of our state’s use of laws, and with regard to voting in particular, to suppress the Black population.” 8/19/21 Trial Tr. 843:25–844:8, at Leg. Defs.’ Br. App. 16–17. On the topic of Section 13-1, however, Legislative Defendants counsel conceded nothing, arguing that “Dr. Burton did not present any evidence that this version of 13-1 was crafted, amended, or authored by any particular legislator . . . with any racial animus.” *Id.* at 844:11–14, at Leg. Defs.’ Br. App. 17.

Nevertheless, Plaintiffs argue that if the Court finds that earlier North Carolina restoration laws (which again, are notably *not* the focus of their discussion of the history of North Carolina law in this area) were the result of racially discriminatory motives, it must impute those same motives to Senator Michaux and his co-sponsors. Pls.' Br. 34–36. First, Plaintiffs argue this case is like *Hunter v. Underwood*, 471 U.S. 222 (1985), but in *Hunter* the Supreme Court insisted upon proof that the challenged law was enacted with discriminatory intent. Unlike Section 13-1, the provision challenged in *Hunter* was enacted in 1901 and had not been modified or reconsidered, let alone replaced, when it was challenged. *Hunter* therefore does not support the argument that racial animus allegedly motivating passage of a totally different statute enacted in 1877 (and which did not amend the real predecessor to Section 13-1 which was enacted in 1840) can be imputed to reformers who enacted Section 13-1 almost a century later. Plaintiffs fault Legislative Defendants for focusing on the events surrounding the enactment of the modern Section 13-1 in the 1970s, but that is the appropriate focus. After all, “we are concerned here with the validity of the [modern] provision, not the [historical] provision.” *Johnson v. Gov. of Fla.*, 405 F.3d 1214, 1223 (11th Cir. 2005).

Second, Plaintiffs argue that a racist intent can be shown by “the General Assembly’s decision in 1973 to preserve § 13-1’s denial of the franchise to people living in the community” which they argue was the result of “White legislators . . . insist[ing] on reinserting it without offering *any* race neutral explanation.” Pls.' Br. 36. Plaintiffs cite no authority for this statement, and with good reason—it lacks support. White

legislators did not “reinsert” a provision requiring felons on some form of community supervision to remain disenfranchised—that was in the original bill. As drafted and sponsored by African American legislators working with the support of the NAACP, the proposed bill stated that rights were to be restored following “unconditional discharge of an inmate by the Department of Correction or Department of Juvenile Correction, of a probationer by the Probation Commission, or of a parolee by the Board of Paroles.” 1973 N.C. Sess. Laws 33 at 1, App. 39 (emphasis added). Plaintiffs’ claim for racist motivation rests on the premise that the African American sponsors of the 1973 bill did not intend reinstatement to wait for the completion of probation or parole, but that premise is unsupported on this record.

2. Impact

Plaintiffs have failed to show disparate impact because Section 13-1 re-enfranchises African American felons at the same rates as all other felons—100%, upon completion of all the terms of their sentences—and there is no evidence in the record that would suggest otherwise. In support of their claim that Section 13-1 results in “extreme disparate impact on African Americans,” Plaintiffs point to a “statewide rate of African American disenfranchisement [that] is 2.76 times as high as the rate of White disenfranchisement.” Pls.’ Br. 36. As Legislative Defendants explained in their opening brief, the United States Supreme Court has said that it is improper to rely on exactly this type of statistic (the ratio of one percentage to another) to establish disparate impact because these ratios frequently “mask the fact that the populations [being compared] were effectively identical.” *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2345 (2021). Plaintiffs argue that is

not true in *this case* because other statistics “align[]” with this ratio. Pls.’ Br. 37. These include the facts that “African Americans comprise 21% of the voting-age population in North Carolina, but 42% of those disenfranchised due to felony supervision” and “[i]n all 84 counties with sufficient data for comparison, the rate of African American disenfranchisement is higher than the rate of White disenfranchisement.” *Id.* But the reason these statistics align with the statewide ratio is that they are themselves comparisons between percentages and so are equally “distort[ing]” under the rationale of *Brnovich*. Furthermore, nothing in these statistics suggests that Section 13-1 is *responsible* for the difference between the share of the voting-age population and the share of the disenfranchised-while-on-felony-supervision population that is African American. And Plaintiffs do not offer any explanation for how the law they have challenged *could* even cause such a discrepancy, when the law makes restoration a guarantee after a felon finishes serving his sentence.

As discussed above, the automatic nature of restoration under Section 13-1 was one of the primary features that motivated its sponsors in the General Assembly. By removing the requirement that a felon must petition a court, the current Section 13-1 not only streamlined the process for restoration but also removed the potential for bias that *could* have actually caused some disparity traceable to the statute. Plaintiffs claim it is inappropriate to attempt to compare the 1973 regime to the 1971 law that was in place before it because the aspects of the law they challenge were present in both 1971 and 1973. Pls.’ Br. 37. But if the comparison is extended further back, to

the provisions that were in effect before 1971, Legislative Defendants' point is made all the more forcefully. Senator Michaux testified that one of the problems with the pre-1971 regime was that felons had to petition a court for reinstatement of rights and he "knew that there were prejudiced judges that would—that would deny you anything you asked for if you were black." Dep. of Sen. Henry M. Michaux, Jr. 36:9–12, App. 36. The challenged version of the law, therefore, significantly *reduced* the possibility the restoration regime would disparately effect people based on their race. That dooms the argument that disparate impact can show the law was enacted with racist motivations. *See, e.g., Johnson*, 405 F.3d at 1226 (distinguishing *United States v. Fordice*, 505 U.S. 717 (1992), on the ground that "Florida's 1968 felon disenfranchisement provision did not continue the adverse disparate impact of earlier *de jure* measures"). In other words, the 1970s reforms cannot possibly be charged with causing racially disparate impact when their effect was to *remove* the discretion that was a potential source for discrimination in the system. Plaintiffs certainly have no evidence for the proposition that any racial disparities in re-enfranchisement were made *worse* by the 1970s amendments, which would be a truly surprising result.

Finally, Legislative Defendants note that Plaintiffs offer no explanation at all for the lack of evidence of a preclearance objection to the law from the United States Department of Justice based on disparate impact. As Legislative Defendants explained, North Carolina, although not a covered state, was required to submit statewide changes in voting laws for preclearance because many counties in the state were covered, and North Carolina accordingly submitted over one thousand laws for

preclearance. The lack of an objection speaks volumes about the anticipated impact of the revised Section 13-1 in 1973. *See* Leg. Defs.' Br. 19.

3. Section 13-1 Is Justified by Race-Neutral Motivations.

Under the *Arlington Heights* framework, if the Court finds racism was a “substantial” or “motivating” factor in a law’s passage, the law will still be upheld if “the law’s defenders . . . demonstrate that the law would have been enacted without this factor.” *Holmes*, 270 N.C. App. at 19, 840 S.E.2d at 256. While Plaintiffs have not made such a showing, the legislative history plainly demonstrates Section 13-1 would have been enacted regardless of any racial motivation, given the intent of Senator Michaux and the other sponsors of Section 13-1 to secure an automatic method for restoration of felons’ rights. Plaintiffs take issue with Legislative Defendants’ argument that the law is independently justified because the line Section 13-1 draws is easily administrable and understandable, *see* Pls.’ Br 56, but they do not mention, much less contest, the overarching state “interest in *restoring* felons to the electorate after justice has been done and they have been fully rehabilitated by the criminal justice system.” *Jones v. Gov. of Fla.*, 975 F.3d 1016, 1034 (11th Cir. 2020); *see also* Leg. Defs.’ Br. 24. That too supports upholding Section 13-1. And Section 13-1 is much more easily administrable than what preceded it, as it draws a bright, automatic line at completion of a felon’s sentence.

B. Section 13-1 Does Not Deprive Anyone of the Fundamental Right to Vote.

Plaintiffs claim Section 13-1 also violates equal protection by denying felons on supervision the right to vote. But as Legislative Defendants explained in their

opening brief, felons do not have a fundamental right to vote, so Section 13-1 cannot violate that right. *See, e.g., Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.). Plaintiffs recognize that federal courts have uniformly affirmed this statement, but nevertheless argue that “North Carolina’s Equal Protection Clause provides greater protection for voting rights than its federal counterpart.” Pls.’ Br. 39. That may be so for some purposes, but that does not mean that the North Carolina Equal Protection Clause protects broader voting rights for felons. If anything, the North Carolina Constitution is even clearer than the U.S. Constitution in establishing that felons lack a fundamental right to vote.

The holding that felons lack a fundamental right to vote under the United States Constitution—and therefore that excluding felons from the franchise generally is not a violation of equal protection—is based on an implication from the fact that Section 2 of the Fourteenth Amendment does not reduce States’ apportionment in Congress for disenfranchising felons. *See Richardson v. Ramirez*, 418 U.S. 24, 54 (1974). The North Carolina Constitution is much more direct. Article VI of the North Carolina Constitution defines who has the right to vote. Section 1 states: “Every person born in the United States and every person who has been naturalized, 18 years of age, *and possessing the qualifications set out in this Article*, shall be entitled to vote at any election by the people of the State, *except as herein otherwise provided*” (emphasis added). In the case of felons, Section 2 explicitly excludes them from this group, stating:

Disqualification of a 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.

The North Carolina Constitution could not be clearer: felons do not have the right to vote, whether they are currently in prison or not, unless they are “restored to the rights of citizenship” as under Section 13-1. It is therefore *impossible* for Section 13-1 to violate the “fundamental right” of felons to vote because they do not possess such a right.

This point is furthered, not diminished, by the cases on which Plaintiffs rely. Plaintiffs cite *Roberts v. Cannon*, 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256 (1839), for the proposition that felons on supervision “feel an interest in [North Carolina’s] welfare” and so, it is implied, they should be allowed to vote. Pls.’ Br. 39. But in *Roberts* the Court acknowledged that the right to vote is granted by the North Carolina Constitution and that the Court “must suppose that the language [of the constitution] was carefully selected” and should be consulted to define the scope of that right. 4 Dev & Bat. at 261. As the Court said in *Texfi Industries, Inc. v. City of Fayetteville*, another case on which Plaintiffs rely but which says nothing about the right of felons to vote, “[w]hile the right to vote has been identified as a fundamental right, our inquiry cannot stop with that acknowledgement.” 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980) (discussing the alleged right of a corporate entity to vote and finding no such right exists) (internal citations omitted). Here the analysis must continue to an examination of the constitutional provision disenfranchising felons, which is dispositive.

C. Section 13-1 Does Not Create an Impermissible Wealth-Based Classification.

Finally, Plaintiffs urge this Court to find that Section 13-1 violates equal protection by requiring felons to pay outstanding costs, fees, and restitution which have been made conditions of their post-release supervision. Plaintiffs claim it is “well settled” that equal protection prevents a state from barring an individual from voting “on account of his economic status.” Pls.’ Br. 48 (quoting *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966)). But wealth is not a suspect classification calling for heightened scrutiny and it only received such scrutiny in *Harper* because it was applied to “citizen[s], otherwise qualified to vote” and interfered with that fundamental right. 383 U.S. at 668. As explained above, until they satisfy the conditions for re-enfranchisement, felons have no such right, so the requirement that felons pay their fines before having their rights restored deserves no such scrutiny.

Plaintiffs offer an example that concedes the important distinction between this case and poll-tax cases like *Harper*. Plaintiffs say “[t]wo North Carolinians could be convicted of the same crime, receive the same sentence, and each complete all other terms of their probation, but the person with financial means to pay *will be re-enfranchised* while the person without *will remain barred from voting*.” Pls.’ Br. 49 (emphasis added). But that is precisely the point. Plaintiffs’ payment is necessary to *re-enfranchise* them, not allow someone “otherwise qualified to vote” access to the ballot box. *See Harper*, 383 U.S. at 668. “The re-enfranchisement law does not condition the right to vote on payment of restitution . . . but instead conditions the restoration of a felon’s right to vote on such payment.” *Johnson v. Bredesen*, 624 F.3d

742, 751 (6th Cir. 2010); *see also Harvey v. Brewer*, 605 F.3d 1067, 1080 (9th Cir. 2010) (“Plaintiffs’ right to vote was not abridged because they failed to pay a poll tax; it was abridged because they were convicted of felonies.”); *Howard v. Gilmore*, 205 F.3d 1333, at *2 (Table) (4th Cir. 2000) (per curiam) (“[I]t is not [plaintiffs] right to vote upon which payment of a fee is being conditioned; rather, it is the restoration of his civil rights upon which the payment of a fee is being conditioned.”). The requirement that a felon pay all fines has nothing to do with the polls, it is part and parcel of his criminal punishment, the amount of which—which Plaintiffs detail to bolster their claim that the fines are onerous, *see Pls.’ Br.* 48—reflects the punishment merited by their offense, not a price tag on their right to vote.

Finally, it is simply not accurate for Plaintiffs to say Section 13-1 denies “similarly situated persons” equal voting power, because a felon who has paid all his fines and completed all terms of his sentence is *not* similarly situated to one who has not under North Carolina law. North Carolina “withholds the franchise from *any* felon, regardless of wealth, who has failed to complete *any* term of his criminal sentence—financial or otherwise. It does not single out the failure to complete financial terms for special treatment.” *Jones*, 975 F.3d at 1030. That is constitutionally permissible.

IV. Section 13-1 Does Not Violate the Ban on Property Qualifications.

In addition to their equal protection claim, Plaintiffs argue that the requirement that felons pay fines and restitution before having their rights restored violates the North Carolina Constitution’s command that “no property qualification shall affect the right to vote or hold office.” N.C. CONST. art. I, § 11. They argue that

money is a form of property, so “[b]y disenfranchising people based on failure to pay court costs, fees, and restitution, § 13-1 violates the constitutional ban on property qualifications.” Pls.’ Br. 51. There are two significant problems with that argument.

First, even accepting Plaintiffs’ characterization of the nature of a “property qualification,” as with every other argument Plaintiffs make, this argument is predicated on the false premise that Section 13-1 disenfranchises felons. The North Carolina Constitution disenfranchises felons. Section 13-1 does not. For that reason, Plaintiffs’ reference to *Harper’s* statement that “whether the citizen, otherwise qualified to vote, has \$1.50 in his pocket or nothing at all” should not impact his right to vote misses the mark. Pls.’ Br. 52 (quoting 383 U.S. at 668). As *Harper* says, that reasoning applies to a citizen who is “otherwise qualified to vote.” 383 U.S. at 668. Felons are not otherwise qualified to vote and the only way they can *become* qualified to vote is to satisfy the requirements of Section 13-1. It is not, as Plaintiffs claim, Pls.’ Br. 51, “semantics” to distinguish between paying fines, which were imposed as part of a criminal conviction, in order to have an individual’s rights restored, and requiring the payment of money to *exercise* a right to vote that an individual possesses. “[R]equiring felons to complete their full criminal sentences [including the payment of fines] ‘falls squarely within the state’s power to fix core voter qualifications.’” *Jones*, 975 F.3d at 1031 (quoting *Gonzalez v. Arizona*, 677 F.3d 383, 409 (9th Cir. 2012) (en banc), *aff’d sub nom. Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013)).

Second, Plaintiffs’ conception of what a “property qualification” is should not be accepted. It is not enough to show that money is a form of property, *see* Pls.’ Br.

50. Plaintiffs' argument hinges upon this court finding that *payment* of the monetary penalties imposed as part of a criminal sentence is a "qualification," but that is not a sensible reading of the constitution, nor is it one for which Plaintiffs have any authority. As Legislative Defendants argued, Leg. Defs.' Br. 32–33, the provision relates to *possession* of property, see *Royal v. State*, 153 N.C. App. 495, 499, 570 S.E.2d 738, 740 (2002), otherwise it is hard to understand how such a requirement could have coexisted with North Carolina's poll tax at earlier periods in its history, see *Moose v. Bd. of Comm'rs of Alexander Cnty.*, 172 N.C. 419, 451, 90 S.E. 441 (1916). Plaintiffs ignore this argument. In fact, the only two cases Plaintiffs cite to construe this clause are both irrelevant to this case and do not establish anything like the principle that a *fine* is a *qualification*. See Pls.' Br. 49–50. In *Texfi Industries, Inc. v. City of Fayetteville*, 44 N.C. App. 268, 261 S.E.2d 21 (1979), the court of appeals was asked whether a corporation was entitled to vote in an annexation referendum. The court said no, noting that "corporations, as artificial entities have no fundamental inalienable rights of suffrage," and it referenced the property qualifications ban only because the corporation's "primary interests . . . at stake are its property interests . . . [But] property interests alone cannot establish voting rights." *Id.* at 273. No party here suggests that an individual, otherwise lacking voting rights, could create them by virtue of possessing property. *Texfi Industries* is irrelevant to this case. Plaintiffs' second case, *Roberts v. Cannon*, similarly does not support the claim that disenfranchising felons until they pay their debt to society violates the ban on property qualifications. In that case, the property qualifications provision was not at

issue and was only referenced by the Court in construing a different provision. Even so, the Court acknowledged that the ban on property qualifications offered a beneficial extension of the franchise to “all classes *of the community*.” 4 Dev. & Bat. at 260 (emphasis added). But as discussed above, felons are *not* part of the political community of North Carolina entitled to vote until they have had their rights restored. The state is permitted to insist on payment of fines before that happens.

V. Section 13-1 Does Not Violate the Free Elections Clause.

Plaintiffs argue that “the Free Elections Clause mandates that elections in North Carolina reflect the will of the people.” Pls.’ Br. 41 (capitalization omitted). But that begs the relevant question: what “people”? And the answer is clear: those members of the political community who are *already endowed with the right to vote*. Plaintiffs do not argue, for example, that non-citizens or children under age 18—neither of whom are entitled to vote in North Carolina—have a right to vote under the Free Elections Clause. Yet, those populations far outnumber the 56,000 convicted felons, without whose participation elections cannot be considered “free” according to Plaintiffs. Similarly, Plaintiffs do not argue that felons still in prison are entitled to vote under the Free Elections Clause, though they too stand to be affected by the policies that might result from elections.

The Free Elections Clause thus cannot endow as broad a right as Plaintiffs suggest. Rather, as this Court has consistently held—including in the recent case (*Harper*) on which Plaintiffs heavily rely and another recent case (*Committee to Elect Dan Forest*) that they ignore—the clause protects *voters* against undue government interference in casting their votes. *See Comm. to Elect Dan Forest*, 376 N.C. at 610,

853 S.E.2d at 735 (“[T]he North Carolina Constitution recognizes the people’s right to free elections, which means that elections must be free from interference[.]” (cleaned up)); *Harper v. Hall*, 380 N.C. 317, 376, 868 S.E.2d 499, 542 (2022), *cert. granted sub nom. Moore v. Harper*, 142 S. Ct. 2901 (2022) (“[F]or an election to be free and the will of the people to be ascertained, each *voter* must have substantially equal voting power” (emphasis added)). These holdings are in no way “nonsensical,” as Plaintiffs suggest, but entirely in line with the history that Plaintiffs themselves summarize. Pls.’ Br. 46. The Free Elections Clause therefore cannot be violated where, as here, a law does not extend voting rights to people who already lack voting rights under the North Carolina Constitution.

Of course, the General Assembly *has* extended voting rights through Section 13-1 to felons who obtain an unconditional discharge from their sentences. But the Constitution’s disenfranchisement provision does not require the General Assembly to do so, and thus neither does the Free Elections Clause. As Plaintiffs do not dispute, the Constitution cannot be at war with itself. Plaintiffs do suggest that this Court rejected that principle (while at the same time explicitly asserting it) in *Stephenson* by reading constitutional provisions “in such a manner as to avoid internal textual conflict.” *Stephenson v. Bartlett*, 355 N.C. 354, 378, 562 S.E.2d 377, 394 (2002). But here, Plaintiffs’ reading would *create* textual conflict between the disenfranchisement provision and Free Elections Clause. For, *contra* Plaintiffs, the disenfranchisement provision clearly “suggests that the Free Elections Clause”—and courts applying the Free Elections Clause—“should not govern th[e] process” of restoring felons’ voting

rights. Pls.' Br. 46. The text of the disenfranchisement provision puts that process in the legislature's hands.

Plaintiffs also lack any real response to the point that the Free Elections Clause must be construed according to the re-enfranchisement baseline against which it was adopted. The point is obviously not that the 1970 constitutional convention "insulate[d] every voting related statute in effect in 1970 from constitutional review." *Id.* The point is that the Free Elections Clause cannot be violated by a statute that does not automatically restore felons' voting rights upon release from prison when a provision *in the same Constitution* does not require that felons' voting rights be restored *at all*. As a logical matter, Section 13-1 cannot violate the Free Elections Clause.

VI. Section 13-1 Satisfies Any Tier-of-Scrutiny Analysis.

Plaintiffs argue that their claims under the Equal Protection Clause² and the Free Elections Clause are properly analyzed under strict scrutiny. Pls.' Br. 53. However, because strict scrutiny is only appropriate where a "regulation classifies a person on the basis of certain designated suspect characteristics or when it infringes on the ability of some persons to exercise a fundamental right," *D.O.T. v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001), it is inappropriate here. As explained at length above, Plaintiffs have not identified a suspect characteristic by which Section

² Plaintiffs offer several Equal Protection claims, but tiers-of-scrutiny analysis is inappropriate on the claim based on racial discrimination, because this Court has endorsed the burden-shifting framework from *Arlington Heights* for such cases. *See Holmes*, 270 N.C. App. at 16, 840 S.E.2d at 254 & n.5. Legislative Defendants addressed the application of that framework above.

13-1 classifies people, and felons do not have a fundamental right to vote, so strict scrutiny cannot apply.

Plaintiffs argue that “at a minimum” intermediate scrutiny should apply to these claims. Pls.’ Br. 53–54. Under intermediate scrutiny, a law must “advance important governmental interests” and not interfere with a “quasi-fundamental right,” or distinguish between “semisuspect classes” “substantially more than necessary to further those interests.” *Blankenship v. Bartlett*, 363 N.C. 518, 524, 526–27 (2009). But again, Section 13-1 does neither. As Legislative Defendants have repeatedly noted, Plaintiffs have challenged a law that distinguishes only between felons who have completed all terms of their sentences, and felons who have not. Felons who have not completed the terms of their sentences are not a “semisuspect class,” nor is voting a “quasi-fundamental right” for them. They are a group that is explicitly disenfranchised by the North Carolina Constitution, and the line that Section 13-1 draws is a line the constitution specifically permits.

Plaintiffs cite to *King ex rel. Harvey Barrow v. Beaufort County Board of Education*, 364 N.C. 368, 704 S.E.2d 249 (2010), to support their argument for intermediate scrutiny, but that case involved a student suing over denial of access to an alternative educational plan during an extended suspension from school. There, the Court found intermediate scrutiny appropriate because although “a fundamental right to alternative education does not exist under the state constitution, . . . insofar as the General Assembly has provided a statutory right to alternative education, a suspended student excluded from alternative education has a state constitutional

right to know the reason for her exclusion.” *Id.* 372. The motivating concern of the court was that the General Assembly “ha[d] chosen to grant [a] statutory right” and intermediate scrutiny was necessary to ensure that administrators would not “arbitrarily deny access” to that right. *Id.* at 378. No similar concern is possible here. There is no statutory right to re-enfranchisement except for the one that Plaintiffs challenge, and, because it confers citizenship rights automatically, it is administered *exactly* on the terms prescribed by the General Assembly. Plaintiffs also cite to *Blankenship*, but the reasoning of that case also does not favor applying intermediate scrutiny here either. In *Blankenship*, which dealt with a challenge to district apportionment for judicial elections, the Court explained that judicial elections were like other cases that required intermediate scrutiny which “combine[d] elements of a fundamental right with conduct generally subject to regulation reviewed only for a rational basis.” 363 N.C. at 527, 681 S.E.2d at 765. Plaintiffs do not offer any explanation for how their claims would fit into the *Blankenship* framework.

Finally, Plaintiffs’ argument here, as everywhere in their brief, is predicated on a false understanding of what Section 13-1 does. Plaintiffs close by claiming that “the mass disenfranchisement of people on felony supervision causes immense harm,” Pls.’ Br. 56, but that harm is not traceable to Section 13-1, which does not disenfranchise anyone. No form of heightened scrutiny is appropriate because Section 13-1 does not deprive anyone of the right to vote. In any event, because Section 13-1 serves the state’s interest in felon re-enfranchisement by drawing an eminently

sensible distinction that relies on no suspect classification and infringes on no constitutional right, it satisfies any tier of scrutiny.

CONCLUSION

The Court should reverse the grants of summary and final judgment for Plaintiffs and order judgment in favor of Defendants.

Respectfully submitted this 9th day of September 2022.

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LAW S
App. 1

OF THE

STATE OF NORTH CAROLINA,

PASSED BY THE GENERAL ASSEMBLY,

AT THE

SESSION OF 1940-41.

Published agreeably to Act of Assembly.

RALEIGH:

PRINTED BY W. R. GALE, OFFICE OF THE RALEIGH REGISTER.

1941.

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CHAPTER XXXVI.

An Act providing for restoring to the rights of citizenship persons convicted of infamous crimes.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,

Rules for restoring persons to citizenship.

That any person either now or hereafter convicted of any infamous crime, whereby the rights of citizenship are forfeited, may be restored to the same under the following rules and regulations: First, he shall file his petition in the Superior Court of Law, setting forth his conviction and the punishment inflicted, and shall state therein his place or places of residence, and his occupation since his conviction, and shall also state the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights. Second, upon filing the petition, the Clerk of the Court shall advertise the substance thereof at the Court House door of his County for the space of three months next before the Court when the petitioner proposes that the same shall be heard. Third, at the hearing thereof, the Court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved by 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, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto.

No deposition for petitioner to be read. Examination of testimony by Court.

II. *Be it further enacted,* That at the hearing of such petition, no deposition relating to the character of the petitioner shall be read, and the Court shall examine all proper testimony which may be offered either by the petitioner, or any, who may oppose the grant of his prayer.

Petition not to be filed in less than 4 years.

III. *Be it further enacted,* That no petition for the purposes aforesaid, shall be filed within less time than four years of conviction.

App. 3

IV. *Be it further enacted*, That the petition shall be filed in the County where the indictment was found, upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different Counties, then the petition shall be filed in that County where the last indictment was found.

Where the petitioner shall file his petition.

V. *Be it further enacted*, That if any person who has once been restored to the forfeited rights of citizenship under this Act, shall afterwards commit an infamous crime, he shall not again have the benefit of this Act, but shall remain infamous.

No person to receive the benefit of this act more than once.

VI. *And be it further enacted*, That Females may have the benefit of this Act, in the same manner as Males, and in every case the petitioner shall give bond with security, payable to the State for the costs of the application, which costs shall be paid by the applicant.

Females may have the benefit of this act.

[Ratified, the 11th day of January, 1841.]

CHAPTER XXXVII.

An Act to protect the interest of Lessors.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That when any lessee of land, for the rent of the land that he shall cultivate, under lease, shall agree to pay a certain share of his or her crop, or a specific quantity of grain, so much of the crop of the lessee raised on his farm held under lease, as will be sufficient to satisfy the rent to his landlord for the year, shall be exempt from execution, and from the lien of all other debts, until the end of each respective year.

Part of the crop to be exempt from execution.

[Ratified, the 11th day of January, 1841.]

Said parties shall render to the governor on or before the first day of April, one thousand eight hundred and seventy-seven, under oath, taken before any person authorized to administer the same, an itemized statement of all such fertilizers, giving brand, name, manufacturer and number of tons of same, and obtain a license for the sale thereof as herein provided: *Provided*, That this act shall not apply to purchases already made.

Ratified the 12th day of March, A. D. 1877.

CHAPTER CCLXXV.

AN ACT TO REGULATE ELECTIONS.

SECTION 1. *The General Assembly of North Carolina do enact*, On the Tuesday next after the first Monday in November, in the year of our Lord, one thousand eight hundred and eighty, and every four years thereafter, an election shall be held in the several election precincts in each county for the followidg officers: First, governor; second, lieutenant governor; third, secretary of state; fourth, auditor; fifth, treasurer; sixth, superintendent of public instruction; seventh, attorney general. And on said Tuesday next after the first Monday in November aforesaid, and every two years thereafter, an election shall be held for members of congress in the several districts; members of the general assembly for their respective counties and districts; a register of deeds, county surveyor, coroner, and sheriff for their respective counties; and in such counties as have one, a county treasurer.

SEC. 2. The board of justices of the peace of each county, a majority being present, shall have power to establish, alter, discontinue or create such separate places of election in their respective counties as they may deem

State officers.

Legislature and county officers.

Powers to establish places of election.

Plaintiffs'
Exhibit

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expedient, giving thirty days' notice thereof by advertisement in some public journal, if there be one published in the county, or in lieu thereof in three places in such county, and at the court house thereof; but there shall be at least one polling place in every township, as nearly central as possible, and there shall be a polling place open in each ward of a city numbering over three thousand inhabitants.

SEC. 3. The secretary of state shall provide for and forward to the commissioners of counties on their requisition, suitable registration books, whenever needed, for each election precinct as established heretofore, and for any new precincts which may be established under the last section.

Secretary of state shall furnish registration books.

SEC. 4. If the commissioners of counties do not receive a sufficient number of registration books, as provided in the last section, they are authorized and directed to provide the same for their respective counties at the expense of the state.

Books to be provided by commissioners, when.

SEC. 5. The board of justices of the peace of the several counties shall select, on or before the first Monday of the month preceding each election, one or more persons for each election precinct, who shall act as registrars of voters for such precinct. Said board shall make publication of the names of the persons so selected, at the court house door, immediately after such appointment, and shall cause a notice to be served upon said persons by the sheriff. If any registrar shall refuse or neglect to perform his duties, the justices of the peace for the township may remove him and appoint another in his place. And no person who is a candidate for any office shall be a registrar, or judge or inspector of an election.

The board of justices of the peace shall select registrars.

Candidate not eligible.

SEC. 6. Registrars shall be furnished with a registration book, and it shall be their duty to revise the existing registration books of their precinct or township in such manner that said books shall show an accurate list of electors previously registered in such precinct or township, and still residing therein, without requiring such

Duty of registrars

electors to be registered anew; and such registrars shall also, between the hours of sunrise and sunset on each day (Sundays excepted) for thirty days preceding each election, keep open said books for the registration of any electors residing in such precinct or township and entitled to registration, whose names have never before been registered in such precinct or township, or do not appear in the revised list. But the board of justices of the peace for such county may, upon giving thirty days' notice in each township, if they shall think proper, direct that there shall be an entirely new registration of voters before any election, instead of the revision of the registration lists, as above provided.

Where electors may vote.

SEC. 7. No elector shall be entitled to register or vote in any other precinct or township than the one in which he is an actual and *bona fide* resident, on the day of election, and no certificates of registration shall be given.

Registration books open to inspection.

SEC. 8. It shall be the duty of the registrars and judges of election to attend at the polling place of their township or precinct with the registration books, on the Saturday preceding the election, from the hour of nine o'clock A. M. till the hour of five o'clock P. M., when and where the said books shall be open to the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite to the name of the person so objected to, the word "challenged," and shall appoint a time and place on or before the election day, when he, together with said judges of election, shall hear and decide said objection, giving due notice to the voter so objected to. *Provided*, That nothing in this section contained shall be construed to prohibit the right of any elector to challenge or object to the name of any person registered or offering to register at any time other than that above specified. If any person challenged or objected to, shall be found not duly qualified, as provided in this chapter, or as provided in

Right of challenge.

Proviso.

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the constitution, the registrar shall erase his name from the books.

SEC. 9. The board of justices of the peace for each county, on or before the first Monday of the month next preceding the month in which each election is held, shall appoint four judges or inspectors of election, two of whom shall be of a different political party, where possible, from the registrars, at each place of holding election in their respective counties. The said judges of election shall attend at the places for which they are severally appointed, on the day of election, and they, together with the registrars for such precinct or township, who shall attend with the registration books, after being sworn by some justice of the peace, or other person authorized to administer oaths, to conduct the election fairly and impartially according to the constitution and laws of the state, shall open the polls and superintend the same until the close of the election. They shall keep poll-books, in which shall be entered the name of every person who shall vote, and at the close of the election the judges of election shall certify the same over their proper signatures, and deposit them with the register of deeds for safe keeping. And said poll-books shall, in any trial for illegal and fraudulent voting, be received as evidence. The board of justices of the peace shall, immediately after the appointment of the judges of election, as herein provided, furnish a list of the names of such judges to the sheriff of their county, who shall, within ten days, serve notice of such appointment upon the said judges; and if, for any cause, any person appointed judge of election shall fail to attend, the registrars of such township shall appoint some discreet person to act as such, who shall be by him sworn before acting, and shall be of the same political party as the absent judge or judges.

Judges or inspectors of election.

SEC. 10. The following classes of persons shall not be allowed to register or vote in this state, to-wit: First. Persons under twenty-one years of age. Second. Idiots and lunatics. Third. Persons who, upon conviction or

Persons not allowed to register or vote.

confession in open court, shall have been adjudged guilty of felony or other crime infamous by the laws of this state, committed after the first day of January, in the year of our Lord one thousand eight hundred and seventy seven, unless they shall have been legally restored to the rights of citizenship in the manner prescribed by law.

Qualification of electors.

Residence of electors.

fraudulent registering or voting punishable by fine and imprisonment.

Persons offering to register shall be sworn.

SEC. 11. Subject to the foregoing exceptions, every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, who shall have resided in the state twelve months next preceding the election, and ninety days in the county in which he offers to vote, shall be deemed a qualified elector in the precinct or township in which he resides; and all electors shall register and vote in the election precinct of their residence. The residence of a married man shall be where his family resides, and that of a single man where he boards and sleeps; and should any single man board in one ward or precinct and sleep in another, then his residence shall be in the ward or precinct in which he sleeps, and he shall not register or vote in any other ward or precinct. But no elector shall be allowed to register in any ward or precinct to which he shall have removed for the mere purpose of being a voter therein, nor unless his residence therein is actual and *bona fide*. And it shall be the duty of the registrar or judge of election, when requested by any bystander, to swear any person offering to register or vote, as to his residence, and to have placed in writing opposite his name the word "sworn;" and any person knowingly and fraudulently registering or voting at any other place than that of his *bona fide* residence shall be deemed guilty of a crime infamous by the laws of this state, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.

SEC. 12. Every person who shall present himself for registration shall state under oath how long he has con-

continuously resided in this state, and in the county in which he offers to vote, whether he is an alien or native born, when he became twenty-one years of age, whether married or single, and where or with whom he resides. Upon the request of any elector the registrar shall require the applicant to prove his identity, or age, and residence, by the testimony of at least one elector, under oath. And if an elector has previously been admitted to registration in any ward, township or precinct in the county in which he resides, he shall not be allowed to register again in another ward, precinct or township in the same county until he produces a certificate of the registrar of the former township, ward or precinct that said elector has removed from said township, ward or precinct, and that his name has been erased from the registration books of the ward, township or precinct from which he has removed; and the identity of any person claiming a right to be registered in any precinct of the same county by virtue of such certificate, with the person named therein, shall be proved by the oath of the claimant, and when required by the registrar, by the oath of at least one other elector. Every person found qualified shall take the following oath: "I, ———, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of North Carolina; that I have been a resident of the state of North Carolina for twelve months, and of the county of ——— for ninety days; that I am a duly qualified elector, and that I have not registered for this election in any other precinct, and that I am an actual and *bona fide* resident of ——— township (or precinct): So help me God." And thereupon said person shall be permitted to register, and the date of his registration shall be noted opposite his name in the registration book.

Oath of electors.

SEC. 13. No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the judges of the election that he has come of the age of twenty-one years on the day of election, or has, for any

Allowed to register on election day.

other reason, become on that day entitled to register, he shall be allowed to register and vote.

When judges to challenge.

SEC. 14. On the day of election any elector may, and it shall be the duty of the judges of election to challenge the vote of any person who may be known or suspected not to be a duly qualified voter.

Oath of persons challenged.

SEC. 15. When any person is so challenged, the judges shall explain to him the qualifications of an elector, and shall examine him as to his qualifications, and if the person insists that he is qualified, and shall prove his identity with the person in whose name he offers to vote, or his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony under oath, of at least one other elector, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, that you are twenty-one years old, and that you have resided in this state for twelve months and in this county for ninety days next preceding this election, and that you are not disqualified from voting by the constitution and laws of this state, that your name is (here insert the name given,) and that in such name you were duly registered as a voter of this township, and that you are now an actual resident of the same and have been ever since you were so registered, and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God." And if he refuses to take such oath, his vote shall be rejected; if, however, he does take the oath when tendered his vote shall be received. *Provided*, that after such oath shall have been taken, the judges may, nevertheless, refuse to permit such person to vote if they be satisfied from record evidence or their own knowledge or other legal testimony adduced before them that he is not a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of a person offering to vote. When-

When to be rejected.

ever any person's vote shall be received after having taken the oath prescribed in this section, it shall be the duty of the clerks of the election to write on the poll books, at the end of such person's name the word "sworn." The same powers as to the administration of oaths and examination of witnesses, as in this section granted to judges of elections, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to.

Challenge to be recorded.

Powers of registrars, &c.

SEC. 16. The polls shall be opened on the day of election from seven o'clock in the morning until sunset of the same day, and no longer; and each voter whose name may appear registered, and who shall not be challenged and rejected, shall hand in his ballots to the judges who shall carefully deposit the ballots in the ballot boxes.

Polls to be opened.

Manner of voting.

SEC. 17. Immediately after any election the judges of election shall deposit the registration books for their respective precincts with the register of deeds of their respective counties.

Judges to deposit registration books.

SEC. 18. The state officers, viz: governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction and attorney general, shall be voted for on one ballot. The members of congress for their respective districts shall be voted for on one ballot. The justices of the supreme court, judges of the superior courts and solicitors shall be voted for on one ballot. The members of the general assembly for their respective counties and districts shall be voted for on one ballot. The county officers for the respective counties, viz: clerk of the superior court, treasurer, register of deeds, surveyor, coroner and sheriff, shall be voted for on one ballot. The ballots shall be on white paper, and may be printed or written, or partly written and partly printed, and shall be without device.

How officers shall be voted for.

Ballots to be without device.

SEC. 19. The county commissioners, or upon their failure, the inspectors of election, shall provide for each election precinct in their respective counties, ballot boxes for each class of officers to be voted for, in which to de-

County commissioners shall provide ballot boxes.

Description of boxes.

Who to keep them.

How boxes opened and ballots counted.

What tickets to be void.

Delivery of the returns.

Board of county canvassers.

posit the ballots for such officers respectively. Each of said boxes shall have an opening through the lid of sufficient size to admit a single folded ballot, and no more. The said ballot boxes shall be kept by the judges of election for the use of their several election precincts respectively. And said judges of election, before the voting begins, shall carefully examine the ballot boxes and see that there is nothing in them.

SEC. 20. When the election shall be finished, the registrars and judges of election, in presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, reading aloud the names of the persons who shall appear on each ticket; and if there shall be two or more tickets rolled up together, or any ticket shall contain the names of more persons than such elector has a right to vote for, or shall have a device upon it, in either of these cases such tickets shall not be numbered in taking the ballots, but shall be void, and the said counting of votes shall be continued without adjournment until completed and the result thereof declared.

SEC. 21. The judges of election in each township, ward or precinct, shall appoint one of their number to attend the meeting of the board of county canvassers, as a member thereof, and shall deliver to the member who shall have been so appointed, the original return statement of the result of the election in such township, ward or precinct; and it shall be the duty of the members of the several township, ward or precinct boards of election, who shall have been so appointed, to attend the meeting of the board of county canvassers for such election in the county in which they shall have been appointed as members thereof.

SEC. 22. The members of the several township boards of election, to whom the original returns or statements of the result of the election in the precincts or townships to which they respectively belong, shall have been delivered as directed in the next preceding section, shall constitute the board of county canvassers for such election in

the county in which such precinct or township shall be situated; and the register of deeds of such county shall be the clerk of such board, unless the board shall prefer to elect another person in his place.

SEC. 23. A majority of the members of the several precinct boards of election, who shall have been appointed to attend the meeting of the board of county canvassers, as members thereof, shall be sufficient to constitute such board.

Majority to constitute the board.

SEC. 24. The board of county canvassers shall meet on the second day next after every election, at twelve o'clock noon of that day, at the court house of the county, and at that hour, without delay, the members of such board who shall be then present, shall proceed to choose one of their number, who shall be the chairman thereof. *Pro-*

The board of county canvassers shall meet.

vided, That the board of county canvassers of Carteret, Hyde and Dare shall meet on the seventh day after the election; and as soon as such chairman shall be appointed, it shall be the duty of such chairman to administer to each of the other members, and of each of the other members to take an oath or affirmation in the following form: "You do swear (or affirm) that you will faithfully and impartially execute the duties of the board of canvassers according to law." And thereupon, one of the members of such board, to be appointed by such board for that purpose, shall administer to such chairman, and such chairman shall take, an oath or affirmation in the same form as that taken by the other members of the board. And before proceeding to canvass and estimate the votes in such county, the chairman of the board shall administer to the clerk thereof an oath or affirmation in the following form: "You do swear (or affirm) that you will faithfully execute the duties of clerk of this board according to law."

Proviso.

Oath.

Oath to be administered to the clerk.

SEC. 25. The board of county canvassers shall, at their said meeting, in the presence of the sheriff and of such electors as may choose to attend, open and canvass the returns and make abstracts, stating the number of

ballots cast in each precinct for each office, the name of each person voted for, and the number of votes given to each person for each different office, and shall sign the same.

SEC. 26. The abstract of the votes for each of the following classes shall be made on a different sheet:

1. Governor and all state officers.
2. Representatives in congress.
3. Senators and representatives in the general assembly.
4. Justices of the supreme court, judges of the superior courts and solicitors.
5. County officers.

SEC. 27. Three abstracts of all the votes cast for any state officer, for representatives in congress, for justices of the supreme court, for judges of the superior court, and for solicitors, shall be made and signed by the board of county commissioners, one of which shall be delivered to the sheriff of the county, one filed with the register of deeds to be registered in his office, and one forwarded by mail, in a registered letter, to the secretary of state, at Raleigh. Also two separate abstracts of all the votes cast for state senators when the senatorial district consists of more than one county, one of which shall be filed with the register of deeds to be registered in his office, and the other furnished to the sheriff of the county or other returning officer.

SEC. 28. Each abstract of the votes cast for such officers as the county alone elects shall contain an accurate statement of all the persons voted for and the number of votes cast for each.

SEC. 29. When the canvass is concluded the board shall deliver the original returns to the clerk of the superior court to be filed in his office, and shall cause each of the abstracts mentioned in the two preceding sections to be recorded in a book to be called "The Election Book," to be kept in the office of said clerk. And said clerk shall also transmit by mail to the secretary of state duplicates of the

Return of the votes.

Abstracts of votes, number to be made out.

With whom filed.

Abstract to contain all the persons voted for, &c.

Returns to be delivered to the clerk of the superior courts.

abstracts mentioned in section twenty-seven, each abstract to be sealed up in a separate envelope.

Duplicate abstracts to be sent to the secretary of state.

SEC. 30. The person having the greatest number of votes for any office is to be declared elected.

Whom to be declared elected.

SEC. 31. When the board of county canvassers have thus completed the comparison of the polls they shall proclaim the result at the court house door of the voting in their county for all the persons voted for and the number of votes cast for each.

Result of election, how announced.

SEC. 32. The sheriff or other returning officer in the various senatorial districts composed of more than one county shall, after receiving the returns as prescribed in section twenty-seven, meet one week after the election, at the following places, in their respective districts for the purpose of comparing the polls: In the first district, at Hertford, in the county of Perquimans. In the second district, at Plymouth, in the county of Washington. In the third district, at Roxabel, in the county of Bertie. In the seventh district, at Nashville, in the county of Nash. In the ninth district, at Pollocksville, in the county of Jones. In the eleventh district, at Kinston, in the county of Lenoir. In the tenth district, at Mount Olive, in the county of Wayne. In the thirteenth district, at Northwest, in the county of Brunswick. In the fifteenth district, at Lennon's cross-roads, near Francis Lennons in Columbus county. In the sixteenth district, at Fayetteville, in the county of Cumberland. In the twentieth district, at Hillsboro, in the county of Orange. In the twenty-fourth district, at Gibsonsville, in the county of Guilford. In the twenty-fifth district, at Brower's Mill, in the county of Randolph. In the twenty-sixth district, at John Webb's on the plank road, in the county of Richmond. In the twenty-ninth district, at Mulcohy, in the county of Anson. In the twenty-eighth district, at Mount Pleasant, in the county of Cabarrus. In the thirtieth district, at Foard's Mill, in the county of Rowan. In the thirty-second district, at Germantown, in the county of Stokes. In the thirty-third district, at

Returning officers, when and where to meet.

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Rockford, in the county of Surry. In the thirty-fourth district, at Taylorsville, in the county of Alexander. In the thirty-fifth district, at Jefferson, in the county of Ashe. In the thirty-sixth district, at Marion, in the county of McDowell. In the thirty-seventh district, at Early Grove, in the county Catawba. In the thirty-eighth district, at Cherryville, in the county of Gaston. In the thirty-ninth district, at Rutherfordton, in the county of Rutherford. In the fortieth district, at Asheville, in the county of Buncombe. In the forty-first district, at Brevard, in the county of Transylvania. In the forty-second district, at Franklin, in the county of Macon. If for any cause any of said sheriffs or returning officers are prevented from meeting at said places respectively, on the aforesaid seventh day after the election, the returns of such officers shall be waited for and received if they arrive on the following day, and the returning officer failing to attend at the time and place required as aforesaid, shall forfeit and pay one thousand dollars, to be recovered in the superior court of his county by any person who may sue for the same, and moreover shall be guilty of a misdemeanor; but if the returns of all the counties of the district be not in by noon of the day appointed, then the returning officers shall adjourn from day to day until the returns from all the counties be received, and in the meantime shall despatch a competent person, under oath, to the county of the delinquent returning officer for a certified copy of the vote of that county, which shall be furnished by the register of deeds of said county, and when received shall be counted; and when the sheriffs shall be convened as aforesaid, the polls for the different counties shall by them, in the presence of one justice, and five electors, to be summoned by the sheriff of the county where they shall meet, be examined and compared; a certificate under the hands and seals of the returning sheriffs, shall be given to the candidate in each district for whom the greatest number of votes shall have been given; but if two or more, persons shall have

When returning officers are prevented from meeting on designated day.

Penalty for failing to make returns.

Messenger to be sent to the county of delinquent.

How such vote to be obtained.

Returns, how examined.

Declaration of result.

an equal number of votes, the said officers shall determine which shall be a senator, and if no decision shall be made by them, they shall determine the same by lot.

SEC. 33. The sheriff of each county shall furnish, within ten days, the member or members elected to the house of representatives and to the senate, where the district is not composed of more than one county, a certificate of election under his hand and seal; he shall also immediately notify all persons elected in the county to meet at the court house on the first Monday in the ensuing month to be qualified.

Certificates of election, when and how furnished.

SEC. 34. The sheriff or other returning officer of every county shall, on or before the third day after the election, transmit by mail, in a registered letter or otherwise, to the speaker of the house of representatives, a separate statement of the votes taken in his county for each of the state officers, to wit: governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction and attorney general, which statement, in each case, shall be in the following or some similar form, viz:

Return for state officers, when, by whom and how made.

STATE OF NORTH CAROLINA.

_____ County,

I, _____, sheriff of _____ county, do hereby certify that at the election held in said county to elect a governor (or other officers, as the case may be,) for four years, from the first day of _____ next, at the places appointed by law for holding elections for said county, on the _____ day of _____, Anno Domini one thousand eight hundred and _____, _____ votes were given for _____, and _____ votes for _____.

Certificate of sheriff.

Given under my hand this _____ day of _____, 18____.
_____, sheriff.

If said statements are transmitted by mail they shall be directed in sealed packets to the speaker of the house of representatives, in care of the secretary of state, and if by messenger, it shall be sent direct to the speaker of the house of representatives, sealed as aforesaid: *Provided*, that no messenger bringing said statements or any other

To whom statement to be sent.

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abstracts or election returns, shall receive compensation therefor. Any sheriff or other returning officer failing or neglecting to perform the duties required in this section, shall forfeit and pay two thousand dollars, to be recovered in the superior court of his county by any person who shall sue for the same, and moreover, shall be guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned at hard labor in the state prison for twelve months. *Provided further*, that the sheriff of the counties of Carteret, Hyde and Dare, shall have until the eighth day after the election to comply with the provisions of this section.

Delinquent returning officer.

Penalty.

Proviso.

Secretary of state to prepare and transmit forms of returns.

SEC. 35. The secretary of state shall cause proper forms of returns to be prepared and printed and send copies thereof, with plain directions as to the manner of endorsing, directing and transmitting the same to the seat of government, to all the returning officers of the state, at least thirty days before the time of holding said election.

Returns for state officers, how and by whom opened and published.

SEC. 36. The speaker of the house of representatives, in the presence of a majority of the members of both houses of the general assembly, shall open and publish the returns for governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction and attorney general, at twelve M., on the first Tuesday after the organization of both houses of the general assembly. And if for any cause there be no return from any county of the state, or if any return be defective, a proper return shall be had in such manner as the two houses in joint session may direct; and in either case the publication of the result may be postponed to such time as the joint session of the two houses may deem best. The person having the highest number of votes for each office respectively shall be declared duly elected thereto, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint vote of both houses of the general assembly in the same manner

In case of defective returns.

Who to be declared elected.

In case of tie vote.

Contested election.

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and under the same rules and regulations as are prescribed in cases of contested elections of members of the general assembly.

SEC. 37. The registrar shall receive one cent for each name copied from the original registration book and three cents for each new name registered.

Fees of registrars.

SEC. 38. Any registrar or judge or judges of election appointed under the provisions of this chapter or any county canvassers or commissioners, register of deeds, clerk or sheriff, failing or neglecting to make the returns and perform the duties required of him by this chapter, for the non-performance of which no penalty has been hereinbefore imposed, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned not more than six nor less than two months, at the discretion of the court.

Penalty for non-performance of duty under this chapter.

SEC. 39. Any person who shall, with intent to commit a fraud, register or vote at more than one box or more than one time, or who shall induce another to do so, shall be guilty of an infamous crime, and on conviction shall be imprisoned not less than six nor more than twelve months, or fined not less than one hundred nor more than five hundred dollars, at the discretion of the court; and any registrar of voters, or any clerk or copyist who shall make any entry or copy with intent to commit a fraud shall be liable to the same penalty.

Penalty for fraudulent registration or voting.

SEC. 40. Any person who shall falsely and corruptly take the oath prescribed for voters in section twelve or fifteen of this chapter, shall be deemed guilty of perjury, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned at hard labor in the penitentiary not less than two nor more than five years.

For falsely taking oath.

Penalty.

SEC. 41. The secretary of state shall, at least sixty days before each election, furnish the county commissioners of each county with a sufficient number of copies of this chapter to supply each county canvasser, commissioner,

Secretary of state to furnish copies.

register of deeds, sheriff, registrar of voters and judges of election with one copy thereof.

SEC. 42. When a vacancy occurs in the general assembly by death, resignation or otherwise, it shall be the duty of the sheriff of the county in which the late member resided, provided the general assembly shall not be in session, to notify the governor of such vacancy, and in case the general assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer of the house in which the vacancy occurs to notify the governor of the same, who shall thereupon issue a writ of election to the sheriff or sheriffs of the district or county represented by the late member, said election to be held at such time as the governor may designate, and in such manner as may be prescribed by law.

SEC. 43. Every election, held in pursuance of a writ from the governor, shall be conducted in like manner as the regular biennial election, so far as the particular case can be governed by the general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers and persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections.

SEC. 44. It shall not be lawful to call or direct any regimental, battalion or company muster on election days, or to assemble armed men on the day of election, at any place appointed by law to hold elections for electors, governor, members of congress or members of the general assembly, under the penalty of one thousand dollars, to be recovered of any person who shall call such muster, or assemble such armed men, one-half to go to the use of the informer, and the other half to the use of the state.

SEC. 45. If any person shall, at any time before or after any election, either directly or indirectly, give any money, property or reward to any elector, or to any county or district, in order to be elected or to procure any other person to be elected a member of the general

How vacancies in general assembly to be filled.

How election to be held.

Elections under writ from governor held as other elections.

Muster not to be on the day, nor armed men assembled at place of election.

Penalty.

Bribery at elections.

assembly, every person so offending shall forfeit and pay four hundred dollars, to any person who will sue for the same. Bribery for.

SEC. 46. If any person shall treat with either meat or drink, on any day of election, or on any day previous thereto, with an intent to influence the election, he shall forfeit and pay two hundred dollars, the one-half for the use of the county, and the other to the use of the person who shall sue for the same. Treating at elections.

SEC. 47. If any person elected a member of the general assembly shall, by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatever; or give or cause to be given, by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote, or to influence him in his election, such person shall, on due proof, be expelled from his seat in the general assembly. Members giving money, &c., to secure election, expelled.

CONGRESSIONAL ELECTIONS.

(For senators and their mode of election, see act of congress of the twenty-fifth of July, one thousand eight hundred and sixty-six, fourteenth statutes at large, two hundred and forty-three.)

SEC. 48. For the purpose of selecting representatives in the congress of the United States, the state of North Carolina shall be divided into eight districts, as follows: The first district shall be composed of the counties of Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Hertford, Hyde, Beaufort, Pitt, Pamlico, Bertie, Martin, Washington, Tyrrell and Dare; the second district shall be composed of the counties of Edgecombe, Wilson, Greene, Wayne, Lenoir, Jones, Craven, Northampton, Warren and Halifax; the third district shall be composed of the counties of Onslow, Duplin, Sampson, Harnett, Cumberland, Bladen, Columbus, Brunswick, New Hanover, Pender, Carteret and Moore; the fourth district shall be composed Representation in congress. 1st. district. 2nd. district. 3rd. district. 4th. district.

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of the counties of Johnston, Wake, Chatham, Orange, Granville, Franklin and Nash; the fifth district shall be composed of the counties of Randolph, Davidson, Guilford, Alamance, Person, Caswell, Rockingham and Stokes; the sixth district shall be composed of the counties of Robeson, Montgomery, Richmond, Anson, Stanley, Cabarrus, Union, Mecklenburg, Gaston, Lincoln and Catawba; the seventh district shall be composed of the counties of Forsythe, Surry, Yadkin, Davie, Rowan, Iredell, Alexander, Wilkes, Alleghany, Ashe and Watauga; the eighth district shall be composed of the counties of Caldwell, Burke, Cleveland, Mitchell, Yancey, McDowell, Transylvania, Buncombe, Madison, Haywood, Jackson, Swain, Macon, Clay, Graham, Cherokee, Rutherford, Polk and Henderson.

Time and manner of conducting elections.

SEC. 49. The election shall be held at the same times and places as are prescribed for holding elections for members of the general assembly, on the Tuesday next after the first Monday in November, immediately preceding the termination of each congress, and shall be conducted by the sheriffs, or by other persons appointed therefor, in like manner as elections for members of the general assembly.

Vacancies in representation, how filled.

SEC. 50. If, at any time after the expiration of any congress, and before another election; or if at any time after any election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships of their respective counties at such time as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy, and the election shall be conducted in like manner as regular elections.

Commissions of members of congress.

SEC. 51. Every person duly elected a representative to congress, upon obtaining a certificate of his election from the secretary of state, shall procure from the governor a commission, certifying his appointment as a representative of the state, which the governor shall issue on such certificate being produced.

SEC. 52. Every sheriff or other returning officer shall be allowed two dollars and fifty cents per day for the time actually employed, and ten cents per mile for distance traveled for making the returns for senators, and sixty cents for each notice served upon the county officers elect, and sixty cents for giving certificates to representatives to the general assembly and to the senators whose district is a single county, all to be paid by the county treasurer upon the affidavit of the returning officer. Clerks and registers of deeds shall also be allowed the usual record and registration fees for recording or making duplicates of the election returns, to be paid by the county.

Compensation of returning officers.

BOARD OF STATE CANVASSERS.

SEC. 53. The governor, secretary of state, attorney general and two members of the state senate, one of each of political party, to be selected by the governor, shall constitute the board of state canvassers, but no member thereof shall take part in canvassing the votes for any office for which he himself is a candidate. But in every such case the remainder of the board shall select some other person to act in the place of such candidate.

Board of state canvassers.

SEC. 54. If the abstracts or returns from any county shall not be received at the office of the secretary of state by the third Monday after the day of election, the said secretary is authorized to obtain from the register of deeds, or clerk of the superior court of such county, at the expense of such county, the original abstracts or returns, or if they have been forwarded, then to obtain copies of them.

Returns not received in time, secretary of state shall obtain original.

SEC. 55. The board of state canvassers shall open the abstracts transmitted to the secretary of state on the Thursday following the third Monday after the day of election, and examine the returns, if they shall have been received from all the counties, and if not all received they may adjourn not exceeding twenty days for the

Abstract to be opened, when and by whom.

purpose of obtaining the returns from all the counties, and when these are received, shall proceed with the canvass, such canvass shall be conducted publicly in the hall of the house of representatives.

SEC. 56. They shall make an abstract stating the number of ballots cast for each candidate, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received, and stating whom they ascertain by the count to be elected to the office, which abstract shall be signed by the board of canvassers, in their official capacity as state canvassers and have the seal of the state affixed thereto.

SEC. 57. The secretary of state shall record the abstract or abstracts in a book to be kept by him for recording the result of elections, and to be called the election book, and shall also file the abstract or abstracts.

SEC. 58. A certificate shall be prepared for each person elected, and signed by the secretary of state, and shall be delivered to the person elected, when he shall demand the same.

SEC. 59. The state canvassers shall estimate the votes cast for officers of the executive department, from the abstracts forwarded to the secretary, and shall publish a statement of the result of such calculation, but this statement shall be for information of the public only, and shall not have the effect to determine what candidates have been elected to such offices. Their election shall be ascertained and declared according to the provisions of section three, article three of the constitution.

SEC. 60. Representatives in congress, justices of the supreme court, judges of the superior courts, and solicitors, shall be commissioned by the governor.

MISCELLANEOUS.

SEC. 61. Any person who shall cause or procure his name to be registered in more than one election ward

Records of the returns to be kept by the secretary of state.

Certificate of election, when and how furnished.

Statement of votes cast for officers of the executive department to be published by state canvassers.

Who are to be commissioned by the governor.

Registering in more places than one.

or precinct, or shall cause or procure his name, or that of any other person, to be registered, knowing that he or the person whose name he has procured to be registered, is not entitled to vote in the ward or election precinct wherein such registration is made, at the ensuing election to be held therein, or who shall falsely personate any registered voter, shall be deemed guilty of a crime infamous by the laws of the state, and shall be punished for each and every such offence by a fine not exceeding one thousand dollars, or imprisonment at hard labor for a term not exceeding two years, or both, in the discretion of the court. Penalty.

SEC. 62. If a person be challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any questions in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution, but if any person so convicted shall vote at any election, without having been legally restored to the rights of citizenship, he shall be deemed guilty of an infamous crime, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding two years, or both. Criminals challenged.

SEC. 63. The judges of election shall in no case receive the vote of any person unless they shall be satisfied that such person is in all respects qualified and entitled to vote; and for the purpose of satisfying themselves as to the right of any person who shall claim a right to vote, they shall have power to examine such person, and any other person or persons, under oath or affirmation, touching such right. And if any judge of election shall receive, or assent to receive, the vote of any person challenged, without requiring such person to take the oath or affirmation hereinbefore prescribed, and if such person shall not be qualified and entitled to vote, such judge of election so receiving or assenting to receive such vote, Penalty for person convicted, voting.

Powers of judges of elections to examine voters.

shall be deemed to have received the same knowing it to be illegal.

Powers of the various boards and judges and inspectors of election.

SEC. 64. The judges and inspectors of election in each ward or precinct, the board of county canvassers of each county, and the board of state canvassers shall respectively possess full power and authority to maintain regularity and order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose; and if any such person shall refuse to obey the lawful command of any such judge or inspector of election, or board of county canvassers, or board of state canvassers, or by disorderly conduct in their hearing or presence, shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days; and such order shall be executed by any sheriff or constable, to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such township or precinct board of election, or board of county canvassers, or board of state canvassers, in writing; and the keeper of such jail shall receive the person so committed, and safely keep him for such time as shall be mentioned in the commitment.

Vacancies, how filled.

SEC. 65. Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following officers, to-wit: governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney general, justices of supreme court, and judges of the superior court, the same shall be filled by elections to be held in the manner and places, and under the same regulations and rules as are prescribed for general elections, at the first general election thereafter, except as otherwise provided for in the constitution.

Qualification of voters.

SEC. 66. All qualified electors who shall have resided for ninety days immediately preceding an election, within the

limits of any ward of a city or town, and not otherwise, shall have the right to vote in such ward for mayor and other city or town officers.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.

SEC. 67. On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand eight hundred and eighty, and every four years thereafter, or on such days as the congress of the United States shall have directed, a poll shall be opened in each of the precincts of the state for the election of electors of president and vice-president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled, and the persons so chosen shall be and are hereby declared to be the electors for the state as aforesaid.

When election to be held.

SEC. 68. The names of the electors to be chosen shall be written or printed on each ballot, and each ballot shall contain the name of at least one inhabitant of each congressional district into which the state may be divided, and against the name of each person shall be designated the number of the congressional district to which he belongs.

Name of elector to be on each ballot.

How electors allotted.

SEC. 69. This election shall be conducted, and the returns made, as nearly as may be, [as] directed in relation to the election of state officers, except as herein otherwise expressed.

Election to be held in case for state officers.

SEC. 70. The returns from the township or precinct judges of election shall be made to the board of county canvassers within two days after the day of election; and on the second day after the day of election the county canvassers shall meet in the court house of their respective counties and shall ascertain, by faithful addition, the number of votes for any person who shall have been voted for as an elector within the county, and shall certify the same under their hands, in the manner and form following, to-wit: "We, the county canvassers for ——— county, do hereby certify that an election was held on

Returns from precinct judges of election.

Meeting of county canvassers.

the day, and at the place fixed by law within said county, for election of president and vice-president of the United States, and that the number of votes hereinafter specified, opposite the names of the several persons following, was given for such persons as electors for the State of North Carolina, of president and vice-president of the United States, namely: D. G. F. (here state the number of votes for D. G. F.) For J. M. L. (here state the number of votes for J. M. L.) and so, on until the list of persons voted for, and the number of votes shall be complete. Given under our hands this — day of —, in the year A. D. —.” And three fair copies of such certificate and return shall be made by the board of county canvassers, under their hands, and one of the same shall be immediately delivered to the sheriff of the county, whose duty it shall be to attend at the meeting of said canvassers, and who shall forthwith make proclamation and read the same through at the court house door; and the said sheriff shall immediately thereafter seal up said copy in an envelope, and transmit the same by mail, in a registered letter, or otherwise, to the secretary of state, at the capitol at Raleigh, so that he shall receive the same within twelve days after the day of said election; and one of said copies, together with the original precinct returns, shall be delivered to the clerk of the superior court, who shall record the said copy in the “election book,” and file the originals and said copy in his office. And one copy shall be delivered to the register of deeds, to be registered in his office. The clerk of the superior court shall, immediately after the same shall have been delivered to him, send a copy of the certificate of the board of county canvassers, sealed with the seal of his office, to the secretary of state, at Raleigh, so that he may receive the same within twelve days after said election. And in case of failing to make such returns within the time herein prescribed, such sheriff or other officer, whose duty it shall be so to do, shall forfeit and pay to the state the sum of five hundred dollars, to

Three copies to be made.

One copy of returns shall be delivered to the sheriff.

Sheriff to make proclamation.

Sheriff to seal returns and transmit to the secretary of state.

One copy with the original to be delivered to the clerk of the superior court.

One copy delivered to register of deeds.

Time of delivery of certificate by clerk of the superior court.

Penalty.

be recovered by the attorney general, in the superior court for the county of Wake.

SEC. 71. The secretary of state within three days after the expiration of the time herein before provided for the delivery to him of said certificates and returns, shall deliver the same to the board of state canvassers whose duty it shall be to then attend, in the presence of such other persons as may choose to attend in the hall of the house of representatives in the capitol, open the certificates and returns and proceed to canvass the same and ascertain the result. *Provided*, that if the returns from any county shall not, by that time, have been received by the secretary of state from the sheriff or clerk of the superior court, then the board of state canvassers shall order and compel a duplicate return from the clerk of the superior court, or register of deeds, or both, in such manner as they may think best; and for that purpose may adjourn from day to day not to exceed ten days. The board of state canvassers in canvassing said returns, as certified by the county canvassers, but it shall be their duty to disregard any such apparent clerical error or any such technical informality as may not render it reasonably uncertain who was the person intended to be designated as voted for, and what was the number of votes actually received by any candidate. At the conclusion of the canvass, the board shall make an abstract of all the votes cast, and shall deliver the same to the secretary of state, together with the original returns from the several counties, to be filed in his office. The secretary of state shall copy said abstracts in "*the election book*," directed in this act to be kept in his office, and shall, under his hand and the seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice president as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh,

Time of delivery of certificates and returns by secretary of state.

Proviso.

Duty of county canvassers.

Abstract to be delivered to the secretary of state.

Secretary of state to record abstract.

Certificate to the governor.

Governor to issue his proclamation.

Organization of the college of electors.

In case of vacancy.

Lists to be made by the governor.

College of electors to proceed in conformity with the constitution of United States.

In case of vacancy in offices of president and vice-president, governor to issue proclamation for election.

Proviso.

wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon, on the Tuesday preceding the first Wednesday of December next after his election, at which time said electors shall meet, and in case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for president and vice president of the United States. And the governor shall, on or before the said first Wednesday in December, make out three lists of the names of the said ten persons so elected and appointed electors, and cause the same to be delivered to them as directed by the act of congress.

Sec. 72. The persons so selected and appointed as electors of president and vice president of the United States, shall assemble on the said first Wednesday of December, at the capitol in the city of Raleigh, and then and there give their votes on behalf of the state of North Carolina, for president and vice president of the United States, and proceed in relation thereto in all things conformably to the constitution of the United States, and the act of congress, in that behalf.

Sec. 73. Whenever the offices of president and vice-president of the United States shall both become vacant, the governor, upon receiving a notification of such vacancy from the secretary of state of the United States, shall forthwith issue his proclamation directing the sheriffs of the several counties, or other proper officers, to hold elections within their respective counties for the appointment of electors of president and vice-president of the United States, on the day of the year in which such vacancy may happen, as is herein prescribed for holding the regular and stated election. *Provided*, That there shall be a space of two months between the date of such notification and the said first Wednesday of December; but if there should not

be such space, the governor shall specify in his proclamation that the electors shall be elected in the year next ensuing the date of such notification, on the day aforesaid; and the electors appointed, in the manner by this section directed, shall meet at the capitol, in the city of Raleigh, and proceed, as hereinbefore provided, for electors of presidents and vice-presidents, chosen at a regular election for the same.

SEC. 74. Each elector chosen, with his own consent previously signified, failing to attend and vote for a president and vice president of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident,) shall forfeit and pay to the state five hundred dollars, to be recovered by the attorney general in the superior court of Wake county. And any person making, or signifying, or delivering, or transmitting a false return of an election, held here under, or making any erasure or alteration in the poll books, shall be deemed guilty of an infamous crime, and on conviction, shall be imprisoned not less than one year, and shall, in addition, forfeit and pay five hundred dollars, one-half to the use of the person who will sue for the same, and the other half to the use of the state. Any officer who shall refuse to permit any candidate, or person qualified to vote, at his own expense to have a copy of the poll books, shall forfeit and pay two hundred dollars; one-half to the person who shall sue for the same, and the other half to the use of the state. Any register of deeds, or clerk of the court who shall refuse to make and give to any person a duly certified copy of the returns of an election, or of a tabulated statement of an election hereinbefore directed to be deposited in his office, upon the tender of the fees therefor, shall be deemed guilty of a misdemeanor, and upon conviction, ousted of his office, and imprisoned for one year.

SEC. 75. The electors shall be allowed for their traveling expenses to and from the city of Raleigh, and their attendance the same compensation as may be allowed

Penalty on electors failing to attend.

Penalty for making false returns or altering poll books.

Register of deeds or clerk of the superior court refusing a certified copy of returns.

Penalty.

Compensation and privileges of electors.

members of the general assembly, and shall be entitled to the same privileges.

Secretary of state
to furnish blanks.

SEC. 76. It shall be the duty of the secretary of state to furnish to the register of deeds for the several counties all such printed blanks as may be necessary for county returns.

GENERAL ELECTION.

Date of election.

SEC. 77. The next general election for members of the general assembly, for justices of the supreme court, superior court judges and solicitors, and for surveyor, coroner, sheriff, clerk of the superior court for the several counties, and in such counties as have one, a treasurer, shall be held on the first Thursday in August, in the year of our Lord, one thousand eight hundred and seventy-eight, but thereafter until otherwise provided, all general elections shall be held on the Tuesday next after the first Monday in November of the year in which an election shall be held.

Who shall constitute the board of justices of the peace.

SEC. 78. The justices of the peace of the several counties shall be constituted the board of justices of the peace for the purposes of this act.

SEC. 79. All laws and clauses of laws in conflict with this act are hereby repealed.

When act to be in force.

SEC. 80. This act shall be in force from and after its ratification.

Ratified the 12th day of March, A. D. 1877.

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Re-assessment of lands in Martin County.

Conflicting laws repealed.

3, page 14 of said Act and by striking out the word "Martin" at all other places where it appears in said Section.

SEC. 2. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. That this Act shall be in full force and effect after its ratification.

Ratified this the 7th day of April, A. D. 1933.

S.B. 234

CHAPTER 243

AN ACT TO AMEND CONSOLIDATED STATUTES WITH REFERENCE TO RESTORATION TO CITIZENSHIP.

The General Assembly of North Carolina do enact:

C. S. 386, amended.

SECTION 1. That Section 386 Chapter Eleven Consolidated Statutes of North Carolina be and the same is hereby amended as follows:

Restoration to citizenship of felons after two years from discharge.

By striking out the words "at any time after the expiration of four years from the date of conviction" and inserting in lieu thereof "at any time after the expiration of two years from the date of discharge of the petitioner."

SEC. 2. That this act shall be in force from and after its ratification.

Ratified this the 10th day of April, A. D. 1933.

S.B. 275

CHAPTER 244

AN ACT MORE CLEARLY TO DEFINE THE DUTIES OF THE COMMISSIONER OF LABOR.

The General Assembly of North Carolina do enact:

Ch. 312, Public Laws 1931, amended.

SECTION 1. That Section 6 of Chapter 312, Public Laws of 1931, be and the same is hereby amended by adding after sub-section (b) the following:

Visitorial and judicial powers of Commissioner of Labor as to institutions and industries.

SEC. 2. The Commissioner of Labor shall have power to take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating-house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within thirty days of the receipt of said list of questions.

Enforcement of inspection laws.

SEC. 3. He shall secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating-places, and commercial institutions in

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

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

3

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

6 Plaintiffs,

7 vs.

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

11 Defendants.

_____ /

12

13

14 Deposition by RingCentral

15 of

16 SENATOR HENRY M. MICHAUX, JR.

17

18



19 (Taken remotely by the Legislative Defendants)

20 Durham, North Carolina

21 Wednesday, June 24, 2020

22

23

24 Reported Remotely in Stenotype

Denise Y. Meek

25 Court Reporter and Notary Public

App. 35
COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.
Senator Henry M. Michaux, Jr. on 06/24/2020

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<p style="text-align: center;">APPEARANCES</p> <p>FOR THE PLAINTIFFS:</p> <p>ELISABETH S. THEODORE, ESQ. (Via RingCentral) DANIEL F. JACOBSON, ESQ. (Via RingCentral) Arnold & Porter Kaye Scholer, LLP 601 Massachusetts Avenue NW Washington, DC 20001-3743 202-942-5000 elisabeth.theodore@arnoldporter.com daniel.jacobson@arnoldporter.com FARBOD K. FARAJI, ESQ. (Via audio only) Protect Democracy Project 77 Pearl Street Middletown, CT 06459 202-579-4582 farbod.faraji@protectdemocracy.org</p> <p>DARYL V. ATKINSON, ESQ. (Via RingCentral) WHITLEY J. CARPENTER, ESQ. (Via RingCentral) CAITLIN SWAIN, ESQ. (Via RingCentral) Forward Justice 400 West Main Street, Suite 203 Durham, NC 27701 daryl@forwardjustice.org</p> <p>FOR THE LEGISLATIVE DEFENDANTS: BRIAN D. RABINOVITZ, ESQ. (Via RingCentral) North Carolina Department of Justice 114 West Edenton Street Raleigh, NC 27603 919-716-6820 brabinovitz@ncdoj.gov</p> <p>FOR THE STATE BOARD DEFENDANTS: PAUL M. COX, ESQ. (Via RingCentral) OLGA E. VYSOTSKAYA, ESQ. (Via RingCentral) 114 West Edenton Street Raleigh, NC 27603 919-716-6820 pcox@ncdoj.gov ovysostskaya@ncdoj.gov</p>	<p style="text-align: center;">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.</p>																														
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<p style="text-align: center;">APPEARANCES (Continued)</p> <p>FOR THE WITNESS: IRVING L. JOYNER, ESQ. (Via RingCentral) NCCU School of Law 640 Nelson Street Durham, NC 27707 919-530-6293 ijoyner@nccu.edu</p> <p>ALSO PRESENT: AUDREY CHILDERS</p>	<p style="text-align: center;">INDEX OF EXAMINATIONS</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">SENATOR HENRY M. MICHAUX, JR.</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>By Mr. Rabinovitz</td> <td style="text-align: right;">8</td> </tr> <tr> <td>By Ms. Theodore</td> <td style="text-align: right;">129</td> </tr> </table> <p style="text-align: center;">INDEX OF EXHIBITS</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">NUMBER</th> <th style="width: 60%;">DESCRIPTION</th> <th style="width: 30%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Defendants' 1</td> <td>Affidavit of Henry M. Michaux, Jr.</td> <td style="text-align: right;">23</td> </tr> <tr> <td>Defendants' 2</td> <td>Chapter 13. Citizenship Restored The General Statutes of North Carolina, Volume 1B - 1969 Replacement Volume Bates: CSI_NCSBE_000011 thru 000014</td> <td style="text-align: right;">31</td> </tr> <tr> <td>Defendants' 3</td> <td>North Carolina General Assembly 1971 Session, Chapter 902, House Bill 285</td> <td style="text-align: right;">50</td> </tr> <tr> <td>Defendants' 4</td> <td>Article - The Robesonian Thursday, July 22, 1971 "Restoring Citizens" Bates: CSI_NCSBE_000003</td> <td style="text-align: right;">64</td> </tr> <tr> <td>Defendants' 5</td> <td>General Assembly of North Carolina 1971 Session, House DRH3041 Short Title: Citizenship Restored</td> <td style="text-align: right;">67</td> </tr> <tr> <td>Defendants' 6</td> <td>General Assembly of North Carolina 1973 Session, House DRH7006 Short Title: Citizenship Restored</td> <td style="text-align: right;">71</td> </tr> <tr> <td>Defendants' 7</td> <td>North Carolina General Assembly 1973 Session Chapter 251, House Bill 33</td> <td style="text-align: right;">88</td> </tr> </tbody> </table>	SENATOR HENRY M. MICHAUX, JR.	PAGE	By Mr. Rabinovitz	8	By Ms. Theodore	129	NUMBER	DESCRIPTION	PAGE	Defendants' 1	Affidavit of Henry M. Michaux, Jr.	23	Defendants' 2	Chapter 13. Citizenship Restored The General Statutes of North Carolina, Volume 1B - 1969 Replacement Volume Bates: CSI_NCSBE_000011 thru 000014	31	Defendants' 3	North Carolina General Assembly 1971 Session, Chapter 902, House Bill 285	50	Defendants' 4	Article - The Robesonian Thursday, July 22, 1971 "Restoring Citizens" Bates: CSI_NCSBE_000003	64	Defendants' 5	General Assembly of North Carolina 1971 Session, House DRH3041 Short Title: Citizenship Restored	67	Defendants' 6	General Assembly of North Carolina 1973 Session, House DRH7006 Short Title: Citizenship Restored	71	Defendants' 7	North Carolina General Assembly 1973 Session Chapter 251, House Bill 33	88
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1 just stay on the record, then.
 2 MS. THEODORE: Sounds good.
 3 MR. RABINOVITZ: Okay.
 4 MR. JOYNER: That's fine.
 5 THE WITNESS: Okay.
 6 BY MR. RABINOVITZ:
 7 Q. So what -- what is your -- what was
 8 your understanding of what was required
 9 under -- under the statute? And this would
 10 have been prior to even to the 1971
 11 legislation. What's your understanding of what
 12 was required for the restoration of voting
 13 rights?
 14 A. The requirement for restoration of
 15 rights was that you had to hire a lawyer, and
 16 go to court and have a hearing, and get a
 17 determination made that way. People that we
 18 were involved with didn't have the wherewithal
 19 to hire a lawyer to get any type of rights
 20 restored. And we just wanted a way -- a way
 21 for them to get them restored without having to
 22 go through any expense. Particularly, after
 23 they had served their time.
 24 Q. Okay. So you mentioned that there was
 25 a -- that, you know, one of the requirements,

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1 because you had to go to court, there was a --
 2 there was a monetary issue there. People had
 3 to hire attorneys to assist them with that
 4 process.
 5 What other problems, if any, were you
 6 aware of in the law as it was prior to the 1971
 7 and 1973 legislation?
 8 A. There wasn't really any other than the
 9 fact that we were trying to get people their
 10 rights back that they had previously enjoyed,
 11 and what everybody else was enjoying, and
 12 served their time, had been rehabilitated, and
 13 why should they not have their rights restored
 14 without having to go through the expense and
 15 problems and trouble of a court hearing which
 16 could take -- you know, turn out not in their
 17 favor anyway. Particularly, if you had a
 18 prejudiced court or something like that; it was
 19 denied.
 20 Q. So I think there's another piece -- and
 21 let me know if I characterize this correctly or
 22 not -- but it seems like another problem with
 23 it, from your view, is that it -- it wasn't
 24 automatic. It was a discretionary issue where
 25 folks had to go in front of a judge and

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1 convince the judge.
 2 A. That's exactly right.
 3 Q. Okay. Did you have concerns at the
 4 time about whether judges would fairly treat
 5 African Americans who were former felons who
 6 might come before them trying to get their
 7 rights restored?
 8 A. I hadn't had any -- I hadn't had any --
 9 any -- any experience with it, no, but I knew
 10 that there were prejudiced judges that would --
 11 that would deny you anything you asked for if
 12 you were Black.
 13 Q. Okay.
 14 A. I mean, that was the -- that was the
 15 psyche in the -- in the whole community. You
 16 don't care what rights white folks had, Black
 17 folks weren't -- weren't -- unless we gave them
 18 to you, specifically, that was the only way you
 19 were going to get them.
 20 Q. Okay. It also seems like, in addition
 21 to hiring an attorney and going through the
 22 court process -- I'm just going to go ahead and
 23 read 13-1, there, so we can discuss it in more
 24 detail.
 25 So it says -- it's titled "Petition

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1 filed." And it says: "Any person convicted of
 2 an infamous crime, whereby the rights of
 3 citizenship are forfeited, desiring to be
 4 restored to the same, shall file his petition
 5 in the superior court, setting forth his
 6 conviction and the punishment inflicted, his
 7 place or places of residence, his occupation
 8 since his conviction, the meritorious causes
 9 which, in his opinion, entitle him to be
 10 restored to his forfeited right, and that he
 11 has not before been restored to the lost right
 12 of citizenship."
 13 Anything else in there that's of
 14 concern to you?
 15 A. No apparent areas of concern to me.
 16 Because if you were Black, and you had been
 17 convicted of an infamous act, and you had
 18 served and done your time, you didn't have to
 19 have your rights restored after that, based on
 20 that, because you had to -- look at what you
 21 had to do. If you couldn't get a job because
 22 you were a convicted felon, or any of the other
 23 things required than just that one paragraph,
 24 it was an anathema to Black folks. I mean,
 25 what you're getting into is you're getting into

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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.
 6 Q. Do you remember -- do you recall what
 7 your conversation was about what still fell
 8 short in the 1971 legislation?
 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

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1 automatically restored without any -- without
 2 them having to do anything.
 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?
 11 A. Yeah, that's "others" who signed onto
 12 the bill.
 13 Q. Okay.
 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.
 18 Q. Okay.
 19 A. The other legislators -- the other
 20 legislators included -- probably included Henry
 21 and me.
 22 Q. Okay. So it just says "others." It
 23 doesn't say specifically who at that time?
 24 A. Well, it says "others" on this version,
 25 but the jacket would have who the others were.

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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?
 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.
 11 Q. Okay.
 12 A. Yeah, that's all it was, just
 13 certification.
 14 Q. Okay.
 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 --
 23 Q. Okay.
 24 A. -- in '73.
 25 Q. Okay. So you said when he first came

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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 --
 5 A. Not --
 6 Q. -- focused on?
 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.
 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?
 16 A. Yes.
 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?
 23 A. That's correct. Without going through
 24 any other -- without going through any other
 25 process. Right.

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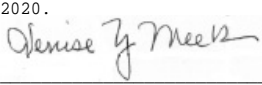
1 record?
 2 MS. VYSOTSKAYA: Yes, please. Thank
 3 you.
 4 Thank you, Madam Court Reporter. We
 5 appreciate you hanging with us with the
 6 technological issues.
 7 MS. THEODORE: Plaintiffs would like a
 8 copy.
 9 MR. RABINOVITZ: And I would like a
 10 copy for the Legislative Defendants.
 11 MR. COX: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

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REPORTER'S CERTIFICATE

1
 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
 hereto, and that I am not financially interested in
 the action.
 15
 16 IN WITNESS WHEREOF, I have hereto set my
 hand this 8th day of June 2020.
 17
 18 
 19 _____
 DENISE Y. MEEK
 Court Reporter/Notary Public
 State of North Carolina
 20
 21 COMMISSION: 201519500202
 EXPIRATION: July 8, 2020
 22
 23
 24
 25

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GENERAL ASSEMBLY OF NORTH CAROLINA

H 33



1973 SESSION

HOUSE DRH7006



65 13

Short Title: Citizenship Restoration

(Public)

Sponsors: Representative Johnson of Robeson.
+ others

Referred to: JUDIC 1

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE AUTOMATIC RESTORATION OF CITIZENSHIP.

3 The General Assembly of North Carolina enacts:

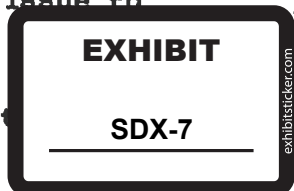
4 Section 1. Chapter 13 of the General Statutes as the
5 same appears in the 1971 Replacement Volume B is hereby amended
6 and rewritten to read as follows:

7 "§ 13-1. Restoration of citizenship.--Any person convicted of
8 a crime, whereby the rights of citizenship are forfeited, shall
9 have such rights restored upon the occurrence of one of the
10 following conditions:

11 (1) Upon the unconditional discharge of an inmate by the
12 Department of Correction or Department of Juvenile Correction, of
13 a probationer by the Probation Commission, or of a parolee by the
14 Board of Paroles;

15 (2) Or upon receiving an unconditional pardon.

16 § 13-2. Assistance by appropriate government personnel.--The
17 Department of Correction, the Department of Juvenile Correction,
18 the Probation Commission, and the Board of Paroles shall issue to
19 the inmate, probationer, or parolee a certificate to the
20 that he has satisfied the provisions of G.S. 13-1 and
21 rights of citizenship are thereby restored."



1 Sec. 2. This act shall become effective upon
2 ratification and shall apply to all inmates, probationers and
3 parolees who have previously been unconditionally discharged.

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