No. 331P21 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

COMMUNITY SUCCESS INITIATIVE, et al.,	)	
Plaintiffs,	)	
v.	)	From Wake County
TIMOTHY K. MOORE, *in his official capacity of Speaker of the North Carolina House of Representatives*, et al.,	)	No. 19 CVS 15941
Defendants.	)	

****

LEGISLATIVE DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS AND MOTION TO SUSPEND APPELLATE RULES

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to North Carolina Rule of Appellate Procedure 15(d), defendants-respondents Timothy K. Moore and Phillip E. Berger, each in their respective official capacities ("Legislative Defendants"), respectfully submit this response in opposition to plaintiffs-petitioners' ("Plaintiffs") petition for discretionary review prior to determination by the Court of Appeals.

INTRODUCTION

For the second time in this litigation, the Superior Court has sought to drastically change North Carolina's election rules on the eve of an election. The court permanently enjoined Defendants to allow all convicted felons serving sentences outside of prison to register and vote. That injunction is irreconcilable with the North Carolina Constitution, which disenfranchises all convicted felons until "restored to the rights of citizenship in the manner prescribed by law," N.C. CONST. art. VI, § 2, pt. 3, and which has not been challenged in this case.

Plaintiffs now seek to capitalize on the timing of the Superior Court's ruling—which has since been temporarily stayed by the Court of Appeals—by requesting that this Court short-circuit the normal appellate process and decide this important matter at a breakneck pace before the upcoming elections. Although Legislative Defendants are confident that the Superior Court's decision cannot stand, the public interest weighs in favor of this Court allowing the Court of Appeals to review the Superior Court's decision in the first instance. No one denies the significance of the issues in dispute here, but that is all the more reason for this Court to avoid a decision made in unnecessary haste and without the benefit of the Court of Appeals' consideration. Consequently, this Court should allow for this case to proceed in the ordinary course. That is particularly so because Plaintiffs offer no valid reason to circumvent that process. Even by taking this case as soon as it is able and deciding it on Plaintiffs' preferred timeline, this Court cannot provide the finality Plaintiffs seek before the May primary and November general elections. Among other reasons, this

Court cannot exercise its discretion to directly review the Superior Court's judgment until an appeal from that judgment has been docketed in the Court of Appeals, which has not yet occurred.

Although this case is of great importance, the usual appellate procedures are best equipped to ensure this Court has the full benefit of intermediate appellate review, giving confidence to this Court, the parties, and the public at large that whatever decision is reached in this contentious case is well-considered and ultimately correct. Legislative Defendants respectfully request that the Court deny Plaintiffs' petition.

PROCEDURAL HISTORY

Plaintiffs, four organizations and six felons, brought this lawsuit on 20 November 2019 to challenge the constitutionality of N.C.G.S. § 13-1 and its application to "probationer[s]" and "parolee[s]"—more specifically, to convicted felons serving terms of "post-release supervision" under N.C.G.S. § 15A-1368 *et seq.* or "probation" under N.C.G.S. § 15A-1341 *et seq.*,[1] who must obtain an unconditional discharge from such sentences before their voting rights are restored. On 11 May 2020, Plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction. The Chief Justice of the North Carolina Supreme Court transferred this case to a three-judge panel of the Wake County Superior Court,

[1] North Carolina eliminated parole with the Structured Sentencing Act, 1993 N.C. Laws ch. 538. For any convicted felons who might still be subject to parole, the relevant conditions are similar to those of probation and post-release supervision. *See* N.C.G.S. §§ 15A-1372, -1374.

pursuant to N.C.G.S. § 1-267.1(a1). On 4 September 2020, the Superior Court granted summary judgment for Plaintiffs on their claims that § 13-1 creates a wealth-based classification in violation of the Equal Protection Clause, N.C. CONST. art. I, § 19, and imposes a property qualification on voting in violation of N.C. CONST. art. I, § 11. The same day, the Superior Court issued a preliminary injunction that required the Defendants to allow to register to vote any person convicted of a felony whose "only remaining barrier to obtaining an 'unconditional discharge,' other than regular conditions of probation . . . is the payment of a monetary amount" or who "has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probations was reduced to a civil lien." Order on Inj. Relief at 10–11, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Sept. 4, 2020), Ex. 11 to Legis. Defs.' Pet. for Writ of Supersedeas and Mot. for Temporary Stay, P22-153 (N.C. Ct. App. Apr. 1, 2022) ("L.D. Pet."), attached hereto as Ex. A.

For nearly a year, the State Board Defendants implemented this injunction pursuant to its plain terms, instructing voters that they were eligible to vote if they were serving extended terms of probation and knew no reason why their terms had been extended other than for non-compliance with their monetary obligations. During trial in August 2021, however, the court made an oral ruling that all parties had misinterpreted the preliminary injunction, which the court had "intended" to cover any "individuals who are subject to post-release supervision, parole, or probation solely by virtue of continuing to owe monetary obligations[.]" Order on Am. Prelim.

Inj. at 7, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021), Ex. 12 to L.D. Pet. After the State Board of Elections informed the court of the difficulties with identifying such individuals (if any exist), the court entered an expanded preliminary injunction, which was reduced to writing on 27 August 2021, and which stated that "it is necessary for equity and administrability of the intent of the 4 September 2020 preliminary injunction to amend that injunction to include a broader class of individuals." *Id.* at 10. In fact, the court expanded the scope to restore voting rights to the tens of thousands of convicted felons who remained on probation or post-release supervision for reasons other than monetary obligations.

Legislative Defendants moved for a stay pending appeal of the expanded preliminary injunction, which the Superior Court denied. *See* Order, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021), Ex. 13 to L.D. Pet. The Court of Appeals granted a write of supersedeas, staying the order, *see* Order, No. P21-340 (N.C. Ct. App. Sept. 3, 2021), Ex. 14 to L.D. Pet. This Court agreed and ordered that the status quo under the original injunction be maintained, with the caveat that any felons who registered to vote during the brief period when the expanded injunction was in effect should remain registered voters. Order, No. 331P21-1 (N.C. Sup. Ct. Sept. 10, 2021), Ex. 15 to L.D. Pet.

This status quo reigned until 28 March 2022, seven months after the conclusion of trial. On the day that absentee ballots were made available for the statewide primary, the Superior Court entered judgment in favor of Plaintiffs, concluding that § 13-1 violates the Equal Protection Clause, Article I, § 19, and the

Free Elections Clause, Article I, § 10, of the North Carolina Constitution, on the ground that it disenfranchises felons, particularly African American felons. Final J. and Order at 62, No. 19 CVS 15941 (Wake Cnty. Super. Ct. March 28, 2022), Ex. 17 to L.D. Pet. The new injunction had the same scope as the expanded preliminary injunction and required defendants to allow to register any person convicted of a felony but still on probation, parole, or post-release supervision. *Id.* at 64–65.

The State Board of Elections did not immediately start registering voters who fit within the terms of the injunction. Rather, "in light of (1) an imminent appeal of the decision; and (2) an apparently conflicting order from the North Carolina Supreme Court last year in the same case" (meaning this Court's order that "the status quo be preserved," Order at 1, Ex. 15 to L.D. Pet., the State Board instructed county boards of elections to allow individuals on probation or parole to file applications for registration, but to neither enroll nor deny them and instead hold their applications until the courts provided further guidance. Mar. 29 email from K. Love to multiple recipients, Ex. 19 to L.D. Pet. On March 31, in response to this policy, the Plaintiffs filed a notice in the Superior Court alleging that the State Board's approach violated the new permanent injunction. Not. of Alleged Violation of Mar. 28, 2022 (Wake Cnty. Super. Ct. Mar. 31, 2022), Ex. 24 to L.D. Pet. The State Board responded on April 1. *See* State Board Defendant's Resp. to Not. of Alleged Violation of Mar. 28, 2022 (Wake Cnty. Super. Ct. Apr. 1, 2022), Ex. 23 to L.D. Pet. The Superior Court has not acted on the notice of violation.

Contemporaneously, following entry of the Final Order, Legislative

Defendants moved for a stay of the new permanent injunction pending appeal on 30 March 2022. *See* Emergency Mot. for Stay, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Mar. 30, 2022), Ex. 2 to L.D. Pet. The trial court denied the motion on April 1, 2022, and the same day Legislative Defendants petitioned the Court of Appeals for Supersedeas and moved for a temporary stay pending resolution of that motion. *See* L.D. Pet., Ex. A. The Court of Appeals granted a temporary stay on April 5. Order, P22-153 (N.C. Ct. App. April 5, 2022), attached hereto as Ex. B.

Plaintiffs filed their petition for discretionary review on 4 April ("Pls.' Pet."), the State Board responded on 13 April, and this response followed.

STATEMENT OF FACTS

The North Carolina Constitution removes voting rights from convicted felons. This is a common and traditional practice, and the U.S. Supreme Court has held that the federal Equal Protection Clause, which is "functionally equivalent to" North Carolina's Equal Protection Clause, *White v. Pate*, 308 N.C. 759, 765, 304 S.E.2d 199, 203 (1983), "permits States to disenfranchise all felons for life, even after they have completed their sentences." *Jones v. Gov. of Fla.*, 975 F.3d 1016, 1025, 1029 (11th Cir. 2020) (en banc); *see Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). Indeed, the Court has specifically held that North Carolina's disenfranchisement provision does not violate equal protection. *See Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972), *summarily aff'd*, 411 U.S. 961 (1973). Under that provision,

> [n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in

the manner prescribed by law.

N.C. CONST. art. VI, § 2, pt. 3. That provision has not been challenged in this case.

Although the disenfranchisement provision allows the State to disenfranchise all convicted felons for life, the State does not do so. In 1973, led by the NAACP and three African American legislators—at that point, every African American member of the General Assembly—North Carolina instituted the current regime for restoring voting rights to convicted felons. Under N.C.G.S. § 13-1, felons' voting rights are "automatically restored upon the occurrence of any one of" several conditions, including "[t]he unconditional discharge of . . . a probationer[ ] or of a parolee by the agency of the State having jurisdiction of that person" (or by the United States or another state, as the case may be). N.C.G.S. § 13-1(1), (4)–(5).

This law embodies the efforts of African American reformers to liberalize North Carolina's re-enfranchisement laws. North Carolina has disenfranchised some felons at least since 1835. And for over a century, the restoration process was significantly more onerous than it is today. Even by 1970, State law required a waiting period before a felon could regain his voting rights and required him to petition a court and convince a judge that he was deserving of re-enfranchisement. *See* N.C.G.S. § 13-1 *et seq.* (1969), Ex. 6 to L.D. Pet. In 1971, the effort to reform § 13-1 was spearheaded by the only two African American members of the General Assembly—Reps. Joy Johnson and Henry Frye—who were supported in their reform efforts by the NAACP. *See* Tr. of Dep. of Sen. Henry M. Michaux, Jr. at 55:12-23 (June 24, 2020), Ex. 7 to L.D. Pet. The General Assembly enacted a new version of Section 13-1 that restored

a felon's voting rights upon the completion of his sentence, including any period of probation or parole, but that still did not do so automatically: the felon either needed to secure a recommendation from the State Department of Correction and swear an oath of allegiance or wait two years to have his voting rights restored. *See* Gen. Assembly, 1971 Sess., HB 285, Committee Substitute, Ex. 9 to L.D. Pet. In 1973, Reps. Johnson and Frye, now joined by a third African American legislator, Sen. Henry Michaux, achieved their aim of enacting a bill that granted automatic and immediate restoration of rights to all felons as soon as they completed their sentences. *See* Tr. of Sen. Michaux Dep. at 74:21–75:2, Ex. 7 to L.D. Pet. Senator Michaux called the result a "victory." Aff. of Henry M. Michaux, Jr. at ¶ 16 (May 7, 2020), Ex. 10 to L.D. Pet. This is the law being challenged in this case.

REASONS WHY CERTIFICATION SHOULD NOT ISSUE

Legislative Defendants do not contest that this case is significant, raising issues of importance to the public and the jurisprudence of the State. Nevertheless, this Court should not exercise its discretion to review and decide this case now because it is in the public interest for the Court of Appeals to consider the substantive issues first and Plaintiffs offer no valid reason to bypass the Court of Appeals. Furthermore, even if this Court does choose to exercise its discretion to bypass the Court of Appeals and review the Superior Court's decision directly, it cannot do so until this appeal has been docketed in the Court of Appeals.

I. The Public Interest Weighs in Favor of Permitting the Court of Appeals to Consider the Case First.

Outside of highly unusual cases, the public policy of the State favors direct

appeal to the Court of Appeals prior to this Court's review. Since "public policy, which has been not inaptly termed the 'manifested will of the state,' is very largely a matter of legislative control," *Reid v. Norfolk S. R.R. Co.*, 162 N.C. 355, 78 S.E. 306, 307 (1913), this Court must consider the carefully legislated path for appellate review. It is the State's public policy under N.C.G.S. § 7A-27 that appeals from the Superior Court are to be reviewed first by the Court of Appeals. *See* N.C.G.S. § 7A-27(b). In 2016, a series of amendments crystallized this policy. Session Law 2016-125 removed the direct pathway of appeal to this Court for facial challenges like the one Plaintiffs raise here, explicitly preferencing Court of Appeals review first. 2016 N.C. Sess. Laws 125 § 22(b). In addition, the General Assembly created en banc review in the Court of Appeals, further indicating a State policy preference for intermediate appellate review. *Id.* § 22(a). And underscoring this State policy is the longstanding importance given to the opinions of Court of Appeals judges: since the inception of the Court of Appeals, the State has allowed, in one form or another, for direct review in this Court when a Court of Appeals judge dissents, an implicit recognition of the value of the development of legal arguments at the intermediate level. *See* 1967 N.C. Sess. Laws 108, § 1; N.C.G.S. § 7A-30(2). With this strong legislated policy prizing intermediate appellate review, it is only in highly unusual circumstances that this Court is to pluck cases out of the normal procedure.

This is not such a case. Although this case implicates the right to vote, this Court has denied discretionary direct review in such cases before. *See, e.g.*, *Holmes v. Moore*, 832 S.E.2d 708, 709 (N.C. 2019) (mem.); N.C. NAACP's Pet. for Discretionary

Review, in *N.C. State Conf. of the NAACP v. Moore*, No. 261P18-2, 2019 WL 2018297, at **2, 11 (N.C. May 1, 2019) (invoking the right to vote as a matter of "significant public interest"); *N.C. State Conf. of the NAACP v. Moore*, 372 N.C. 359, 828 S.E.2d 158 (N.C. June 11, 2019) (mem.) (denying petition). It has also done so in other cases purportedly implicating fundamental rights. *See, e.g.*, Pet. for Discretionary Review, in *Bessemer City Express, Inc. v. City of Kings Mountain*, No. 85P03, 2003 WL 23325713 (N.C. Feb. 5, 2003) (invoking fundamental constitutional rights and substantive due process); *Bessemer City Express, Inc. v. City of Kings Mountain*, 357 N.C. 61, 579 S.E.2d 384 (2003) (mem.) (denying petition); *Leandro v. State*, 346 N.C. 336, 344, 488 S.E.2d 249, 253 (1997) (denying joint request for discretionary review prior to determination by Court of Appeals in case implicating fundamental right to education).

This case is also in a very different posture than *Holmes v. Moore* and *Harper v. Hall*, in which this Court recently exercised its authority for early discretionary review. *See Holmes v. Moore*, 868 S.E.2d 315, 315 (N.C. 2022) (mem.); *Harper v. Hall*, 865 S.E.2d 301, 302 (N.C. 2021) (mem.). Both *Holmes* and *Harper* involved challenges to *new* laws (or electoral maps) that necessarily impacted all voters and for which review was sought *prior* to implementation of the challenged policy. *See Holmes v. Moore*, 840 S.E.2d 244, 267, 270 N.C. App. 7, 36 (2020) (enjoining enforcement of S.B. 824 until case was "decided on the merits"); *Harper*, 865 S.E.2d at 302 (staying candidate-filing period "until such time as a final judgment on the merits . . . is entered and a remedy, if any is required, has been ordered"). By contrast, the law

that Plaintiffs challenge in this case has been in effect in its current form for nearly half a century and, with a small carve-out for individuals who are on an extended form of supervised release only because of failure to pay a fine, is *still* being enforced the same way it has been for that entire period. And furthermore, unlike *Harper* and *Holmes*, which focused on the legitimacy of policies impacting the whole North Carolina electorate, the restriction here impacts, as Plaintiffs candidly admit, about 56,000 potential voters—still a large number to suddenly permit to vote, but smaller than the whole electorate. Because of this law's long-standing history of enforcement and comparatively narrow scope, several reasons for granting discretionary review in *Harper* and *Holmes* are absent in this case. The ordinary appellate process should apply.

II. Plaintiffs Offer No Valid Reasons to Short-Circuit Appellate Review.

Plaintiffs argue that this Court should grant discretionary review because of the public interest in this case and its importance to North Carolina's jurisprudence, Pls.' Pet. at 32–34; 36, but for all the reasons discussed above, those facts weigh strongly in favor of allowing the ordinary appellate process to operate. Next, Plaintiffs argue that this appeal will determine whether approximately 56,000 people will be eligible to vote in the May 2022 primary elections and the November 2022 general election, and that "[m]ultiple levels of appellate review in this timeframe . . . would likely cause enormous uncertainty and confusion." Pls.' Pet. at 33–34. But it is already too late for discretionary review to impact the May primary, and almost certainly too late for the November general election. The State Board has informed this Court, in response to Plaintiffs' Petition, of the "administrative steps that would

be required to implement" the Superior Court's order in time for the primary elections. State Board Defs.' Resp. to Pls.' Pet. for Discretionary Review and Mot. to Suspend the App. Rs. ("S.B. Resp.") at 3 (Apr. 13, 2022). The many moving parts that the State Board must account for in complying with the order include updating the Statewide Election Information Management System, for which the Board requires at least seven business days' notice to implement any changes; changing absentee ballots, which take 10 to 12 weeks to print and assemble and which are already in circulation for the upcoming primaries, making changes at this point "almost certainly . . . infeasible for all counties"; and of course most importantly, revising the physical voter registration forms, of which the State Board estimates there are "currently hundreds of thousands of registration forms in circulation" all over the State, "in every county board office, Department of Motor Vehicle ('DMV') office, local Department of Social Services ('DSS') and Special Supplemental Nutrition Program for Women, Infants, and Children ('WIC') offices, and in the hands of dozens of political and civic organizations throughout the state" and "even the most expeditious implementation will not be able to completely replace these forms" before in-person voting begins. *Id.* at 6–7 & Attach. ¶ 14 (Aff. of Karen Brinson Bell) ("Bell Aff."). In fact, the State Board believes that "many counties would face challenges" in printing an adequate number of revised forms. Bell Aff. ¶ 13. And those are just the changes the State Board can make itself—it would also need to work with the Department of Public Safety and the DMV to update the systems that interface with the voter registration system. *Id.* ¶¶ 20–21. The State Board in particular noted that "[a] large

portion of registration occurs via online registration through the DMV [and t]he DMV and its vendor typically require extensive documentation and *months* for the State Board to accomplish changes to the online voter registration system." *Id.* ¶ 20 (emphasis added).

In light of the breadth of these changes and the tight time constraints under which it must work, even if the Court *could* take immediate action on Plaintiffs' petition (as discussed below, it cannot), it could not provide the finality needed to implement the permanent injunction in time for the primary election. Indeed, the State Board has stated it would need any decision vacating the temporary stay by *today*, 18 April, in order to make that change effective in the primary election and even then, "some level of voter and poll worker confusion can be expected." S.B. Resp. at 7. And it is likely too late for the November general election as well. According to the North Carolina Department of Justice, this Court takes on average six months to decide a case. *See How long does it take for an appeal to be decided by the Court?*, N.C. DEP'T OF JUST., https://bit.ly/3u0Vg31 (last visited Apr. 13, 2022). And this important case deserves at least average consideration. Six months from today would still be after the 14 October 2022 registration deadline for the general election and too short a time before election day for the State Board to change course without significant risk of mistake or confusion. Only if this Court were to operate at a breakneck pace would it be able to hastily resolve this case in time for enrollment of all non-incarcerated felons before November 2022 (assuming the Court could order such relief, which it cannot do in a case that does not challenge the actual source of felons'

disenfranchisement). If the Court is not inclined to act so hastily, then Plaintiffs' claimed basis for exigence evaporates. Given the lack of truly exigent circumstances, *cf. Harper*, 865 S.E.2d at 302, there is no need to circumscribe the deliberateness of this Court's review of Section 13-1 by taking this case early and without the benefit of the Court of Appeals' perspective.

To the extent that Plaintiffs hope that this Court will grant discretionary review in order to resolve the Petition for Supersedeas that is currently pending in the Court of Appeals, Plaintiffs' declaration of urgency is difficult to square with their inaction in that court. Legislative Defendants filed their Petition for Supersedeas on 1 April, and on 5 April the court granted a temporary stay of the Superior Court's order, stating that "[a] ruling on the petition for writ of supersedeas will be made after the filing of the response to the petition or the expiration of the time for response if no response is filed." Ex. B. And yet Plaintiffs took until 13 April, the day before the deadline for filing a response, to respond, despite their claimed need for haste. Plaintiffs suggest the reason for this strategy is because "[if] the Court of Appeals were to grant a writ of supersedeas, even if this Court later vacated that writ, there would be widespread confusion among people on community supervision." Pls.' Pet. at 5. But that does not make sense. The State Board has already said that it is not currently enrolling non-incarcerated felons as voters and the Court of Appeals has already granted a temporary stay of the Superior Court's injunction. Even if Plaintiffs filed a response in the Court of Appeals and supersedeas were immediately granted, the only change to the status quo would be that Plaintiffs would have the ability to

immediately petition this Court for review under Rule 23. The Court should not credit Plaintiffs' assertions of urgency when they have foregone an alternative that would likely have provided them an earlier opportunity for this Court's review.

Plaintiffs also argue that discretionary review is needed because "the recent 28 March 2022 order has raised a new issue that only this Court can resolve," specifically because the State Board of Elections has indicated confusion over whether the new final injunction governs or this Court's previous stay of the expanded preliminary injunction remains in effect. Pls.' Pet. at 34. That is simply not true. This Court is not the only one that can resolve the confusion—in fact, as explained below, the Superior Court retains jurisdiction until the appeal has been docketed, and *it* is the court that most easily can resolve the confusion its new injunction caused. That it has not yet acted, despite Plaintiffs' filing a Notice of Violation alleging that the State Board was violating the new injunction and the State Board's quick response on 1 April 2022, does not provide a reason for this Court to address what is still a question for the court that issued the injunction. In any event, the Court of Appeals' stay of the new injunction has reinstated the status quo under this Court's prior order and thus removed any present confusion.

III. The Court Lacks Jurisdiction to Review This Case Now.

If this Court nevertheless determines that direct review is appropriate in this case, it cannot grant Plaintiffs' petition until an appeal has been docketed in the Court of Appeals. Both N.C.G.S. § 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure contemplate this Court granting discretionary review only *after*

the appeal has been perfected. Rule 15(a) does so explicitly (allowing petitions "[e]ither prior to or following determination by the Court of Appeals *of an appeal docketed in that court*" (emphasis added)) and § 7A-31(a) does so implicitly (providing that, "[i]n any cause in which appeal is taken to the Court of Appeals . . . the Supreme Court may, in its discretion . . . certify the cause for review. . . . The effect of such certification is to *transfer the cause from the Court of Appeals* to the Supreme Court" (emphasis added)). This requirement reflects the reality that, until the appeal has been perfected and docketed by the Court of Appeals, jurisdiction has not yet transferred to the appellate courts from which the above rules allow this Court to take the case. *Craver v. Craver*, 298 N.C. 231, 237 n.6, 258 S.E.2d 357, 361 n.6 (1979); *see also Ponder v. Ponder*, 247 N.C. App. 301, 305, 786 S.E.2d 44, 47 (2016).[2] Because "an appeal is not 'perfected' until it is docketed in the appellate court," *id.*, and because perfecting the appeal requires receipt of both the record on appeal and the docketing fee by the Court of Appeals, *see Watson v. Watson*, 118 N.C. App. 534, 539, 455 S.E.2d 866, 869 (1995), neither of which have yet occurred in this case, jurisdiction has not yet transferred to the Court of Appeals and this Court cannot grant discretionary review until that has changed.

Plaintiffs' invocation of Rule 2 of the North Carolina Rules of Appellate Procedure, which empowers this Court to "suspend or vary the requirements or

[2] Although jurisdiction has not yet transferred to the Court of Appeals, because of the relation-back doctrine the Superior Court lacks jurisdiction to take any actions that it would not be able to take once the appeal is perfected. *See Ponder*, 247 N.C. App. at 306.

provisions" of the appellate rules as necessary to expedite decision "except as otherwise expressly provided by these rules," N.C. R. APP. P. 2, cannot alter the above analysis. "Appellate Rule 2 cannot be used to grant appellate review, where no jurisdiction exists." *State v. Mangum*, 270 N.C. App. 327, 342, 840 S.E.2d 862, 873 (2020); *see also Bailey v. North Carolina*, 353 N.C. 142, 157, 540 S.E.2d 313, 323 (2000) ("[S]uspension of the appellate rules under Rule 2 is not permitted for jurisdictional concerns."); N.C. R. APP. P. 1(c) ("These rules shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law."). Therefore, although Plaintiffs' petition may be considered properly filed once the appeal is docketed, *see, e.g.*, *Romulus v. Romulus*, 216 N.C. App. 28, 33, 715 S.E.2d 889, 892 (2011) ("[W]hen it is docketed, the perfection [of the appeal] relates back to the time of the notice of appeal."), the Court is without jurisdiction to act before that time.

CONCLUSION

The Court should deny Plaintiffs' petition.

Respectfully submitted this 18th day of April 2022.

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This the 18th day of April, 2022.

/s/Electronically Submitted
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Counsel for Legislative Defendants

EXHIBIT A

No. TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARIUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; and SHAKITA NORMAN, *Plaintiffs,* v. TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chairman of the North Carolina State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the North Carolina State Board of Elections*; STACY EGGERS IV, *in his official capacity as member of the North Carolina State Board of Elections*; JEFF CARMON, *in his official capacity as member of the North Carolina State Board of Elections*; and TOMMY TUCKER, *in his official capacity as member of the North Carolina State Board of Elections,*[*] *Defendants*.	)	From Wake County No. 19 CVS 15941

[*] The current State Board members are listed pursuant to N.C. R. CIV. P. 25.

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PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR TEMPORARY STAY

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No. TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
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COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARIUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; and SHAKITA NORMAN,	)	
Plaintiffs,	)	From Wake County
v.	)	
	)	No. 19 CVS 15941
TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chairman of the North Carolina State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the North Carolina State Board of Elections*; STACY EGGERS IV, *in his official capacity as member of the North Carolina State Board of Elections*; JEFF CARMON, *in his official capacity as member of the North Carolina State Board of Elections*; and TOMMY TUCKER, *in his official capacity as member of the North Carolina State Board of Elections*,	)	
Defendants.	)	

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PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR TEMPORARY STAY

****

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate ("Legislative Defendants"), respectfully petition this Court to issue a temporary stay and a writ of supersedeas.

INTRODUCTION

The Superior Court has issued an injunction that is plainly irreconcilable with the North Carolina Constitution. Under Article VI, § 2, anyone convicted of a felony may not vote "unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." The Superior Court held unconstitutional the "manner prescribed by law," found in N.C.G.S. § 13-1, meaning that felons serving sentences outside of prison now have no lawful means of regaining their voting rights and thus remain disenfranchised under Article VI, § 2.

Yet, the Superior Court has permanently enjoined Defendants to allow such persons to register and vote. And the court has done so on the eve of an election—indeed, in a manner that, if not stayed, will insulate the ruling from this Court's review with respect to the upcoming elections.

This is the second time in this litigation that the Superior Court has upended the State's rules for felon enfranchisement with elections approaching. The last time, this Court—in a decision later upheld by the Supreme Court—stayed the Superior Court's attempt to suddenly permit all of

the tens of thousands of felons serving sentences outside of prison to register and vote, instead allowing the State Board of Elections to maintain the narrower rules promulgated under the Superior Court's original preliminary injunction.

The Superior Court's permanent injunction, which has the same scope as the preliminary injunction that this Court stayed, must be stayed as well. Although the Superior Court's original preliminary injunction was itself erroneous, rules issued pursuant to that injunction have been in place for over a year and for two election cycles. Like last time, therefore, Legislative Defendants ask only that this Court prevent disruption by staying the permanent injunction to the extent it departs from the status quo under the original preliminary injunction and as reflected by the Supreme Court's order of September 10, 2021. A stay is again warranted because Legislative Defendants are likely to succeed on the merits of their appeal from the Superior Court's judgment, which commits several fundamental errors in holding that North Carolina's *re*-enfranchisement statute violates the North Carolina Constitution by *dis*enfranchising felons,[1] and because the Superior Court's last-minute rewrite of election rules will "result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (per curiam). Indeed, absentee voting for the upcoming primary elections has already opened.

Legislative Defendants noticed an appeal and filed for a stay in the Superior Court, which denied the stay request in a split decision with Judge Dunlow dissenting. *See* Not. of Appeal (Wake

[1] Legislative Defendants have filed a notice of appeal that encompasses both the Superior Court's final judgment and its earlier order granting summary judgment to Plaintiffs on certain claims, the same claims on which the original preliminary injunction was based. However, for purposes of this stay, Legislative Defendants seek to preserve the status quo following the Supreme Court's September 10, 2021 order, which includes the State Board of Elections allowing felons on probation to vote if their only reason for being on probation is outstanding fines, fees, or restitution. So, while Legislative Defendants are appealing the summary judgment ruling that resulted in that practice, they will focus on their likelihood of success on the merits in appealing from the final judgment in this motion.

Cnty. Super. Ct. Mar. 30, 2022), Ex. 1; Emergency Mot. for Stay Pending Appeal (Wake Cnty. Super. Ct. Mar. 30, 2022), Ex. 2; Order (Wake Cnty. Super. Ct. Apr. 1, 2022), Ex. 25. Accordingly, Legislative Defendants respectfully request that this Court issue a writ of supersedeas to the Superior Court of Wake County to stay the order issued on March 28, 2022 to the extent specified above pending resolution of the appeal from that order. Legislative Defendants also request that the Court temporarily stay enforcement of that order until the Court can rule on this petition for a writ of supersedeas.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. North Carolina's Provisions for Felon Disenfranchisement and Re-Enfranchisement.

The North Carolina Constitution provides that:

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

N.C. CONST. art. VI, § 2, pt. 3. "[E]xcluding those who commit serious crimes from voting" is a "common practice," and the U.S. Supreme Court has held that the federal "Equal Protection Clause permits States to disenfranchise all felons for life, even after they have completed their sentences." *Jones v. Gov. of Fla.*, 975 F.3d 1016, 1025, 1029 (11th Cir. 2020) (en banc); *see Richardson v. Ramirez*, 418 U.S. 25, 56 (1974). Indeed, the Court has specifically held that North Carolina's disenfranchisement provision does not violate equal protection. *See Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972), *summarily aff'd* 411 U.S. 961 (1973).

North Carolina does not disenfranchise all felons for life. The statute at issue here, N.C.G.S. § 13-1, "automatically restore[s]" voting rights to convicted felons "upon the occurrence of any one of" several conditions, including "[t]he unconditional discharge of . . . a probationer[ ]

or of a parolee by the agency of the State having jurisdiction of that person" (or by the United States or another state as the case may be). § 13-1(1), (4)–(5). Although North Carolina long provided for re-enfranchisement in more limited circumstances, the current version of § 13-1 dates back to the early 1970s. The North Carolina Supreme Court has already spoken to the intent of those laws: "It is obvious that the 1971 General Assembly . . . intended to substantially relax the requirements necessary for a convicted felon to have his citizenship restored," and "[t]hese requirements were further relaxed in 1973." *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974).

II. Section 13-1 Embodies the Efforts of African American Reformers To Liberalize North Carolina's Re-Enfranchisement Laws.

North Carolina has disenfranchised some felons at least since 1835. Expert Report of Orville Vernon Burton at 10 (May 8, 2020), Ex. 3. Restoration for these felons was onerous and involved securing private legislation restoring an individual to his rights. *Id.* at 11. By 1840 (and possibly before), North Carolina disenfranchised individuals who had committed "infamous" crimes, which were defined, at least in part, to include crimes for which whipping was a suitable punishment. *Id.* at 11, 15. An "infamous" criminal in 1840 had a standardized, but still quite difficult, path to re-enfranchisement which required waiting at least four years after conviction, petitioning a court for restoration, and presenting five witnesses who would attest to his character based on at least three years of acquaintance. 1840 N.C. Laws, ch. 36, Ex. 4. The system could be gamed: In 1866, in anticipation of an expansion of the franchise to African Americans, North Carolina courts began a practice of sentencing them to whipping as a way of pre-emptively disenfranchising them. Ex. 3 at 19–20.

In 1868, North Carolina put in place a new state constitution that briefly did not restrict the rights of felons to vote—however that was changed by amendment in 1876. Laws implementing

that amendment were passed and again, the process of achieving restoration of rights was difficult and subject to discretion on behalf of the decisionmaker. *See, e.g.* 1899 N.C. Laws, ch. 44., Ex. 5. The law was updated many times over the next century, but in 1970 the law still required a waiting period before a felon could get his rights back and required him to petition a court and convince a judge he was deserving of re-enfranchisement. N.C.G.S. § 13-1 *et seq.* (1969), Ex. 6.

In 1971, the effort to enact a much more straightforward version of § 13-1 was spearheaded by the only two black members of the General Assembly—Reps. Joy Johnson and Henry Frye—who were supported in their reform efforts by the NAACP. Trans. of Dep. of Sen. Henry M. Michaux, Jr., 55:12-23 (June 24, 2020), Ex. 7. The original version of the bill introduced in the House, H.B. 285, stated: "Restoration of Citizenship – Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon the full completion of his sentence or upon receiving an unconditional pardon." Gen. Assembly, 1971 Sess., House DRH3041, HB 285, Ex. 8. The law, as enacted, was amended to remove "automatically" from the text and add in "including any period of probation or parole" after "full completion of his sentence. Gen. Assembly, 1971 Sess., HB 285, Committee Substitute, Ex. 9. In lieu of automatic restoration, the enacted 1971 law required a felon to secure a recommendation of restoration from the State Department of Correction and to take an oath of allegiance to have his rights restored immediately. Otherwise, he had to wait for two years after his sentence had been served to receive the right to vote. *Id.*

In 1973, Reps. Johnson and Frye, now joined by a third black legislator, Sen. Henry Michaux, tried again and this time achieved their aim of enacting a bill that granted automatic and immediate restoration of rights to all felons as soon as they completed their sentences. Ex. 7 at 74:21–75:2. Senator Michaux called the result a "victory," Aff. of Henry M. Michaux, Jr. ¶ 16

(May 7, 2020), Ex. 10, and noted that the only two things the law didn't accomplish and that he wished it did were to exclude *extended* supervision (where a probationer's or parolee's term is extended because he violated one the conditions of his release or committed a new felony) and to return a felon's Second Amendment rights alongside his voting rights, Ex. 7 at 83:13-84:11; 103:7–12.

III. The Superior Court Enjoins Enforcement of § 13-1.

Plaintiffs are four organizations and six convicted felons who either are or were on probation or post-release supervision. They brought this lawsuit in November 2019 to challenge § 13-1 and its application to "probationer[s]" and "parolee[s]"—more specifically, to convicted felons serving terms of "post-release supervision" under N.C.G.S. § 15A-1368 *et seq.* or "probation" under N.C.G.S. § 15A-1341 *et seq.*[2] On September 4, 2020, the Superior Court granted summary judgment for Plaintiffs on their claims that § 13-1 creates a wealth-based classification in violation of the Equal Protection Clause, N.C. CONST. art. I, § 19, and imposes a property qualification on voting in violation of N.C. CONST. art. I, § 11. The same day, the Superior Court issued a preliminary injunction that required the Defendants to allow to register to vote any person convicted of a felony whose "only remaining barrier to an 'unconditional discharge,' other than regular conditions of probation . . . is the payment of a monetary amount" or who "has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probations was reduced to a civil lien." Order on Inj. Relief at 10–11, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Sept. 4, 2020), Ex. 11.

[2] North Carolina eliminated parole with the Structured Sentencing Act, 1993 N.C. Laws ch. 538. For any convicted felons who might still be subject to parole, the relevant conditions are similar to those of probation and post-release supervision. *See* N.C.G.S. §§ 15A-1372, -1374.

For nearly a year, the State Board Defendants implemented this injunction pursuant to its plain terms, instructing voters that they were eligible to vote if they were serving extended terms of probation and knew no reason why their terms had been extended other than for non-compliance with their monetary obligations. During trial in August 2021, however, the court made an oral ruling that all parties had misinterpreted the preliminary injunction, which the court had "intended" to cover any "individuals who are subject to post-release supervision, parole, or probation solely by virtue of continuing to owe monetary obligations." Order on Am. Prelim. Inj. at 7, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021) ("Expanded PI Order"), Ex. 12. The expanded preliminary injunction, which was reduced to writing on August 27, 2021, stated "it is necessary for equity and administrability of the intent of the September 4, 2020 preliminary injunction to amend that injunction to include a broader class of individuals," expanding the scope to restore voting rights to tens of thousands of convicted felons who remained on probation or post-release supervision for reasons other than monetary obligations. Expanded PI Order, Ex. 12 at 10.

The Superior Court denied Legislative Defendants' motion for a stay pending appeal of the expanded preliminary injunction, *see* Order, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021), Ex. 13, but this Court granted a writ of supersedeas, staying the order, *see* Order, No. P21-340 (N.C. Ct. App. Sept. 3, 2021), Ex. 14. The Supreme Court agreed and ordered that the status quo under the original injunction be maintained, with the caveat that any felons who registered to vote during the brief period when the expanded injunction was in effect should remain registered voters. Order, No. 331P21-1 (N.C. Sup. Ct. Sept. 10, 2021), Ex. 15. Thus, until Monday of this week, the status quo—which was in place for last fall's municipal elections—was that a felon who had not registered to vote while the expanded preliminary injunction was in effect and was still under some form of supervision could register only if "serving an extended term of probation,

post-release supervision, or parole" with "outstanding fines, fees, or restitution" and if the felon did "not know of another reason that [his] probation, post-release supervision, or parole was extended." *See Who Can Register*, N.C. STATE BD. OF ELECTIONS (as last visited Apr. 1, 2022), https://bit.ly/3IQAlTY, Ex. 16.

On Monday, March 28, 2022, seven months after the conclusion of trial, and the very same day that absentee ballots were made available for the statewide primary, the Superior Court entered judgment in favor of Plaintiffs, concluding that § 13-1 violates the Equal Protection Clause, Article I, § 19, and the Free Elections Clause, Article I, § 10, of the North Carolina Constitution on the ground that it disenfranchises felons, particularly African American felons. Final Judgment and Order at 62, No. 19 CVS 15941 (Wake Cnty. Super. Ct. March 28, 2022) ("Final Order"), Ex. 17. The new injunction has the same scope as the expanded preliminary injunction did. The Final Order states:

> 1. N.C.G.S. § 13-1's denial of the franchise to persons on felony probation, parole, or post-release supervision violates the North Carolina Constitution's Equal Protection Clause and Free Elections Clause.
>
> 2. Defendants . . . are hereby enjoined from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision.
>
> 3. For the avoidance of doubt, under this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina.

Ex. 17 at 64–65.

Early voting for North Carolina's statewide primaries begins on April 28. *Calendar of Events*, N.C. STATE BD. OF ELECTIONS, https://bit.ly/35l15y4 (last visited March 30, 2022). The Superior Court's new injunction threatens to upset the status quo with precious little time for the State Board Defendants to implement the court's new injunction, which will expand the franchise to over 50,000 felons who are otherwise not eligible to vote because they are on some form of

supervision. *See* Ex. 16. The timing of the Superior Court's opinion appears designed to tie the State Board's and this Court's hands. After having already found Plaintiffs likely to succeed on the merits, the Superior Court took seven months to issue an opinion that largely tracks Plaintiffs' proposed findings of fact and conclusions of law. The Superior Court left the State Board with slightly more than the approximate amount of time the Board had previously indicated it would need to implement the expanded preliminary injunction even for off-year municipal elections. *See* Not. Regarding Implementation of Inj. and Mot. for Clarification at 6 (Aug. 21, 2021), Ex. 18 (noting that the State Board needed clarity on the rules by August 23 in order to implement them in time for early voting on September 16).

However, the State Board has not started registering voters who would not be eligible to vote under the preliminary injunction and this Court's stay order. The State Board has instructed the county boards of election "in light of (1) an imminent appeal of the decision; and (2) an apparently conflicting order from the North Carolina Supreme Court last year in the same case" that while they should allow individuals on probation or parole to file applications for registration, they should neither enroll nor deny them, but rather hold their applications until the State Board knows how to apply the law properly. Mar. 29 email from K. Love to multiple recipients, Ex. 19.[3] Legislative Defendants moved for a stay of the injunction pending appeal in the Superior Court on March 30, 2022, and informed the court in their motion that, in light of the urgency of the issue—with the status quo presently maintained and any changes (especially changes followed by

[3] Plaintiffs filed a notice in the Superior Court alleging that the State Board's approach violates the new permanent injunction. *See* Not. of Violation (Wake Cnty. Super. Ct. Mar. 31, 2022), Ex. 24. As the State Board has since explained, however, the approach represents a good-faith effort to comply with two apparently conflicting orders (one from the Superior Court, one from the Supreme Court) and to avoid the confusion that proceeding with full implementation would inevitably cause until the courts provide further guidance. *See infra* Part II. Plaintiffs' request for relief from this alleged violation is still pending.

reversals) at this late stage likely to cause significant confusion before the statewide primaries—they would seek emergency relief from this Court by April 1, 2022 regardless of whether the court had acted on the motion by that date. The Superior Court denied Legislative Defendants' stay motion this afternoon.

REASONS THE COURT SHOULD ISSUE A WRIT OF SUPERSEDEAS

The writ of supersedeas serves "to preserve the status quo pending the exercise of appellate jurisdiction," *Craver v. Craver*, 298 N.C. 231, 238, 258 S.E.2d 357, 362 (1979), and may issue "when an appeal has been taken, or a petition for . . . certiorari has been filed to obtain review of [a] judgment, order, or other determination" and "a stay order . . . has been sought by the applicant . . . by motion in the trial tribunal and such order . . . has been denied." N.C. R. APP. P. 23(a)(1). Legislative Defendants have filed a notice of appeal from the Superior Court's judgment and the Superior Court has denied a stay, so this Court's consideration of this petition is appropriate.

Although supersedeas precedent is limited, it supports applying the familiar balancing test for temporary relief. The writ should issue where (1) the petitioner is likely to succeed on the merits of the appeal, (2) irreparable injury will occur absent a stay, and (3) the balance of the equities favors preserving the status quo during the appeal. *See Abbott v. Town of Highlands*, 52 N.C. App. 69, 79, 277 S.E.2d 820, 827 (1981) (stay appropriate where "[t]here was some likelihood that plaintiffs would have prevailed on appeal and thus have been irreparably injured"); *see also, e.g., Home Indem. Co. v. Hoechst Celanese Corp.*, 128 N.C. App. 113, 117–19, 493 S.E.2d 806, 809–11 (1997); *N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 196 N.C. App. 68, 79, 674 S.E.2d 436, 443 (2009). All three factors supported preserving the status quo seven months

ago when this Court first granted supersedeas in this case, and they again support preserving the status quo now under strikingly similar circumstances.

I. Defendants Are Likely to Succeed on the Merits of Their Appeal.

The Superior Court's judgment rests on several clear errors of fact and law. Indeed, the Superior Court did not even address Legislative Defendants' arguments that Plaintiffs lacked standing, which was necessary to the court's subject-matter jurisdiction. Permanent injunctions are reviewed for an abuse of discretion, *see Mid-Am. Apartments, L.P. v. Block at Church St. Owners Ass'n, Inc.*, 257 N.C. App. 83, 89, 809 S.E.2d 22, 27 (2017), and "a trial court by definition abuses its discretion when it makes an error of law." *State v. Rhodes*, 366 N.C. 532, 536, 743 S.E.2d 37, 39 (2013) (cleaned up). Legislative Defendants will show in this appeal that the Superior Court's injunction is an abuse of discretion founded on multiple errors of law.

a. The Plaintiffs Lack Standing to Challenge § 13-1 and the Superior Court Lacked Power To Rewrite the Law

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

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

Section 13-1, which Plaintiffs challenge here, is that "manner prescribed by law." This leads to fatal problems for Plaintiffs' case.

Plaintiffs lack standing to challenge Section 13-1. "As a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Mangum v. Raleigh Bd. of Adjust.*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). But more specifically, that harm must be traceable to the statute the plaintiff has challenged. "The rationale of the standing rule is that only one with a

genuine grievance, one personally injured by a statute, can be trusted to battle the issue." *Willowmere Cmty. Ass'n, Inc. v. City of Charlotte*, 370 N.C. 553, 557, 809 S.E.2d 558, 561 (2018) (citation and alteration omitted); *see also Piedmont Canteen Serv., Inc. v. Johnson*, 256 N.C. 155, 166, 123 S.E.2d 582, 589 (1962) ("Only those persons may call into the question the validity of a statute who have been injuriously affected thereby in their persons, property or constitutional rights."). Here, Plaintiffs have not been injured by the statute they challenge. Rather, they have sued to invalidate as discriminatory (and have now invalidated) the very avenue by which they may *regain* their right to vote. Although the trial court found that, for example, "§ 13-1 interferes with the fundamental right to vote on equal terms as it prohibits people with felony convictions from regaining the right to vote even while they are living in communities in North Carolina," Ex. 17 at 57, that is not at all the functioning of § 13-1, but rather the work of the North Carolina Constitution. Plaintiffs have picked the wrong target with their lawsuit—a statute that has never "injuriously affected" them—and as a result they lack standing to bring this suit.

Lacking a "direct injury" attributable to the statute they have chosen to challenge, *Comm. to Elect Dan Forest v. Emp's Pol. Action Comm.*, 376 N.C. 558, 608 (2021), Plaintiffs likewise lack standing because their injury cannot be "redressed by a favorable decision" within the power of the Superior Court, *Marriott v. Chatham Cnty.*, 187 N.C. App. 491, 494, 654 S.E.2d 13, 16 (2007) (standing requires "that the [alleged] injury will be redressed by a favorable decision"); *see also Breedlove v. Warren*, 249 N.C. App. 472, 478, 790 S.E.2d 893, 897 (2016). Ordinarily, when a court finds a statute unconstitutional, a declaration of its unconstitutionality (sometimes accompanied by injunction prohibiting its enforcement) "is the most assured and effective remedy available." *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (cleaned up). Not so here—a declaratory judgment that §13-1 is unconstitutional actually *hurts* the people Plaintiffs

seek to represent. That declaration would close off the sole avenue by which a felon may regain his rights but leave in place the constitutional provision that strips it away in the first place. Furthermore, it would have no impact on the criminal prohibition on felons voting "without having been restored to the right of citizenship in due course and by the method provided by law," N.C.G.S. § 163-275(5), except to ensure that the population capable of violating that statute grows continuously in the absence of a "method provided by law" to re-enfranchise them. Indeed, such a declaration would (as the Superior Court's does) *invite* lawbreaking by felons who mistakenly believe that a court declaring § 13-1 unconstitutional has any impact on the validity of § 163-275(5), which it did not consider, or that an injunction against the State Board Defendants somehow applies against local law enforcement officials, who were not a party to the case.

To summarize: the result of the court's order is that all felons serving sentences outside of prison remain disenfranchised under the North Carolina Constitution, since the court has enjoined the "manner prescribed by law" for felon re-enfranchisement. N.C. CONST. art. VI, § 2, pt. 3. Thus, the effect of the order can only be to induce violations of § 163-275(5) and to subject violators to prosecution.

Of course, that is not what the Superior Court *attempted* to do in issuing the injunction. The panel stated: "[U]nder this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina." Ex. 17 at 65. Evidently, the Superior Court viewed itself as removing *any* North Carolina law, be it statute or constitution, before the court or not, standing in the way of felons on supervised release who might seek to vote. This it could not do. North Carolina reserves for the legislature, not the courts, the authority to create new laws. "When a court, in effect, constitutes itself a superlegislative body, and attempts to rewrite the law according to its predilections and notions of enlightened legislation,

it destroys the separation of powers and thereby upsets the delicate system of checks and balances which has heretofore formed the keystone of our constitutional government." *State v. Cobb*, 262 N.C. 262, 266, 136 S.E.2d 674, 677 (1964); *see also C Invs. 2, LLC v. Auger*, 277 N.C. App. 420, 430, 860 S.E.2d 295, 302 (2021) ("The role of the courts is to interpret statutes as they are written. We do not rewrite statutes to ensure they achieve what we, or the parties in a lawsuit, imagine are the legislature's policy goals."); *Davis v. Craven Cnty. ABC Bd.*, 259 N.C. App. 45, 48, 814 S.E.2d 602, 605 (2018) ("This court is an error-correcting body, not a policy-making or law-making one." (quotation marks omitted)).

The Superior Court's violation of the separation of powers is patent here. As explained, the State Constitution provides that felons may only be re-enfranchised in the "manner prescribed by law." By attempting to take upon itself the power to prescribe the manner for felon re-enfranchisement after declaring unconstitutional the General Assembly's prescription, the Superior Court improperly exercised the lawmaking authority constitutionally reserved for the General Assembly.

The Superior Court thus had no authority to rewrite § 13-1 to restore voting rights upon "release from prison" rather than "unconditional discharge" from a criminal sentence. And the court certainly had no authority to invalidate the Constitution's disenfranchisement provision as applied to felons serving sentences outside of prison, which the court's injunction effectively does, where Plaintiffs *have not challenged that constitutional provision* in this litigation. Furthermore, it is not possible for one provision of the North Carolina Constitution to invalidate another. By exceeding its authority when crafting the injunction, the trial court necessarily abused its discretion. *See South Carolina v. United States*, 907 F.3d 742, 753 (4th Cir. 2018).

The trial court entered an injunction that purports to rewrite North Carolina law because Plaintiffs challenged a law that never caused them any injury. Whether considered as a lack of standing for the Plaintiffs or authority for the trial court, the result is the same: the injunction cannot stand and Defendants must prevail on appeal.

b. Section 13-1 Does Not Violate the Equal Protection Clause or the Free Elections Clause

Wholly apart from Plaintiffs' lack of standing to challenge § 13-1 and the separation of powers concerns raised by the Superior Court's injunction, Legislative Defendants are likely to succeed on the merits of their appeal.

i. The Superior Court Erred by Applying Strict Scrutiny

The Superior Court erred in applying strict scrutiny to § 13-1 when analyzing Plaintiffs' Equal Protection challenge. Strict scrutiny is only appropriate where a government classification "impermissibly interferes with the exercise of a fundamental right" or "operates to the peculiar disadvantage of a suspect class." *Liebes v. Guilford Cnty. Dep't of Pub. Health*, 213 N.C. App. 426, 428, 713 S.E.2d 546, 549 (2011) (citation omitted). Otherwise, rational-basis review applies. *Id.* Section 13-1 neither interfere with any fundamental right nor disadvantages any suspect class.

As to the first point, the Superior Court held that § 13-1 interferes with "[a] fundamental right to vote." Final Order at 57. But convicted felons do not have such a right. Under the North Carolina Constitution, a felon is barred from voting "unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. CONST. art. VI, § 2, pt. 3. Under that provision, felons for whom the General Assembly provides no path to re-enfranchisement are disenfranchised for life. And when the General Assembly does provide a path to re-enfranchisement, the right to vote is restored only when the conditions for restoration have been met. Similarly, the United States Constitution follows its own Equal Protection Clause

immediately with "an affirmative sanction" of "the exclusion of felons from the vote." *Richardson*, 418 U.S. 24, 54 (1974); *see also* U.S. CONST. amend. 14, § 2. As a result, federal courts of appeals have uniformly concluded felons do not have a fundamental right to vote. *See, e.g.*, *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.).

In holding otherwise, the Superior Court did not confront these authorities, but merely asserted that felons who are not currently in prison are "similarly situated" to "North Carolina residents who have not been convicted of a felony" because they "feel an interest in [the State's] welfare." Ex. 17 at 57 (quoting *Roberts v. Cannon*, 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260–61 (1839)). That felons and non-felons alike may have an interest in how they are governed does not make them similarly situated for these purposes when both the North Carolina and United States constitutions expressly treat them differently. *See State v. Grady*, 372 N.C. 509, 567, 831 S.E.2d 542, 582 (2019) ("[F]elons do not enjoy the same measure of constitutional protections . . . as do citizens who have not been convicted of a felony.").

The Superior Court also noted that the Equal Protection Clause protects "the fundamental right of each North Carolinian to substantially equal voting power." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002). But Plaintiffs *have* no claim under that principle. Convicted felons are not constitutionally entitled to any vote until their voting rights are restored in the manner that the General Assembly provides. And *Stephenson* itself recognizes that constitutional provisions—such as the felon-disenfranchisement provision and the Equal Protection Clause—must be read "in conjunction." *Id*. at 378, 562 S.E.2d at 394. This principle thus provides no basis for strict scrutiny, either.

It appears that the Superior Court applied strict scrutiny primarily because it had incorrectly found a violation of a fundamental right, *see* Ex. 17 at 58 ("Thus, if a statute interferes with the

exercise of a fundamental right, strict scrutiny applies even if the affected group is not a suspect class."), though the court also appears to have done so because it incorrectly found that § 13-1 disadvantages a suspect class, *see id*. ("N.C.G.S. § 13-1 both interferes with the exercise of the fundamental right of voting and operates to disadvantage a suspect class. Therefore, it is subject to strict scrutiny."). To the extent it applied strict scrutiny on the latter basis, that was another error. This Court has applied a distinct framework to claims of allegedly discriminatory burdens on the right to vote: not the tiers of scrutiny, but the burden-shifting framework that the U.S. Supreme Court established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). *See Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 & n.5 (2020); *see also Libertarian Party of N.C. v. State*, 365 N.C. 41, 42, 707 S.E.2d 199, 200–01 (2011) ("adopt[ing] the United States Supreme Court's analysis for determining the constitutionality of ballot access provisions").

Under that framework, the plaintiff has the initial burden to show that discriminatory intent was a motivating factor in the passage of the law at issue with either direct evidence of racial animus—of which Plaintiffs have none here—or circumstantial evidence drawn from the law's purported impact, legislative process and legislative history, and historical background. *See Arlington Heights*, 429 U.S. at 266–268. That evidence must support "an inference [of discriminatory intent] that is strong enough to overcome the presumption of legislative good faith" that attaches to all legislative acts. *Abbott v. Perez*, 138 S. Ct. 2305, 2329 (2018); *see also Holmes*, 270 N.C. App. at 19, 840 S.E.2d at 256 n.7 (noting "our Supreme Court's strong presumption that acts of the General Assembly are constitutional" (cleaned up)). If Plaintiffs had made this showing (which they did not), the burden would have shifted to Defendants to show that the General Assembly would have enacted § 13-1 even without the allegedly discriminatory motivation. If

Defendants had not made that showing (which they did), then § 13-1 would be unconstitutional and the inquiry would be over.

The Superior Court itself purported to follow this framework. *See* Ex. 17 at 5–6. Although the Superior Court's conclusions under that framework were incorrect, they gave the court no basis to apply strict scrutiny. In any event, strict scrutiny is also inappropriate because § 13-1 does not operate to disadvantage a suspect class of people. On its face, § 13-1 makes no distinction between felons based on race, sex, or any other suspect or quasi-suspect class. The *only* distinction it draws is between felons who have completed their sentences and felons who have not—and that "reasonable distinction" does not offend equal protection. *See State v. Stafford*, 274 N.C. 519, 535, 164 S.E.2d 371, 382–83 (1968). Section 13-1 thus draws no arbitrary lines. And as shown below, it has no discriminatory effect.

The Superior Court also erred in applying strict scrutiny to Plaintiffs' claim under the Free Elections Clause. *See* Ex. 17 at 60. That clause provides simply that "[a]ll elections shall be free," N.C. CONST. art. I, § 10, and requires that voters be free to choose how they cast their ballots without coercion, intimidation, or undue influence. Again, § 13-1 does not deprive anyone of the right to vote—a felony conviction and the North Carolina Constitution do that. And "a constitution cannot be in violation of itself." *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 394. It therefore cannot be, as the Superior Court held, that North Carolina's elections are not free within the meaning of its constitution merely because some people are *constitutionally* precluded from participating in them. *See* Ex. 17 at 59. Moreover, § 13-1 not only does not deprive anyone of the right to vote, it *extends* the right to vote to felons who otherwise would be disenfranchised. Thus, "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights . . . is inapplicable," because the distinction being challenged is only "a limitation on a reform measure

aimed at eliminating an existing barrier to the exercise of the franchise." *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966).

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

For the reasons that follow, Plaintiffs also failed to establish any violation of the Equal Protection Clause under *Arlington Heights* or any violation of the Free Elections Clause.

ii. The Evidence Does Not Establish Discriminatory Intent

As an initial matter, the Superior Court failed to start its analysis with the presumption that the General Assembly enacted § 13-1 in good faith, as the court was required to do. *See Abbott*, 138 S. Ct. at 2324. In fact, the words "good faith" appear nowhere in the court's opinion. As a result, the court failed to make any factual findings under the correct standard. "[F]acts found under misapprehension of the law are not binding . . . and will be set aside," and legal conclusions

based on those facts are necessarily erroneous as well. *Van Hanford v. McSwain*, 230 N.C. 229, 233, 53 S.E.2d 84, 87 (1949). In any event, legal conclusions are reviewed *de novo*. *See In re C.H.M.*, 371 N.C. 22, 28–29, 812 S.E.2d 804, 809 (2018). And the Superior Court committed legal error by concluding that § 13-1 was passed with discriminatory intent based on any of the facts before it.

1. Impact

When assessing the impact of the statute, it is important to remember, again, just what Plaintiffs challenged. They have not challenged the whole of North Carolina's felon disenfranchisement regime, nor have they challenged any state action that might result in African Americans disproportionately being charged with and convicted of felonies, or anything else that might contribute to a difference in the rates of disenfranchisement between black and white North Carolinians. They have only challenged North Carolina's restoration law, and fatally, Plaintiffs did not even attempt to show that as a practical matter Section 13-1 re-enfranchises felons of different races at a different rate. An intentional discrimination claim requires proof of *both* disparate impact and discriminatory intent, *see Irby v. Virginia State Bd. of Elections*, 889 F.2d 1352, 1355 (4th Cir. 1989), and Plaintiffs have wholly failed to make the former showing.

Nevertheless, the Superior Court stated, without explanation that § 13-1 "has a demonstrably disproportionate and discriminatory impact." Ex. 17 at 57. Though unexplained, this statement must be the result of two errors: first the Superior Court necessarily conflated § 13-1 with other elements of North Carolina's felon disenfranchisement regime which cause the loss of voting rights. Second, it credited testimony from Plaintiffs experts who testified, for example that "The African American population is . . . denied the franchise at a rate 2.76 times as high as the rate of the White population." Ex. 17 at 26. But the Supreme Court has cautioned that exactly this sort of reasoning, dividing one percentage by another can create "[a] distorted picture," *Brnovich*

v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2345 (2021), and indeed it does here. In fact, 1.24% of African Americans of voting age in North Carolina are disenfranchised by reason of a felony conviction, which is just 0.81% greater than the 0.45% of the white electorate that is similarly disenfranchised. Ex. 17 at 26. Comparing these ratios is misleading because, although it is true that African American voters are disenfranchised 2.76 times more than white voters, that statement "mask[s] the fact that the populations [are] effectively identical." *Brnovich*, 141 S. Ct. at 2345.

In any event, regardless of how expressed, the relative percentages of African Americans and whites who are disenfranchised by reason of a felony conviction is irrelevant to the claims Plaintiffs actually made in this case. Again, Plaintiffs are not (and could not, in this state constitutional challenge) challenging the provision of the North Carolina Constitution disenfranchising felons. Instead, they are challenging the re-enfranchisement law. Plaintiffs have not even attempted to make a legally relevant showing of disparate impact.

Therefore, no reliable evidence shows that § 13-1 disenfranchises African Americans at a significantly greater rate than members of another race—which, again, § 13-1 could not do because it does not disenfranchise anyone.

2. Legislative Process and Legislative History

The Superior Court erred again when it concluded that § 13-1, which was championed by the NAACP and the only three black members of the General Assembly in 1973, was motivated by racially discriminatory intent. Ex. 17 at 56. As noted, the court failed to presume that the legislature operated in good faith. *See Abbott*, 138 S. Ct. at 2324. In fact, in crediting circumstantial

evidence of the popularity of the "Law and Order" movement, the court appeared to presume exactly the opposite. *See, e.g.*, Ex. 17 at 22.

The court also misread legislative history, which in fact demonstrates that the 1971 and 1973 changes to the law accomplished the primary goals of the reforming legislators by "substantially relax[ing] the requirements necessary for a convicted felon to have his citizenship restored." *Currie*, 284 N.C. 562 at 565, 202 S.E.2d at 155. It was not, as the court incorrectly concluded, "the goal of these African American legislators and the NC NAACP . . . to eliminate section 13-1's denial of the franchise to persons released from incarceration," Ex. 17 at 19, but to make the process automatic *upon completion of a felon's sentence*. PX175 at 78:10–14, Ex. 7.[4] And even assuming, contrary to the evidence, that the Superior Court was right about the intent of the sponsors of the bill, that would not mean that a committee was "independently motivated by racism" when it added language to clarify that full completion of a sentence included periods of probation or parole. Ex. 17 at 56. The Superior Court's reliance on highly attenuated circumstantial evidence of racism, *see, e.g.*, *id*. at 22 ("The Ku Klux Klan was active, arch-segregationist George Wallace won North Carolina's presidential primary in 1972, and Jesse Helms was elected to the U.S. Senate."), is incompatible with the presumption of good faith, *Abbott*, 138 S. Ct. at 2329.

3. Historical Background

The Superior Court relied on atmospherics so heavily because the historical record, when limited, as it should be, to the enactment of the challenged law itself, demonstrates definitively that the enactment of the act served as an intervening event that severed North Carolina's felon re-

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

enfranchisement process from any past discrimination. *See Abbott*, 138 S. Ct. at 2324–25. "No one disputes that North Carolina 'has a long history of race discrimination generally and race-based vote suppression in particular.' " *N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d 15, 25 (M.D. N.C. 2019) (quoting *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016)). But the Superior Court's own finding that the 1973 law was championed by the NAACP and the only three black members of the General Assembly strongly undercuts any argument that § 13-1 itself was the product of that history.

In finding otherwise, the Superior Court improperly imputed to people in 1973 the motivations of the individuals who amended North Carolina's constitution in the 1870s to disenfranchise felons in the first place. *See* Ex. 17 at 21 ("It was well understood and plainly known in the 1970s that the historical and original motivation for denial of the franchise to persons on community supervision in the post-reconstruction era had been to attack and curb the political rights of African Americans. . . . Rep. Ramsey provided no explanation for the Committee's decision to nonetheless preserve the existing law's disenfranchisement of people after their release from any incarceration.").

Reference back to the 1860s is particularly inappropriate because, shortly before the new §13-1 was enacted, North Carolina replaced its Constitution of 1868 with a new constitution, known as the 1971 Constitution. *See Stephenson*, 355 N.C. at 367, 562 S.E.2d at 387. The 1971 Constitution, which is still in place today, independently required the disenfranchisement of all felons and the Superior Court erred in imputing any past discriminatory intent to the disenfranchisement required by the 1971 Constitution. The re-adoption of the disenfranchisement provision by the 1971 Constitution was an intervening event that severed the link with any discriminatory intent reflected in the 1868 Constitution.

What is more, it was error to impute any discriminatory intent to the General Assembly based on North Carolina's disenfranchisement of felons. As we have emphasized, that disenfranchisement is caused by the State Constitution. That disenfranchisement, therefore, must be taken as the baseline against which § 13-1 is measured. Only racial discrimination *independent from* the constitutional baseline could impugn § 13-1. *Cf. Arlington Heights*, 429 U.S. 252, 264–65 (1977). Given the history of § 13-1 as a reform bill championed by civil rights leaders, had it properly framed its analysis, the Superior Court would have reached a different result.

The Eleventh Circuit rejected a strikingly similar argument in *Johnson v. Gov. of State of Fla.*, 405 F.3d 1214 (11th Cir. 2005) (en banc). In that case, the court rejected the plaintiffs' argument that "racial animus motivated the adoption of Florida's [felon] disenfranchisement law in 1868 and this animus remains legally operative today despite the re-enactment in 1968," noting that the "re-enactment eliminated any taint from the allegedly discriminatory 1868 provision, particularly in light of the passage of time and the fact that, at the time of the 1968 enactment, no one had ever alleged that the 1868 provision was motivated by racial animus." *Id.* at 1223–24. Here, if anything, the case for finding this law, backed by the NAACP with the explicit goal of broadening the restoration of citizenship rights compared to the old regime, removed the taint of prior discrimination rather than ratified it is even stronger than it was in *Johnson*.

This evidence is strong enough that, even if the burden shifted to Defendants, it would demonstrate that § 13-1 was supported by valid motivations. One need not search for hints of secret racism to explain why an amendment clarifying that no felon could vote until he had completed all elements of his sentence was passed by the General Assembly. Not only is such a line easily administrable by the State and easily understood by the felons it impacts, but it also affirmatively advances the State's "interest in *restoring* felons to the electorate after justice has been done and

they have been fully rehabilitated by the criminal justice system." *Jones*, 975 F.3d at 1034. The record clearly establishes that § 13-1, which was championed by the only African American legislators serving at the time, would have been enacted even absent any allegedly discriminatory motives.

For these reasons, Plaintiffs are likely to succeed in any number of ways in showing that the Superior Court erred in holding § 13-1 violated the Equal Protection Clause.

iii. The Evidence Does Not Establish Any Violation of the Free Elections Clause

For three reasons, it was impossible for Plaintiffs to prove that § 13-1 violates the Free Elections Clause of the North Carolina Constitution.

First, felons whose voting rights have not been restored in the manner prescribed by law are not part of the voting public that the Free Elections Clause protects. This follows from the North Carolina Constitution itself. One provision (the Free Elections Clause) states that "[e]lections shall be free." N.C. CONST. art. I, § 10. Another (the felon-disenfranchisement provision) states that "[n]o person adjudged guilty of a felony . . . shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. CONST. art. VI, § 2,pt. 3. Because "a constitution cannot be in violation of itself," *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 394, it follows that a convicted felon has no right to vote—and thus no claim under the Free Elections Clause—until his rights are restored in the manner that the General Assembly prescribes. And because the Constitution's felon-disenfranchisement provision does not require the General Assembly to pass any law restoring felons' voting rights, it follows that the General Assembly cannot have violated the Free Elections Clause by passing one.

Second, the Free Elections Clause must be construed according to the re-enfranchisement baseline against which it was adopted. *Cf. Brnovich*, 141 S. Ct. at 2338–39 (interpreting Section 2

of the Voting Rights Act, as amended in 1982, according to the "standard practice" of voting regulation at that time, "a circumstance that must be taken into account"). The citizens of North Carolina voted in 1970 to ratify the operative Free Elections Clause. At that time, as the evidence clearly shows, the State's re-enfranchisement regime was much more restrictive than it is today. *See* Ex. 6. Felons were not automatically re-enfranchised upon completing their sentences as they are today. Instead, they needed to wait three years, petition for restoration, and subject themselves to judicial discretion (and the situation was even worse when the Clause was first ratified in 1868, under the original 1840 re-enfranchisement law, the strictest of them all). *See* Ex. 4. With the passage of the current version of § 13-1 in 1973, therefore, the State's re-enfranchisement regime is now more lenient than it ever was before. If the Free Elections Clause was ratified while a more restrictive regime was in place—and if the people of North Carolina were satisfied that, even with that regime, the State's elections would be "free," N.C. CONST. art. I, § 10—it cannot be the case that a less restrictive re-enfranchisement regime violates this Clause.

And third, Plaintiffs failed to offer any evidence that § 13-1 constrains any voter's choice about whom to vote for. Instead, they attempt to locate such a constraint in the fact that disenfranchised felons cannot vote at all until their voting rights are restored. This is not the sort of constraint on a voter's "conscience" that violates the Free Elections Clause. *Clark v. Meyland*, 261 N.C. 140, 143, 134 S.E.2d 168, 170 (1964); *accord Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 610, 853 S.E.2d 698, 735 (2021). And in any event, felons' disenfranchisement does not result from § 13-1. It results from the North Carolina Constitution. Plaintiffs therefore *could* have no evidence that § 13-1 interferes with a voter's choice. Without § 13-1, the disenfranchisement remains. Indeed, no felon would be re-enfranchised.

For these reasons, Legislative Defendants are also likely to succeed in showing that the Superior Court erred in holding that § 13-1 violates the Free Elections Clause.

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

"Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (cleaned up). The injury is exacerbated when an election law is enjoined on the eve of an election. "A State indisputably has a compelling interest in preserving the integrity of its election process," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (quotation marks omitted), and "once the election occurs, there can be no do-over and no redress," *Holmes v. Moore*, 270 N.C. App. 7, 35, 840 S.E.2d 244, 266 (2020) (quotation marks omitted). That is not the only reason courts should avoid changing election rules on the eve of elections: "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4–5; *accord, e.g.*, *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam).

For the second time in seven months, the Superior Court has violated these principles. For over a year—including a presidential election—the State Board of Elections has published clear rules for felon re-enfranchisement pursuant to a preliminary injunction based on certain claims in this case. In August of last year, from the bench at trial over the other claims, the Superior Court ordered the State Board to suddenly adopt different rules and, when the State Board pointed to serious problems with the new rules, the court sought to enjoin § 13-1's application to any felons on probation or post-release supervision over a conference call. In the process, the State Board told the Superior Court on August 22, 2021—25 days before one-stop early voting began for municipal elections—that in order to effectuate the expanded preliminary injunction it would need to begin

implementing changes "immediately." Req. for Clarification at 8 (Aug. 22, 2021), Ex. 20. This Court was required to step in to prevent the chaos that the Superior Court's actions had threatened to create, granting supersedeas, staying the expanded preliminary injunction, and reinstituting the original preliminary injunction. The Supreme Court maintained the stay.

And now, the Superior Court has issued a permanent injunction on a strikingly similar timeline. Early voting was 31 days away for North Carolina's statewide primary when the Court issued its order two days ago, and confusion is certain to result if this Court does not stay execution of its injunction and return to the status quo ante. Indeed, confusion has already ensued. The day after the Superior Court's order, the State Board's General Counsel observed that it "apparently conflict[ed]" with the "order from the North Carolina Supreme Court last year in the same case," which had "ordered that 'the status quo be preserved'" for the then-imminent municipal elections and thus affirmed the re-implementation of the original preliminary injunction, while allowing all felons who had registered under the expanded preliminary injunction to vote. Ex. 19 at 1. Although neither this Court nor the Supreme Court expressly addressed the likelihood of Defendants' success on the merits of their appeal, that was a necessary consideration under the supersedeas standard, and thus the stay of the expanded preliminary injunction places the validity of the new (but similar) permanent injunction in further doubt.

Accordingly, the General Counsel advised that "[u]ntil further instruction, county boards of elections should keep registration applications of voters who are on probation, parole, or post-release supervision it receives in the Incomplete Queue." *Id*. (emphasis omitted). And yesterday morning, the State Board voted unanimously to direct its counsel to file a response to the stay application in the Superior Court "ask[ing] the court how to proceed under [its] order" and explaining "the urgency of the situation and timelines that should be contemplated in light of the

April 22 voter registration deadline for the May 17 primary." *Statement on* Community Success Initiative v. Moore *Case*, N.C. STATE BD. OF ELECTIONS (Mar. 31, 2022), Ex. 21. As of that time, the State Board's website continued to provide the registration guidance for felons promulgated under the original preliminary injunction, and it still did the last time checked shortly before this filing. *See* Ex. 16.

Pursuant to the State Board's instructions, its counsel in the Attorney General's Office filed a response to the stay application in the Superior Court today. Although the State Board formally took no position on the stay application, it "request[ed] that the Court take into account the State Board's need for certainty and consistency, and the administrative considerations that implementation presents." State Bd. Defs.' Resp. to Emergency Mot. for Stay Pending Appeal at 1 (Wake Cnty. Super. Ct. Apr. 1, 2022), Ex. 22. The State Board also explained its "good-faith" efforts to comply with the Superior Court's new injunction while "avoid[ing] any possible conflict with the Supreme Court's September 10, 2021 order," entered in the appeal from the expanded preliminary injunction that has not yet been dismissed, by holding rather than denying registration applications from felons covered by the new injunction and suspending automated removal of non-incarcerated felons from election-management software. *Id*. at 4–5. For the same reasons, the State Board explained that "Plaintiffs' Notice alleging violations" of the new permanent injunction "is meritless." State Bd. Defs.' Resp. to Not. of Alleged Violation at 1 (Wake Cnty. Super. Ct. Apr. 1, 2022), Ex. 23.

If the State Board were required to proceed with "full implementation of voter registration" of felons covered by the new injunction in time for the upcoming elections, however, the State Board informed the Superior Court of the "complexity of the task at hand." Ex. 22 at 6. Such a change "takes considerable time and effort," requires cooperation from "the 100 county boards of

elections' staff," and has "many moving parts that may not be obvious to the external observer," including changes to the Board's software (which can take a week or more to make and are difficult to reverse), distributing new voter-registration forms, and updates to other agencies' data systems. *Id*. at 7–8. And all this will occur while absentee voting is already underway and "[t]here are likely hundreds of thousands of voter registration forms in circulation" already. *Id*. at 7. "[H]aving multiple forms in circulation and contradictory guidance within a short period of time creates a risk of confusion both to voters and county administrators." *Id*. at 6.

Time is therefore of the essence. Absentee ballots have already been made available for the primaries. The State Board now has about the same amount of time (plus a weekend) to implement new rules for these statewide elections as it said it needed to implement new felon-voting rules for certain municipal elections last fall. Just as in that go-round, an order to begin implementing such changes would "result in voter confusion and consequent incentive to remain away from the polls," especially given the new injunction's departure from the status quo established by this Court and the Supreme Court in the preliminary injunction appeal. *Purcell*, 549 U.S. at 4–5. "As an election draws closer, that risk will increase." *Id*. at 5. But the Superior Court, having denied Legislative Defendants' stay motion without explanation, has shown no consideration of that danger. In these "extraordinary circumstances," it is imperative that this Court stay the permanent injunction and prevent it from sowing further confusion. N.C. R. APP. P. 8(a). If the State Board begins to register felons under the new injunction—as it has been putting itself in the position to do, *see* Ex. 22 at 4–6, and as the trial court could order it to do at any time—and a stay comes too late, the State Board must begin to reverse itself (again), and even more confusion will result. Of course, that is not a reason to *deny* a stay, for such a rule would create incentives for trial courts to issue injunctions on the eve of an election in an effort to prevent the court of appeals from acting to

correct an erroneous order. Indeed, that is what the Superior Court appears to have attempted to do here, and the confusion that its order has already caused is entirely its own doing. Ending the confusion requires this Court to act now.

Leaving aside voter confusion and the difficulty of administering a significant change on the eve of an election, if the Superior Court's order is not stayed other harms are sure to result. All eligible voters stand to have their vote diluted by felons who are still ineligible to vote under the North Carolina Constitution. Indeed, the court found that its own injunction could swing the results of dozens of elections where the margin of victory was considerably less than the 56,000-plus people who it has suddenly enjoined Defendants to include on the voter rolls. Final Order at 38–39. And any felons who register and vote under the Superior Court's injunction but who remain ineligible to vote under the North Carolina Constitution—a status that the injunction does not change—risk subjecting themselves to prosecution under N.C.G.S. § 163-275(5).

MOTION FOR TEMPORARY STAY

Pursuant to Rule 23(e) of the North Carolina Rules of Appellate Procedure, Legislative Defendants also respectfully move this Court to issue a temporary stay of the Superior Court's order of March 28, 2022 until the Court rules on the foregoing petition for a writ of supersedeas. Legislative Defendants do not suggest that the State Board order the denial of felon voting registrations during this temporary stay, but rather that such applications not be acted on pending a determination by this Court and, if necessary, the Supreme Court. This should not prejudice any felons even if the petition for writ of supersedeas ultimately were denied, because there should be sufficient time for the petition to be adjudicated such that any registrations held due to a temporary stay could be processed in time to allow for voting in the upcoming primary. In support of this

Motion, Legislative Defendants incorporate and rely on arguments presented in the foregoing petition.

CONCLUSION

Wherefore, Legislative Defendants respectfully pray that this Court issue its writ of supersedeas to the Superior Court of Wake County to stay the above-specified order pending issuance of the mandate of this Court following its review and determination of the appeal; that this Court temporarily stay enforcement of the above-specified order until such time as this Court can rule on this petition for a writ of supersedeas; and that Legislative Defendants have such other relief as the Court might deem proper.

Respectfully submitted this 1st day of April, 2022.

By: /s/ Electronically Submitted
Nicole Jo Moss (State Bar No. 31958)
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N.C. R. APP. P. 33(b) Certification:
I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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VERIFICATION

The undersigned attorney for Legislative Defendants, after being duly sworn, says:

I have read the foregoing Petition for a Writ of Supersedeas and Motion for Temporary Stay and pursuant to Appellate Rule 21, I hereby certify that the material allegations and contents of the foregoing petition are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

I also hereby certify that the documents attached to this Petition for a Writ of Supersedeas and Motion for Temporary Stay are true and correct copies of the pleadings and other documents from the file in Wake County Superior Court and/or are documents of which this Court can take judicial notice.

Nathan Huff

Wake County, North Carolina

Sworn to and subscribed before me this 1st day of April, 2022.

Courtney Ritter

Courtney Ritter
Notary's Printed Name, Notary Public

My Commission Expires: 9-19-23

COURTNEY RITTER
NOTARY PUBLIC
WAKE COUNTY, NC
COMMISSION EXPIRES
Sept. 19, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition and Motion was served on the parties to this action via email to counsel at the following addresses:

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This the 1st day of April, 2022.

/s/ Electronically Submitted
Nicole Jo Moss

Counsel for Legislative Defendants

No. TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; and SHAKITA NORMAN,	)	
Plaintiffs,	)	From Wake County
v.	)	
	)	No. 19 CVS 15941
TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chairman of the North Carolina State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the North Carolina State Board of Elections*; STACY EGGERS IV, *in his official capacity as member of the North Carolina State Board of Elections*; JEFF CARMON, *in his official capacity as member of the North Carolina State Board of Elections*; and TOMMY TUCKER, *in his official capacity as member of the North Carolina State Board of Elections*,	)	
Defendants.	)	

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EXHIBIT INDEX

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EXHIBIT 1

STATE OF NORTH CAROLINA WAKE COUNTY COMMUNITY SUCCESS INITIATIVE, et al., Plaintiffs, vs. TIMOTHY K. MOORE, et al., Defendants.	)	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CASE NO. 19 CVS 15941 FILED 2022 MAR 30 P 3:39 WAKE CO., C.S.C. BY **NOTICE OF APPEAL**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (the "Legislative Defendants"), by and through counsel, pursuant to Rule 3(a) of the North Carolina Rules of Appellate Procedure, do hereby notice their appeal to the Court of Appeals of North Carolina from 1) the Final Judgment and Order of the three-judge panel composed of the Honorable Lisa C. Bell, Keith O. Gregory, and John M. Dunlow entered on March 28, 2022 in the Superior Court, Wake County declaring N.C.G.S. §13-1 in violation of the North Carolina Constitution's Equal Protection Clause and Free Elections Clause and enjoining Defendants from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision and 2) the Summary Judgment Order entered on September 4, 2020 by this same panel declaring that N.C.G.S. §13-1 violates the Ban on Property Qualifications of the North Carolina Constitution and the Equal Protection Clause of the North Carolina Constitution.

Respectfully submitted, this the 30th day of March, 2022.

(with permission)

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Counsel for Legislative Defendants

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Counsel for the State Board Defendants

This the 30th day of March, 2022.

(with permission)
Nicole Jo Moss

Counsel for Legislative Defendants

EXHIBIT 2

STATE OF NORTH CAROLINA

WAKE COUNTY

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

vs.

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

Defendants.

FILED
2022 MAR 30 P 3:40
WAKE CO., C.S.C.
BY

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

EMERGENCY MOTION FOR A STAY PENDING APPEAL

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

INTRODUCTION

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

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

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

RELEVANT BACKGROUND

The North Carolina Constitution provides that "[n]o person adjudged guilty of a felony . . . shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. CONST. art. VI, § 2, pt. 3. That manner is prescribed by N.C.G.S. § 13-1, which provides in pertinent part that "[a]ny person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon . . . [t]he unconditional discharge of . . . a probationer[] or of a parolee by the agency of the State having jurisdiction of that person."

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

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

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

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

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

Early voting for North Carolina's statewide primaries begins on April 28. *Calendar of Events*, N.C. STATE BD. OF ELECTIONS, https://bit.ly/35l15y4 (last visited March 30, 2022). The Court's new injunction threatens to upset the status quo with precious little time for the State Board Defendants to implement the court's new injunction, which will expand the franchise to 55,000 felons who are otherwise not eligible to vote because they are on some form of supervision. *See* Ex. F. The timing of the Court's opinion leaves the State Board with slightly more than the approximate amount of time the Board had previously indicated it would need to implement the expanded preliminary injunction even for off-year municipal elections. *See* Not. and Mot. for Clarification at 6 (Aug. 21, 2021), Ex. H (noting that the State Board needed clarity on the rules by August 23 in order to implement them in time for early voting on September 16). The Court should stay its order to allow for orderly review in the court of appeals while not upending the imminent state-wide election in which voting has already started.

ARGUMENT

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

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

I. Defendants are Likely to Succeed on the Merits of Their Appeal.[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: March 30, 2022

Respectfully Submitted,

(with permission)

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The undersigned hereby certifies that the foregoing Motion was served on the parties to this action via email to counsel at the following addresses:

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This the 30th day of March, 2022.

(with permission)
Nicole Jo Moss

Counsel for Legislative Defendants

EXHIBIT A

NORTH CAROLINA
COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON INJUNCTIVE RELIEF

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

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

Procedural History

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

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

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

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

Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted

to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. Const. art. VI, § 2(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads as follows:

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

N.C.G.S. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

History of Restoration of Rights of Citizenship in North Carolina

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

including the right to vote—are restored to persons convicted of "infamous crimes." Infamous crimes included offenses which warranted "infamous punishments." Thereafter in 1840, a general law was passed regulating the restoration of rights, including granting the courts unfettered discretion in restoring rights of citizenship.

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

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

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

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

Injunctive Relief

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

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

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

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

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

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

prohibition, including those guaranteed in the Declaration of Rights contained in Article I of our Constitution. Section 11 of Article I declares that "[a]s political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office," N.C. Const. art. I, § 11, and Section 19 of Article I declares, in relevant part, that "[n]o person shall be denied the equal protection of the laws," N.C. Const. art. I, § 19. Importantly, the "fundamental purpose" for which the Declaration of Rights was enacted is "to provide citizens with protection from the State's encroachment upon these [enumerated] rights." *Corum v. Univ. of N.C.*, 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992).

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

I. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 11 and 19 for those persons convicted of a felony and, as a result, made subject to property qualifications is GRANTED.

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

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

c. References in this Order to "Defendants" encompasses all individuals and entities referenced in this paragraph.

II. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 10, 12, 14, and 19 for those persons convicted of a felony but not subject to incarceration is DENIED.

III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.

IV. Plaintiffs' bond in the amount of $1000 is sufficient and proper for the issuance of this Order.

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

Lisa C. Bell, Superior Court Judge

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON INJUNCTIVE RELIEF (DISSENT)

John Dunlow, dissenting.

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

This the 4th day of September, 2020.

John M. Dunlow

CERTIFICATE OF SERVICE

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

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This the 4th day of September 2020.

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

EXHIBIT B

FILED

2021 AUG 27 PM 4:05

WAKE CO., C.S.C.

BY

NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 19 CVS 15941
COMMUNITY SUCCESS INITIATIVE, *et al.*, Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, *et al.*, Defendants.	**ORDER ON AMENDED PRELIMINARY INJUNCTION**

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

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

Procedural History

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

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

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

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

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

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

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

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

Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. Const. art. VI, § 2(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads as follows:

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

N.C.G.S. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

History of Restoration of Rights of Citizenship in North Carolina

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

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

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

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

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

Injunctive Relief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

The Honorable John M. Dunlow dissents from this Order.

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

I. The September 4, 2020, Preliminary Injunction is modified to enjoin Defendants from denying voter registration to any convicted felon who is on community supervision, whether probation, post release supervision, or parole.

II. This ruling applies to persons convicted in both North Carolina state and federal courts and is effective immediately.

III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.

IV. Plaintiffs' previously submitted bond in the amount of $1000 is sufficient and proper for the issuance of this Order.

SO ORDERED, this the 27th day of August, 2021.

Lisa C. Bell, Superior Court Judge

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON AMENDED PRELIMINARY INJUNCTION (DISSENT)

John Dunlow, dissenting.

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

John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

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

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Counsel for State Board Defendants

This the 27th day of August 2021.

Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org

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

EXHIBIT C

FILED

2021 AUG 27 PM 4:06

WAKE CO., C.S.C.

BY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,
Plaintiffs,

v.

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

ORDER

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

This the 27th day of August, 2021.

Lisa C. Bell, Superior Court Judge

/s/ Keith O. Gregory
Keith O. Gregory, Superior Court Judge

/s/ John M. Dunlow
John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

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

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Counsel for State Board Defendants

This the 27th day of August 2021.

Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org

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

EXHIBIT D

North Carolina Court of Appeals

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Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

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

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

No. P21-340

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

PLAINTIFFS,

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

DEFENDANTS.

From Wake
(19CVS15941)

ORDER

The following order was entered:

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

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

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

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

Eugene H. Soar
Clerk, North Carolina Court of Appeals

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

EXHIBIT E

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * *

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; AND SHAKITA NORMAN	)	
	)	WAKE COUNTY
v.	)	
TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAVID C. BLACK, IN HIS OFFICIAL	)	

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

* * * * * * * * * * * * * * * * * * *

ORDER

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

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

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

For the Court

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

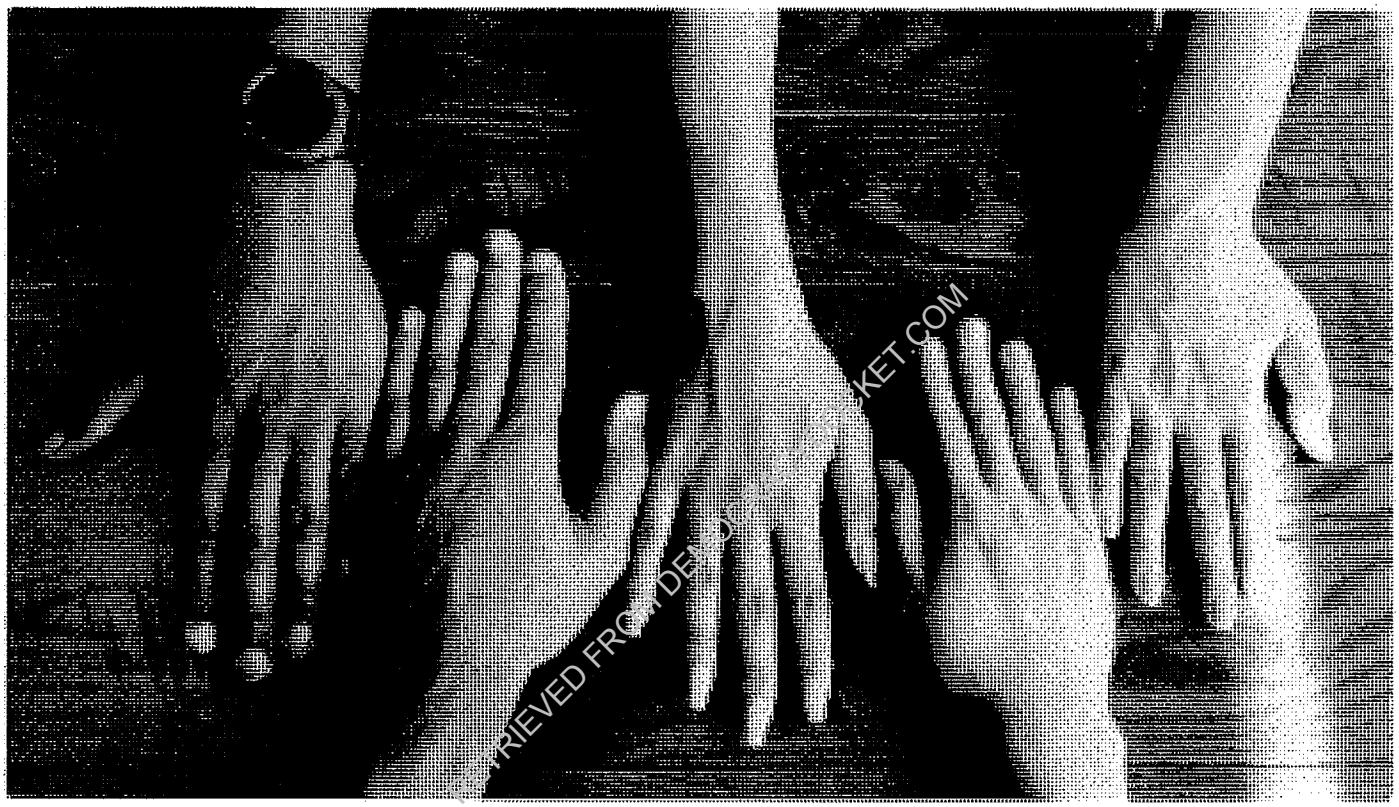
AMY L. FUNDERBURK
Clerk of the Supreme Court

Copy to:
North Carolina Court of Appeals
Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Nathan A. Huff, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Whitley J. Carpenter, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Terence Steed, Assistant Attorney General, For State Board of Elections - (By Email)
Mr. Stephen D. Feldman, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Matthew W. Sawchak, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative, et al.
Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections - (By Email)
Mr. Jared M. Butner, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

EXHIBIT F

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Who Can Register



Qualifications to Register to Vote

To register to vote in North Carolina, you must:

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

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

- The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) allows certain voters who are active duty military or their families as well as U.S. citizens abroad special rights that provide an expedited means to register and vote by mail-in ballot. Find more information on Military and Overseas Voting. (https://www.ncsbe.gov/voting/vote-mail/military-and-overseas-voting)

- Be at least 18 years old, or will be by the date of the general election.
  - 16- and 17-year-olds may preregister to vote. (/node/33)
  - 17-year-olds may vote in a primary election if they will be 18 at the time of the general election.

- Not be serving a sentence for a felony conviction, including probation, parole, or post-release supervision.
  - Note: By order of the court, you may now register and vote if you are serving an extended term of probation, post-release supervision, or parole, you have outstanding fines, fees, or restitution, and you do not know of another reason that your probation, post-release supervision, or parole was extended.
  - Once you have completed a felony sentence, including any probation, parole, or post-release supervision, or received a pardon, you are eligible to register and vote. No additional documentation is needed.
  - If you have been discharged from probation, you are eligible to register and vote, even if you still owe money or have a civil lien.

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

Registering as a College Student

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

Registering as a Person in the NC Criminal Justice System

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

Preregistering to Vote When You are 16 or 17 Years Old

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

Learn how to register (/registering/how-register) →

Related Content

Determine if You Are a U.S. Citizen | USCIS (https://www.uscis.gov/forms/explore-my-options/proof-of-citizenship-for-us-citizens)
Military and Overseas Voting (/voting/vote-mail/military-and-overseas-voting)
N.C.G.S. Chapter 163, Article 6: Qualifications of Voters. (https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter_163/Article_6.html)
N.C.G.S. Chapter 163, Article 7A: Registration of Voters. (https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter_163/Article_7A.html)
Registering as a College Student (/registering/who-can-register/registering-college-student)
Registering as a Person in the NC Criminal Justice System (/registering/who-can-register/registering-person-criminal-justice-system)
Preregistering to Vote When You are 16 or 17 Years Old (/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old)
Registering (/registering)

Registering

FAQ: Voter Registration (/registering/faq-voter-registration)

Who Can Register (/registering/who-can-register)

- Registering as a College Student (/registering/who-can-register/registering-college-student)
- Registering as a Person in the Criminal Justice System (/registering/who-can-register/registering-person-criminal-justice-system)
- Preregistering to Vote When You are 16 or 17 Years Old (/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old)

How to Register (/registering/how-register)

Checking Your Registration (/registering/checking-your-registration)

Updating Registration (/registering/updating-registration)

Choosing Your Party Affiliation (/registering/choosing-your-party-affiliation)

Hosting Voter Registration Drives (/registering/hosting-voter-registration-drives)

National Voter Registration Act (NVRA) (/registering/national-voter-registration-act-nvra)

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

EXHIBIT G

FILED

2022 MAR 28 PM 4:28

WAKE CO., C.S.C.

BY: SOJ

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

FINAL JUDGMENT AND ORDER

TABLE OF CONTENTS

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

BACKGROUND

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

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

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

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

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

a. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving all persons with felony convictions subject to probation, parole, or post-release supervision, who are not incarcerated, of the right to vote;

b. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving the African American community of substantially equal voting power; and

c. that N.C.G.S. § 13-1 violates the Free Elections Clause of the North Carolina Constitution.

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

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

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

LEGAL STANDARD

A. Facial Constitutional Challenges

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

B. Equal Protection

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

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

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

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

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

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

13. Further, North Carolina's Equal Protection Clause expansively protects "the fundamental right of each North Carolinian to substantially equal voting power." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002). "It is well settled in this State that the right to vote on equal terms is a fundamental right." *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted).

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

C. Free Elections Clause

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

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

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

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

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

FINDINGS OF FACT

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

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

1. **The 1800s**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. 1897 to 1970

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

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

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

3. The Early 1970s

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Racial Disparities in Felon Disenfranchisement

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

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

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

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

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

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

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

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

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

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

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

African American people. At both the statewide level and the county, African American people are disproportionately denied the franchise by wide margins. 8/18/21 Trial Tr. 78:2-22. As Dr. Baumgartner aptly put it, "We find in every case that it works to the detriment of the African American population." *Id.* at 78:21-22.

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

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

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

1. Expected Voter Turnout Among People on Felony Supervision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

election if they were not denied franchise due to being on community supervision. PX-39 at 3; 8/17/21 Trial Tr. 42:12-43:1.

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

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

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

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

2. The Potential Impact on Elections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Testimony of Plaintiffs' Expert Dr. Burch

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

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

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

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

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

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

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

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

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

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

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

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

b. Testimony from the Department of Public Safety

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

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

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

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

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

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

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

c. Testimony from the State Board of Elections

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

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

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

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

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

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

d. Testimony of the Organizational Plaintiffs

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

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

a. Dennis Gaddy, the Executive Director of Community Success Initiative, testified that CSI's clients are often confused about whether they are allowed to vote. 8/16/2021 Trial Tr. 53:8-9, 56:21-57:1-21. He further testified that when clients are disenfranchised due to felony supervision, they cannot effectively advocate for themselves, their families, or their communities. *Id.* at 58:16-59:16. Mr. Gaddy testified that during his seventeen years of educating people convicted of felonies about their voting rights, he has witnessed how not being able to vote causes many people to lose hope, and not being able to vote means that you do not have a civic voice. Mr. Gaddy lamented that clients often feel frustrated on being required to pay taxes but not being allowed to vote. *Id.* at 59:10-60:4.

b. Diana Powell, the Executive Director of Justice Served NC, testified that section 13-1 is confusing, that many impacted community members are afraid to vote, and that due to frequent address changes, many people are never informed that their rights are

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

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

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

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

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

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

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

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

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

e. Testimony of the Individual Plaintiffs

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

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

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

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

Id. at 154:17-155:2.

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is therefore ORDERED, ADJUDGED, AND DECREED THAT:

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

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

SO ORDERED, this the 28th day of March, 2022.

Lisa C. Bell, Superior Court Judge

3/28/22

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

DISSENT

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

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

This Court would make the following:

FINDINGS OF FACT

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

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

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

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

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

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

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

> Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.

7. N.C.G.S. § 13-2(a) provides:

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

8. There has been no evidence presented that any agency, department or court having jurisdiction over an inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of N.C.G.S. § 13-1(1) has failed to immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

9. Each and every individual who is disqualified from voting under the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution is automatically restored the right to vote under the provision of N.C.G.S. § 13-1(1).[2]

10. The Plaintiffs have offered, and the Court received, a myriad of testimony, statistical analysis and evidence relating to the impact the provision of Article VI, Section 2, Part 3 of the North Carolina Constitution (felon disenfranchisement) has on the African American population.

11. The Plaintiffs have offered no testimony, statistical analysis or evidence relating to the impact, if any, N.C.G.S. § 13-1 has on the African American population or any other suspect class.

12. "[F]elons do not enjoy the same measure of constitutional protections . . . as do citizens who have not been convicted of a felony." *State v. Grady*, 372 N.C. 509, 567, 831 S.E.2d 542, 582 (2019). As a result of their own conduct, felons are subject to these reduced constitutional protections, which "society . . . recognize[s] as legitimate." *See id.* at 555, 831 S.E.2d at 575. Our courts have recognized that there is a dividing line, for constitutional rights, between those who have "served [their] sentence[s], paid [their] debt[s] to society, and had [their] rights restored," and those who have not. *Id.* at 534, 831 S.E.2d at 561.

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

13. Establishing a process by which convicted felons can regain their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.

14. Establishing a restoration process that requires convicted felons to complete their terms of imprisonment, probation, parole or post-release supervision before regaining their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.

15. The Free Elections Clause of the North Carolina Constitution mandates that elections in North Carolina faithfully ascertain the will of the people. The people whose will is to be faithfully ascertained are the persons who are lawfully permitted to vote in North Carolina elections.

16. Because convicted felons, who have not had their citizenship rights restored, are not lawfully permitted to vote in North Carolina elections, the Free Elections Clause has no application to those persons.

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

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter.

2. N.C.G.S. § 13-1 does not bear more heavily on one race than another.

3. N.C.G.S. § 13-1 does not have the intent nor the effect of discriminating against African Americans.

4. The intent of the legislature in enacting N.C.G.S. § 13-1 was to, "substantially relax the requirements necessary for a convicted felon to have his citizenship restored." *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974).

5. N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right.

6. N.C.G.S. § 13-1 does not operate to the peculiar disadvantage of a suspect class.

7. Because N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right nor does it operate to the peculiar disadvantage of a suspect class, the appropriate level of review to apply in this facial challenge is rational-basis review.

8. N.C.G.S. § 13-1 bears a rational relationship to valid and legitimate governmental interests.

9. The Plaintiffs have failed to meet their heavy burden of showing that N.C.G.S. § 13-1 bears no rational relationship to any legitimate government interest.

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

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

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

ORDER, ADJUDGE and DECREE

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

This the 25 day of March, 2022.

John M. Dunlow
Superior Court Judge

CERTIFICATE OF SERVICE

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

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This the 28th day of March 2022.

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

EXHIBIT H

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 15941
COMMUNITY SUCCESS INITIATIVE, et al., Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**THE STATE BOARD DEFENDANTS' NOTICE REGARDING IMPLEMENTATION OF INJUNCTION AND MOTION FOR CLARIFICATION**

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

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

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

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

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

II. Practical Considerations Regarding Implementation

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

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

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

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

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

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

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

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

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

III. Request for Clarification and/or Guidance

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

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

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

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

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

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

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

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

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

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

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

* * *

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

This the 21st day of August, 2021.

JOSHUA H. STEIN
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/s/ Paul M. Cox

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CERTIFICATE OF SERVICE

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

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This the 21st day of August, 2021.

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

EXHIBIT I

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

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

Plaintiffs,

vs.

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

Defendants.

_____/

Deposition by RingCentral

of

SENATOR HENRY M. MICHAUX, JR.

(Taken remotely by the Legislative Defendants)

Durham, North Carolina

Wednesday, June 24, 2020

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

APPEARANCES

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ALSO PRESENT:

AUDREY CHILDERS

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.

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MR. RABINOVITZ: This is Brian Rabinovitz with the North Carolina Attorney General's Office on behalf of the Legislative Defendants, Speaker Moore and President Pro Tem Berger; and we affirm or agree to the stipulation of the remote oath.

MR. COX: This is Paul Cox from the North Carolina Attorney General's Office representing the State Board of Elections members that are named in this action; and we also agree to the stipulation that Mr. Rabinovitz outlined.

MR. JOYNER: I'm Irving Joyner, and I'm representing Senator Michaux; and agree with the stipulations.

MS. THEODORE: And I am Elisabeth Theodore from Arnold & Porter, representing the plaintiffs; and we also agree to the stipulations.

MR. JACOBSON: This is Daniel Jacobson from Arnold & Porter, also for the plaintiffs.

MS. CARPENTER: This is Whitley Carpenter from Forward Justice, also representing the plaintiffs.

MR. ATKINSON: Daryl Atkinson, Forward Justice, representing the plaintiffs; agree with the aforementioned stipulations.

MS. VYSOTSKAYA: This is Olga Vysotskaya on behalf of the State Board of Elections.

THE REPORTER: Senator, I'll ask you to please raise your right hand.

Do you solemnly swear the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE REPORTER: Thank you very much.

- - -

SENATOR HENRY M. MICHAUX, JR.,
having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. RABINOVITZ:

Q. Okay. Representative Michaux, we met briefly remotely prior to going on the record here in the deposition today. My name, again, is Brian Rabinovitz, and I'm representing the legislative defendants in this case, and that is Speaker Moore and President Pro Tem Berger, both in their official capacities.

I think one thing that Huseby asked us to do, just for everyone, to make sure there's no feedback or anything, is that if most people can mute their microphone, unless -- unless you're talking, I think that will just, hopefully, cut down on any distractions that we might have. And there's also a Huseby tech on the line, I understand. So, you know, if we get disconnected or run into a technical problem, I think that we can ask for their assistance. So Representative Michaux, you know, just a couple preliminary matters.

You understand, even though we're doing this deposition in a somewhat unusual way with everybody appearing remotely, that you are testifying under oath today?

A. Yes. Yes.

Q. And is there anything that would interfere with your ability today to understand and answer my questions?

A. No.

Q. Okay. And if I do ask a question that you don't understand, because I may at times say things in an inarticulate way, please just let me know, and I'll be happy to go ahead and repeat it or rephrase it as necessary. If you don't ask me to do that, though, I'm going to -- I'm going to assume that you've understood my question.

Does that seem fair?

A. That seems fair. Yes.

Q. Okay. Great. And we talked about this a little bit before we went -- before we went on the record, but, certainly, if you need a break at any time, you know, you just let me know, and we can go off the record and take a break.

MR. RABINOVITZ: And I would, you know, extend that to everyone else who is participating as well. I know many people like me are participating from home today. So if other counsel needs a break for some reason, you know, we can certainly accommodate that and go off the record.

BY MR. RABINOVITZ:

Q. As I said before, I'm hoping this will

only take a couple hours of your time today, that it -- that it won't take too long.

In terms of how you prepared for today's deposition, other than speaking with your attorney -- and I certainly don't want to ask anything that you spoke with Professor Joyner about -- but aside from conversations with him, what else did you do to prepare for today's deposition?

A. I checked copies of bills and tried to sit down and recollect what happened 46, 47 years ago, for what the deposition was about. And I got -- basically, I talked with folks yesterday, just in general, but...

Q. Okay.

A. I'm just trying to rely on an old memory.

Q. Okay. And other than your attorney, you mentioned speaking with some folks yesterday. Who was it that you spoke with?

MR. JOYNER: Brian, this is Irv Joyner. I apologize for interrupting, but let me just say for the record that Senator Michaux enjoys immunity, legislative immunity, and is waiving that only with

respect to matters emerging from this litigation in this case. So I want to make that clear for the record, that the waiver of immunity is a limited one, and it's limited just to the deposition -- this affidavit -- in a deposition about this affidavit.

MR. RABINOVITZ: All right.

MR. JOYNER: I apologize.

MR. RABINOVITZ: Understood. Thank you. Thank you, Professor Joyner. I appreciate that clarification.

BY MR. RABINOVITZ:

Q. Just so my question is clear, I'm not asking -- I'm not asking about conversations with Professor Joyner. I'm also not asking about anything, you know, outside of your affidavit or, you know, your participation in this deposition and your deposition here today.

So what I'm asking -- you mentioned that you talked to some folks yesterday. My understanding was that you were saying that you talked to them in relationship to giving this deposition here today. And so that's -- that's the only question that I'm asking you is: What

conversations --

A. Yes. Yes.

Q. -- did you have with them about this deposition?

A. Yes. Yes.

Q. So who was it who you spoke to other than Professor Joyner?

A. Caitlin Swain, and the lady from Arnold & Porter, who was the NAACP.

Q. Okay. And from the NAACP, did you -- you spoke with -- do you mean counsel for the NAACP in this case or officials at the NAACP?

A. No. No. He is there with them now.

Q. Okay.

A. Yeah.

Q. Counsel for the NAACP?

A. Yeah.

Q. Okay. Okay. And was there anyone else, or was it just -- it was Caitlin Swain and counsel for the NAACP?

A. And my counsel.

Q. And your counsel. Sure.

A. Arnold & Porter.

Q. Okay. And the folks at Arnold & Porter.

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Okay. And can you -- can you -- what was the topic that you spoke with them about? Obviously, in relation to this here today, but can you explain in some more detail what those conversations involved?

A. It was just basically about what -- what brought about the legislation and what I remembered about the legislation. You have to remember, this was 46, 47 years ago, and there were three of us involved. There was some legislation that had been passed the year before I got there, and this was -- I got -- in '71. I got there in '73 and was asked to take that on as part of that. And that's basically what we talked about.

Q. Okay.

A. Yeah.

Q. And were they providing you with information or data to help refresh your recollection, or were they just asking you what your recollection was?

A. It was a -- I guess you could call it a general conversation. I got supplied with copies of the legislation and had an opportunity to look it over. We didn't go into

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any great detail.

Q. Okay.

A. To any extent that I can recall.

Q. Okay. Did they --

A. Other than the fact that compromises had to be made in order to get the legislation like we thought -- like I thought it should be and like we thought it should be.

Q. Okay. And what questions did they ask you about those compromises?

A. That was yesterday, too.

Q. I understand.

A. It wasn't -- there weren't questions as it was just a general conversation. My recalling, for instance, why certain verbiage was put in there.

Q. Okay. And what -- do you recall what specific verbiage it was that you were discussing?

A. Why we -- why we used probation and parole, put that in there. It's my understanding that -- my purpose -- our purpose was, at the time, to try to clear up the legislation that was passed in '71, which had you still going before a court to get your

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rights restored.

Our position at the time, in '73, was the people who were getting their rights restored couldn't afford to go to court. And so we just put it in a blanket form in order to try to get it to a state where they didn't have to go to court.

They came back and agreed that because of certain instances that come about, that we had to put in probation and parole. Because what I was looking for was almost like a legislative pardon.

Q. Uh-huh.

A. An unconditional pardon, is what I was looking for.

Q. Okay. And I am going to get into the details asking you about each of those pieces of -- each of those pieces of legislation. Right now I'm just trying to understand, you know, as best I can, the nature of the conversations that you had prior to your deposition testimony.

Did you -- did plaintiffs discuss with you the litigation and the parties' positions in this current litigation?

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A. No.

Q. Did they explain that to you?

A. No.

Q. Okay.

A. I -- they -- I guess they just assumed that I knew. And I know a little bit about it. I've, you know, I've read parts of the lawsuit.

Q. Okay. What parts of the lawsuit have you read?

A. I don't -- I looked at it. I don't know. It's been a while since I've, you know, took a look at it, but...

Q. Okay.

A. I was -- I was just, basically, generally familiar with it.

Q. Okay. So that would probably be the complaint, I would assume --

A. The complaint, yeah.

Q. -- would be what you would have looked at, probably?

A. Yeah.

Q. Okay. Prior to your conversation with the folks who you mentioned yesterday, were there other conversations that you had earlier on with other people about this lawsuit or

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about your affidavit, again, other than Professor Joyner?
A. No.
Q. No. Okay.
A. And the people I talked to yesterday.
Q. Okay. You also mentioned that you reviewed some documents. And those were -- I believe you said those were some documents related to this -- to the legislation that we're talking about here?
A. To the legislation. Right.
Q. Okay. So would those have been, like, the session laws or some of the bills that were introduced?
A. They were bills that were introduced and passed.
Q. Okay. And when -- when were those materials provided to you?
A. I think I printed them off yesterday or the day before.
Q. Okay. So they weren't provided by anyone? You went and you found them and printed them?
A. My lawyer got them for me.
Q. Your lawyer. Okay. Okay.

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

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

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of North Carolina.
Q. So that was -- what years did you -- did you break for service?
A. '77 to '81.
Q. I'm sorry. I --
A. June of '77 to '81, 1981. I served as United States Attorney for the Middle District of North Carolina.
Q. Okay. And then -- and then you -- after many years of service, you eventually retired from the House. What year was that?
A. I retired from the House at the end of the 2019 session.
Q. Okay.
A. I'm sorry. 2018 session.
Q. 2018 session. Okay. And then -- and then you had another -- another short political career after that as well. Can you explain that?
A. I had an extremely short political career in the Senate in 2020, three months.
Q. Okay. Now, you talked about some of your civil rights work that you did prior to when you got elected to join the House of Representatives.

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Did any of your professional work or organizational work or civil rights work relate to the issue in this case, which is the voting rights of former felons?

A. Specifically, no; but on an overall basis, yes.

Q. Okay. Can you explain that a little?

A. Because -- because there were several factors involved. And you have to understand the subtlety in the Black community during that time. If you -- if you were -- if you got convicted of a felony, you lost all your rights for the rest of your life. And that was -- that was a tangential part of the whole Civil Rights Movement was giving constitutional rights back to people who had either lost them or had never been able to exercise them. So it was not a -- not a pure specific point, but it was a tangential point. Yes.

Q. Okay. And when you talk about someone losing all of their rights -- you know, this case is obviously about voting rights, but what other issues, you know, fall under that, in your mind?

A. In my mind, every constitutional right

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that Americans enjoy fell under that right, including why you don't have the constitutional right to vote, including the right of enfranchisement. And anything that we were denied as African Americans, we considered a right. And so all we were looking for was just what every other American enjoyed. The same rights that they enjoyed, we wanted those rights. Yeah. So that's why I say, tangentially, anything that white Americans enjoy, Black Americans should enjoy too. And once -- once you -- once you were deprived of those rights, then there should be some way of restoring those rights. So as an overall feature, that was it.

(Defendants' 1 premarked.)

BY MR. RABINOVITZ:

Q. Okay. I want to -- I'm going to try and go ahead here and share an exhibit with you. And you'll let me know if this works. This is going to be the affidavit that you -- that you executed in this case.

Are you able to -- are you able to see that on your screen?

A. Yes, I am.

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Q. Okay. Great. Does this -- I can scroll through it, it's several pages long, but from what you can see, does this appear to be a true copy of the affidavit that you executed here? And if you'd like to, I can even let you have the control to scroll through it, if you'd like to look at the different pages at your own pace. Whatever -- whatever works best for you. You let me know.

A. It appears to be. I have a copy of it.

Q. Okay. Okay. So --

A. So it appears to be.

Q. Okay.

A. Yeah.

Q. Okay. So just for purposes of making a clear record, though, it's fine for you to look at your copy, but I want to make sure that what you see on the screen, you can, you know, affirm that that -- that that is your affidavit.

A. Yes.

Q. So there at the bottom, that appears to be your signature on --

A. That is my signature.

Q. -- May 7th? Okay.

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A. Right.

Q. So this is the affidavit that you executed for the plaintiffs in this case on May 7th; is that right?

A. That's correct.

Q. Okay. Now, at the time that you executed this affidavit, were you already being represented by Professor Joyner?

A. No.

Q. Okay. So when was it that you -- that Professor Joyner first started representing you in this case, approximately?

A. About a month ago, I think; somewhere in that time.

Q. Okay. And were you represented -- just to make sure I've covered all the bases, were you represented by another attorney at any point when you executed this affidavit?

A. No.

Q. No. Okay. So how did it -- how did it come about that -- that you executed this affidavit for -- for the plaintiffs in this case?

A. For the plaintiffs, the NAACP asked me about it, and we talked about it -- though,

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

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

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

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

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

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

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

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

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

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

Q. Okay.

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

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

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

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

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

Q. Yeah.

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

Q. Okay.

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

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

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

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

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

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

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

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

Q. Yes.

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

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they wanted to know what I recalled about the law itself, and why he, you know -- and, I mean, that was it. The normal course of trying to get information in regard to their lawsuit.

Q. Okay. In terms of -- in terms of your affidavit here, what was the -- what was the drafting and editing process? Was this -- was the affidavit drafted by the plaintiff's counsel here, the initial draft, or was it drafted by you, initially?

A. It was drafted in conjunction with me.

Q. Okay.

A. By plaintiff's counsel.

Q. Okay. So did they produce a draft after speaking with you that they then presented to you to review?

A. Yes.

Q. Okay. And do you recall if there were changes that you had to make to the draft that they presented to you?

A. There were some changes that were made, yes.

Q. Okay. And can you recall what any of those changes were?

A. I really can't. There were some

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editorial changes.

Q. Okay.

A. And, no, I don't recall all the changes, but...

Q. Okay. Do you recall if there were any substantive changes that had to be made?

A. Not that I can recall.

Q. Okay. So you mentioned printing off some legislation, the bills, when you were getting ready for your deposition testimony here today.

What about when you were working with them on the affidavit? Were you consulting with any of those legislative history documents, bills, or session laws?

A. No.

Q. Okay. Any other types of documents at the time, or just your memory?

A. Just my memory.

Q. Okay. Was there anyone else you talked to, other than the counsel for the NAACP, before you executed your affidavit here?

A. No.

(Defendants' 2 premarked.)

BY MR. RABINOVITZ:

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Q. Okay. I want to go ahead and look at another exhibit here, which should show up on your screen.

Are you able to see that I've changed to Defendants' Exhibit 2?

A. Yes.

Q. Okay. And just for the record -- I'll go back a second to your affidavit. I've pre -- I premarked your affidavit as Defendants' Exhibit 1.

Do you see that sticker at the --

A. I see it. Yeah.

Q. -- at the top right-hand corner?

A. Uh-huh.

Q. And this next exhibit I've marked as Exhibit Number 2. And this represents itself to be some of the North Carolina statutes from or through the legislative session in 1969.

Is that what it appears to be from this --

A. That's what it appears to be.

Q. -- face sheet here?

Okay. I'm going to go on to the second sheet. So this is obviously not the entire copy of the General Statutes then, but this is

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Chapter 13 of the General Statutes. So this is as the law appeared in 1969, I believe.

Does that -- that look accurate to you?

A. That's what it appears to be.

Q. Okay. And if you want to go ahead and review, you know, 13-1 and 13-2. I want to talk to you a little bit about what the law was at that time, the prior law.

A. Okay.

MS. THEODORE: Brian, sorry to -- sorry to interrupt, but would it be possible for you to email counsel for plaintiffs, and for Mr. Joyner, certainly, if he wants them, a copy of the affidavit -- of the -- of the exhibits that you're showing on the screen here.

MR. RABINOVITZ: Yeah, I would be happy to do that. Do you want to go off the record for a minute for me to be able to do that?

MS. THEODORE: Sure.

MR. RABINOVITZ: Okay. Actually, I think Olga just said she can go ahead and do that while I continue to move along. So if it's all right with everyone, we can

just stay on the record, then.

MS. THEODORE: Sounds good.

MR. RABINOVITZ: Okay.

MR. JOYNER: That's fine.

THE WITNESS: Okay.

BY MR. RABINOVITZ:

Q. So what -- what is your -- what was your understanding of what was required under -- under the statute? And this would have been prior to even to the 1971 legislation. What's your understanding of what was required for the restoration of voting rights?

A. The requirement for restoration of rights was that you had to hire a lawyer, and go to court and have a hearing, and get a determination made that way. People that we were involved with didn't have the wherewithal to hire a lawyer to get any type of rights restored. And we just wanted a way -- a way for them to get them restored without having to go through any expense. Particularly, after they had served their time.

Q. Okay. So you mentioned that there was a -- that, you know, one of the requirements,

because you had to go to court, there was a -- there was a monetary issue there. People had to hire attorneys to assist them with that process.

What other problems, if any, were you aware of in the law as it was prior to the 1971 and 1973 legislation?

A. There wasn't really any other than the fact that we were trying to get people their rights back that they had previously enjoyed, and what everybody else was enjoying, and served their time, had been rehabilitated, and why should they not have their rights restored without having to go through the expense and problems and trouble of a court hearing which could take -- you know, turn out not in their favor anyway. Particularly, if you had a prejudiced court or something like that; it was denied.

Q. So I think there's another piece -- and let me know if I characterize this correctly or not -- but it seems like another problem with it, from your view, is that it -- it wasn't automatic. It was a discretionary issue where folks had to go in front of a judge and

convince the judge.

A. That's exactly right.

Q. Okay. Did you have concerns at the time about whether judges would fairly treat African Americans who were former felons who might come before them trying to get their rights restored?

A. I hadn't had any -- I hadn't had any -- any -- any experience with it, no, but I knew that there were prejudiced judges that would -- that would deny you anything you asked for if you were Black.

Q. Okay.

A. I mean, that was the -- that was the psyche in the -- in the whole community. You don't care what rights white folks had, Black folks weren't -- weren't -- unless we gave them to you, specifically, that was the only way you were going to get them.

Q. Okay. It also seems like, in addition to hiring an attorney and going through the court process -- I'm just going to go ahead and read 13-1, there, so we can discuss it in more detail.

So it says -- it's titled "Petition

filed." And it says: "Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited right, and that he has not before been restored to the lost right of citizenship."

Anything else in there that's of concern to you?

A. No apparent areas of concern to me. Because if you were Black, and you had been convicted of an infamous act, and you had served and done your time, you didn't have to have your rights restored after that, based on that, because you had to -- look at what you had to do. If you couldn't get a job because you were a convicted felon, or any of the other things required than just that one paragraph, it was an anathema to Black folks. I mean, what you're getting into is you're getting into

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the whole psyche of the movement in putting into law, language that takes those rights away from you once you have rehabilitated yourself.

Q. Okay. And then I want to look at the next section there as well, 13-2, which is titled "When and where petition filed."

So it says: "At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide, or in the superior court of the county, at term, 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, the petition shall be filed in the superior court of that county where the last indictment was found."

So it appears from this and is it your understanding that there was also a waiting period or a time period that was required before somebody could petition the court?

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A. You've got -- you've got a built-in two-year time period, which really could be up to five years before you would even think about getting your citizenship back.

Q. Okay. And why could it be up to five years?

A. Because it says down here -- where does it say it? "The applicant is at the time of filing and has been for five years next preceding a bona fide resident."

Anybody who moved -- you've got to live in a place five years before you can -- can apply for it.

Q. Okay. Does that -- in your mind, does that create any obstacles that were particular to the African-American population?

A. Yes. You get a Black man who has been convicted of a felony who can't get a job in one county. He moves around to several counties to get a job. It takes him a year, two years, three years to do that. He's still not up to the five years he's got to live in that county. Even though you've got a two-years application part in there. You've got to live in the county -- you've got to live

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in one place for five years before you can exercise the two years.

Q. Now, it also uses the language there when it's talking about waiting the two years. It says "from the date of discharge of the petitioner." And I want to ask you your understanding of what that means --

A. I don't know what it --

Q. -- "date of discharge."

A. I don't know what it means. Because the way courts were acting then, and even today, what -- discharge from what?

For instance, if you -- if you get put on probation, you violate your probation, and your probation is extended, which period of time are you looking at, the original or the extended period?

Q. Okay. So it's unclear to you from this statute what was meant by that?

A. Yeah. And I think it was made vague on purpose.

Q. Okay. And what was the purpose for that, do you believe?

A. The purpose was to keep Black folks from being declared full citizens with the

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right to vote.

Q. Okay. Looking at the next section, 13-3, titled "Notice given." It says: "Upon filing the petition the clerk of the court shall advertise substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard."

Can you tell me your thoughts on that section and whether, in your mind, that presented particular problems for the African-American population?

A. Most definitely. If they didn't want you to register to vote, why would -- I mean, who is going to say that they're going to put up a notice on the courthouse door that I want my citizenship rights restored? Why? Why have I got to let the whole world know that this is what I want to do. Particularly, if I'm Black. And so the clerk had the option of putting it up there or not, even though the law said that they had to do it.

Q. Okay.

A. They didn't have to do it.

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Q. Okay.
A. They didn't want to.
Let me tell you -- I mean, what you're talking about -- well, no. Go ahead. I'm sorry. I won't...
Q. It's fine if you have more to say about it. I don't want to --
A. No. No. No. No.
Q. -- cut you off or rush you along.
A. No. No. No. Go ahead.
Q. Okay. So the next Section 13-4. It's titled "Hearing and evidence."
So this section says: "The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition or by anyone who may oppose the grant of his prayer."
I'll pause there. Any issues that you identify there that are problematic?
A. Yeah. If I didn't want you to have your citizenship rights restored, I'd come in and pray that you not restore.
Q. Right.

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A. And then whoever you are and whoever the judge is, it won't get restored.
Q. And then it goes on to say: "The petition shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this State for three years next preceding the filing of the petition."
So there's a requirement here that the -- that the petitioner seeking the restoration of rights have five witnesses there to testify to his character for truth and honesty.
A. And not by deposition, but by being there. Unless -- I mean, go ahead. I'm sorry.
Q. No. I mean, my question to you is just going to be, you know: What are your concerns with, if any, with that particular provision, again, in terms of the African-American community?

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A. You've got to have five witnesses come in and testify to their truth and honesty, and they can't do it by deposition. So if you've got five Black folks in a hearing before a prejudiced Black judge, what do you think is going to happen?
Q. And I do need to ask you -- that's a rhetorical question, but I need to ask you what would happen. What is your understanding --
A. It would be denied.
Q. -- of what would happen?
A. It would be denied.
Q. It would be denied?
A. Right.
Q. Okay. Okay. So, again, just to be sure we're on the same page, this is the law -- this was the law as it stood prior to the amendment in 1973, which was before you, yourself, had joined the House, but prior to the amendment in 1973, which was when you had joined the House, right?
A. Right. That's correct.
Q. Okay. So can you just -- well, we'll leave it at that, and we'll move on and come back if we need to.

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It sounds like we've now gone -- we've gone through several problems that you perceived with this statute. I think the first one that you mentioned was the issue of costs that would be associated with getting an attorney to go through this process.
Is that one of the problems that identified with this?
A. That's one of the problems, yes.
Q. Okay. It seems like there's another set of problems related to the procedure here, and I just want to draw those out a little bit, because it seems like you're alluding to a particularly harmful effect or impact that this statute would have on the African-American population because of the way the procedures were designed.
So one of the issues is this possibility for folks to come in and give opposing testimony at a hearing when someone is trying to get their rights restored.
Can you just explain a little bit more what the concerns are with allowing people to come in and testify in opposition to this petition?

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A. I'm a Black man who has been convicted of a felony, and I want my rights restored. Number one, I have to hire a lawyer to do it. Then I have to appear in court with witnesses to do it. And they have to be live witnesses; it can't be depositions. And if you are before a prejudiced court, you're not going to get your rights restored, period. I mean, everything in that whole -- in that whole statute is an impediment to having a Black person's rights restored depending on the psyche of the judge who is going to render that decision.

Q. Okay.

A. That's basically what it is.

Q. Okay. Was this -- so we talked a little bit about whether any of your civil rights work or other organizational work was specifically related to this issue, this voting for former felons. And I think you said it was generally related, because it was related to constitutional rights for everyone, and in particular, for African Americans, but that you hadn't -- prior to joining the legislature, you hadn't worked on this very specific issue. Is

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that correct? Is that a fair statement?

A. That's correct.

Q. Okay. Prior to joining the legislature, was this an issue, though, that you were aware of and that you had a -- and that you had a view on at the time?

A. No.

Q. Okay.

A. It was not a -- it was not an issue that I was aware of, so I couldn't have had a view on it.

Q. Okay.

A. Until it was brought to my -- that specific item was brought to my attention.

Q. Okay. So during your service as an assistant district attorney in Durham, this wasn't -- this wasn't something that was -- that you were aware of during that time?

A. That's correct. Right.

Q. Okay. Okay. You know, we've teased out some of the specific provisions here and talked about them, but when you did look at this law, when you joined the legislature and became familiar with it, did you have concerns about the procedure being confusing or

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convoluted for folks to follow through with?

A. Yes. It didn't take long to figure that out.

Q. Okay.

MS. THEODORE: Just for the record, this was not -- the 1969 law was not the law that was in place when Senator Michaux joined the legislature.

A. No, it wasn't, actually. No, it wasn't, but it was before I got there.

Q. Right. And to clarify my question, to see if this helps, what I was -- what I was saying is, if you joined the legislature, at some point you seem to be familiar with this law, how it was back in 1969, which I believe it was that way all the way up through 1971. So I was just asking about when you became familiar with the law, what were your concerns about it? Does that make sense?

A. That makes sense. But I was familiar with the law as it was passed in '71, because it was brought to my attention.

Q. Right. Okay.

A. And at that point, it was probably when I went back and started looking at it and

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seeing what needed to be cleared up in the '71 law that was passed.

Q. Okay.

A. And what we were looking for was an unconditional pardon for those who had served their full-time and had their rights automatically restored.

Q. Okay.

A. Rather than going through the convoluted issue that was even in the '71 legislation.

Q. Okay. Let me ask you this, then. You know, I have this statute up as an exhibit. We're talking about it today, and we're going through it, but at some point prior to us talking about this today, you know, because of your work and interest in this issue, did you become familiar with this law, the requirements that were there prior to 1971?

A. No.

Q. No. Okay. So --

A. I became familiar with it when it was brought to my attention by Joy in 1973.

Q. Okay. And, again, I'm probably just not asking this as clearly as I should be, but

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when he brought that to your attention, obviously, the law that was in place at that time was the 1971 law.

As part of your research and understanding the issue, had you looked back at what the law was prior to 1971?

A. Yes. Yes.

Q. Okay. And so at that time, when you looked back at what the law was prior to 1971, you became familiar with what it was?

A. Yes.

Q. Okay. Thank you. I'm sorry if I asked a series of questions that were not as clear as they should have been.

(Defendants' 3 premarked.)

BY MR. RABINOVITZ:

Q. I want to go ahead now and look at another exhibit. So this will be -- I've premarked this one as Defendants' Exhibit Number 3.

Are you able to see that up on the screen?

A. Yes, I am.

Q. Okay. And are you able, from looking at that, to identify what that is?

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A. It looks like it's a House bill.

Q. Okay.

A. Involving Chapter 13.

Q. Okay.

MS. THEODORE: Excuse me for a minute, Brian. I just wanted to check on whether Senator Michaux or Professor Joyner wanted to take a break, if now is a good time.

MR. RABINOVITZ: Sure. We've been going for an hour. So if anyone needs a break, please let me know.

THE WITNESS: I'm fine.

MR. JOYNER: I'm fine as well. Yeah.

MS. THEODORE: Okay.

MR. RABINOVITZ: Okay. Great. Well, just let me know at any time.

BY MR. RABINOVITZ:

Q. So we were identifying this -- this particular law here.

Do you see at the top that it says that it's from the 1971 Session of the General Assembly?

A. Yes.

Q. Okay. And this is titled "An Act to Amend Chapter 13 of the General Statutes to

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Require the Automatic Restoration of Citizenship to Any Person Who Has Forfeited Such Citizenship Due to Committing a Crime and Has Either Been Pardoned or Completed His Sentence."

A. Yes.

Q. Okay. And so is it your understanding that this is the law that was enacted in 1971?

A. If you go to the end of it.

Q. Yes. Certainly.

A. I don't see any signatures on there. I'm not so sure that that's -- you don't have the ratified bill, do you?

Q. Okay. Let me see. Well, I believe it says it was ratified, here. Let me see what I can find here.

A. It was a Committee Substitute.

Q. Right. So I believe that this is the -- the session law that was enacted. But I will see if -- let's see.

So down here at the end it says: "In the General Assembly read three times" --

A. And ratified.

Q. -- "and ratified, this the 16th day of July, 1971."

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A. Right. Okay. I see that. Okay.

Q. Okay. So --

A. That -- that -- that's fine.

Q. Okay. So this does appear, then, to be the ratified bill; is that right?

A. Right. Yes. It appears to be.

Q. Okay. So this was the law that was ratified in 1971. This was also the law as it stood when you joined the legislature in 1973. Is that right?

A. That's correct.

Q. Okay. And, again, I think you've already answered this, but just to be clear, you weren't in the legislature at the time that this was ratified. You also didn't have any informal involvement in this legislation. Is that right?

A. In the '71 legislation?

Q. Yes, sir.

A. No, I didn't have any.

Q. Okay. And I want to go ahead and go through this one as well.

So the first section is -- again, it's 13-1. But I think this is just a complete replacement of what had been there before.

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Because it says in section 1 up there: "Chapter 13 of the General Statutes of North Carolina is hereby repealed in its entirety and a new Chapter 13 is hereby enacted and read as follows."

So my understanding of that is that the law that we were looking at a minute ago from 1969, there, was completely repealed, and it was replaced with what we're looking at here now. Is that correct?

A. That's correct. That's correct.

Q. And so this first section here, 13-1, is entitled "Restoration of Citizenship." And it says: "Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon compliance with one of the following conditions." And there are three conditions there.

The first one: "(a) the Department of Correction at the time of release recommends restoration of citizenship;

"(b) two years have elapsed since release by the Department of Correction including probation or parole, during which

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time the individual has not been convicted of a criminal offense of any state or of the Federal Government; and

"(c) or upon receiving an unconditional pardon."

So before I ask about that, specifically, are you familiar with who sponsored this bill?

A. Joy Johnson. Yes.

Q. Okay. Representative Joy Johnson?

A. Right.

Q. And he was -- I know, in your affidavit and possibly here today, you mentioned that back at this time, obviously, you weren't in the -- you weren't in the legislature yet, but who were the other African-American members who would have been in the legislature back in 1971? Do you recall that?

A. Henry Frye was the other member.

Q. Okay. So it was just the two of them, and Representative Johnson is the one who sponsored this bill; is that right?

A. That's correct.

Q. Okay. And it sounds like when you joined the legislature in '73, you had some

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conversations with Representative Johnson about this -- this law as it stood at the time. Is that right?

A. That's correct.

Q. And, obviously, you guys decided to offer, you know, an additional amendment to the law. But just going back and talking about this 1973 law, did Representative Johnson convey to you what his -- you know, what his intention or purpose was in enacting this 1971 legislation to replace what had previously been there?

A. It wasn't with the voting, I know that was one of them, but he was trying to get convicted felons -- getting them to be able to vote. When you say "rights restored," you don't -- you don't delegate the rights. You say that all have such rights restored, rights of citizenship restored. And that was what he was trying to get at. And he -- he didn't write what eventually came out of that, but he didn't have the wherewithal to fight it at that time.

Q. Okay.

A. And when I got there in '73, that was

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one of the first things he said. "I'm just not satisfied with what we got in '71. Take a look at it and see what you think about it."

And that's when I got into it in '73 and told him he really didn't do that much with that bill, that what -- you know, that what we were looking for was a whole lot more than what was -- what that bill was purporting to do.

Q. So in what ways did this --

A. Let me -- let me -- let me say that Joy was a preacher, and Henry was a civil lawyer. So Henry didn't know anything about criminal law. But we talked about it. When Joy brought it to me, the three of us sat down and talked about it. And I was the only one with any criminal law experience involved. And I said, "You haven't really done anything with this other than the fact that you've cut out some of the process, but you really haven't made it, you know, really worth much, because you've still got too much -- too many hoops to go through," in the '71 law.

Q. Okay. And when you say there were too many hoops to go through, do you mean again --

A. For instance, two years -- two years

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

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

A. Yes.

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

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

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

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

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

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

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

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

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in '73 was a Committee Substitute.

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

A. Right.

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

A. Right.

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

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

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

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

Q. What about --

A. Because it exacerbates the situation.

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

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

Q. And what is the problem there?

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

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

A. Say that again.

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

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recommendation --
A. That's correct. Right.
Q. -- is there a concern there in your mind for African Americans based on that, the discretion that the Department of Correction had?
A. Yes.
Q. Okay. And can you explain that?
A. It depends on who is in charge of making the recommendation.
Q. Okay.
A. If nobody is in charge of making the recommendation, it doesn't get made. If there is somebody in charge of making the recommendation, then if they don't like you, they don't make the recommendation.
Q. Okay.
A. If you're Black, and I'm white and don't like you because you're Black, you don't get the recommendation.
Q. Right. Okay. What about -- just talking more generally, you know, you've talked a lot about the requirement to -- well, scratch that. I'll move on and come back to that later.

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Is there -- is there anything else that you can think of that we didn't discuss about the 1971 statute that made it continuing to be a problem for you?
A. Other than the whole bill? No.
Q. Okay. Was it, in your mind, at least, an improvement over the 1969 statute?
A. No.
Q. Okay. So in your mind, it wasn't any better than the 1969 statute?
A. It was better that, really, one or two items had been taken out, but it was still an impediment to Black folks, to Black former convicted felons getting the right to vote.
Q. Okay. But there were some -- some obstacles that were taken out, right?
A. Right.
Q. So, for example, this law did not -- does not appear to me to require the five witnesses, for example --
A. Yeah.
Q. -- who testify to your truthfulness and honesty. Is that right?
A. That's correct. Yes.
Q. Okay. So there were some impediments

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that were removed?
A. Right.
Q. And some of the impediments that were removed were among those that were detrimental, under the former law, to the African-American population?
A. That's correct.
Q. Okay. And the procedure here is also simplified to some extent over what the procedure had been under the 1969 statute?
A. Right. But just still leaving it up to one person.
Q. Okay. All right. I want to go ahead and look at a couple newspaper articles from around this time when this law was being considered and when it was passed.
(Defendants' 4 premarked.)
BY MR. RABINOVITZ:
Q. So this next exhibit I'm showing is Defendants' -- I've premarked it as Defendants' Exhibit Number 4. This is from July 22, 1971. If I go back to the previous exhibit, that was -- it was ratified on July 16, 1971. So this is -- this is a couple of days, it appears to me, after ratification here, in the

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Robesonian, which was a local newspaper that was in circulation at the time, is my understanding. Were you familiar with that newspaper?
A. No.
Q. Okay. So this says a couple of things here. So it's titled "Restoring Citizens." And it's just two short paragraphs, so I'll go ahead and read it.
The first paragraph says: "Procedure for restoration of citizenship to persons convicted of felonies is simplified under a bill introduced by Representative Joy J. Johnson of Robeson and enacted into law. It looks like a humanitarian gesture."
So we were just talking about this, but one of the things that this paragraph says is that the law was simplified in comparison to what was there before. And I think you just said you agree with that, that there was some simplification that was done. Is that correct?
A. That's correct. Right.
Q. Okay. And the second paragraph here says: "A full pardon or a recommendation by the Department of Correction, plus an oath

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before a judge or clerk of Superior Court, seems adequate to restore citizenship to a person who has paid his debt to society. If the previous procedure was more complicated, simplification should make former felons feel more welcome as restored citizens and encourage them to make their conduct acceptable."

Do you agree with the characterization or take any issue with the characterization in this article?

A. Yeah, I take issue with it.

Q. Okay. Can you explain that?

A. Yeah. The last -- the last -- that last paragraph, the last paragraph, the last sentence: "If the previous procedure was more complicated, simplification should make former felons feel more welcome as restored citizens and encourage them to make their conduct acceptable."

Acceptable to who? You've still got to go before a judge or a clerk. And if it's not acceptable to them, then -- you know, that was -- that was typical at that time, a typical reaction. They took out some of the things that you had to do, but it still left it up to

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one person. That's -- that's -- that's a nice little article.

Q. Okay.

A. For something saying, really, nothing.

Q. Okay.

A. And plus the fact it says that -- it's off-base. "A full pardon or a recommendation."

Q. Uh-huh.

A. I'm not sure how they get the full pardon in there, because the full pardon comes from the governor.

Q. Okay. All right. I want to go ahead and look at another article here. Why don't we look at another article. No, I want to actually jump to some of the legislative history documents here.

(Defendants' 5 premarked.)

BY MR. RABINOVITZ:

Q. So this I've marked as Defendants' Exhibit Number 5. Can you identify what this is or, at least, this first page here?

A. It looks like a bill from the 1971 session.

Q. Okay.

A. A bill entitled "An Act to Amend

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Chapter 13 of the General Statutes to Require the Automatic Restoration of Citizenship."

Q. Is this -- you had mentioned that you reviewed some -- reviewed and printed off some legislative materials when you were looking at this.

A. Yes.

Q. This is for the 1971 law; not the 1973 law.

A. Right.

Q. But was this included in the materials that you looked at?

A. Yes, sir.

Q. Okay.

A. That my lawyer sent me the other day. Right.

Q. Okay. And so you would have some -- you've looked at this, you know, more recently than --

A. Right.

Q. -- than back in 1973, at least, you've had a look at it?

A. Right.

Q. Okay. So this, I believe, is -- is the bill as it was introduced.

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A. That's correct.

Q. That's correct? Okay.

So this adds a section -- if you look at section 1 of this bill, it's adding a new section to the statute, or proposing to add a new section to the statute, 13-11.

And then if you look at section 2, it's repealing the previous sections from the law. So repealing 13-1 through 13-10. So it's attempting to replace all of that with this new section 13-11.

Does that appear correct to you?

A. That appears correct. Right.

Q. Okay. And 13-11 is entitled restoration of citizenship. It says: "Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon the full completion of his sentence or upon receiving an unconditional pardon."

What's your understanding of what that section was -- was trying to do, what the aim of that section was?

A. The aim of that section was to restore their rights automatically without having to do

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

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

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

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

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And I took a look at it, at his suggestion, and suggested that he didn't quite accomplish what he really wanted to accomplish with that bill. And then we started work on the '73 legislation.

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

A. The hearing. The hearing called for in the '71 legislation. And that what we were -- what I thought that he was looking for was the fact that he didn't have -- that some of the hoops were taken out, but that they still had hoops to jump through as a result of the '71 legislation. And what he wanted was a -- I guess what you might want to 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 he was looking for, in my estimation, particularly in the bill that he introduced, was a flat-out pardon, where once all the sentence had been completed, that the citizenship rights were

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automatically restored without any -- without them having to do anything.

Q. Okay. And so what I'm looking at this -- this first bill here, this 1973 bill, it lists here as the sponsors -- it's a little hard for me to read. It says Representative, and then someone has written in "J.," Johnson. And it used to say "of Robeson," but now there's a handwritten word under there. Do you know what that says?

A. Yeah, that's "others" who signed onto the bill.

Q. Okay.

A. The only way you would be able to find that out is you would have to go to the jacket of the bill and find out who signed in onto the bill.

Q. Okay.

A. The other legislators -- the other legislators included -- probably included Henry and me.

Q. Okay. So it just says "others." It doesn't say specifically who at that time?

A. Well, it says "others" on this version, but the jacket would have who the others were.

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Q. Okay. Now, you said that he first approached you with a version of what he wanted to do. So was his version what we have here, what was initially introduced, or was this version after you-all had discussed it? Do you recall that?

A. This -- I don't recall specifically what it was, but this had more than what he really wanted. For instance, there's no hearing or anything other than certifications.

Q. Okay.

A. Yeah, that's all it was, just certification.

Q. Okay.

A. Not any hearings or swearing before anybody or recommendation from anybody. Once they had completed their service, that was it. And that was what he was looking for. And I told him -- and that's when I told him that what he was looking for, that he didn't have it in -- in the '71 legislation. This is what he was looking for --

Q. Okay.

A. -- in '73.

Q. Okay. So you said when he first came

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to you to look at the proposal for the '73 legislation, you had some suggestions for him about what he needed to include. Do you recall what things it was that you had --

A. Not --

Q. -- focused on?

A. Not really, other than the fact I said, "This is" -- you know, that, "This is what you wanted," instead of what came out in '71.

Q. Okay. Okay. And so is what we have here -- and we can go ahead and read through it, but does this appear to be -- you know, this is more of what you were -- what you were looking for? What you thought it needed to be replaced with?

A. Yes.

Q. Okay. And just to, I guess, summarize it, it sounds like the main point was to simplify and specifically make it automatic that once a felon's complete sentence was finished, their rights of citizenship would be restored. Is that correct?

A. That's correct. Without going through any other -- without going through any other process. Right.

Q. Okay. And what was the -- what was the purpose of that? Why was that the goal?

A. Because it would -- it would let them know that they were, you know, that their rights were restored and that they could go vote.

Q. Okay.

A. All the rights that they had had prior to their incarceration or whatever.

Q. Was a purpose also to remove the discretionary decision-making that was involved in the previous law which could possibly inject some bias or prejudice into the process?

A. Yes. You said it better than I could. Yes.

Q. Okay. Can you say anything more on that?

A. No.

Q. Okay. Fair enough. So I want to go through and read through this section 13-1, here, "Restoration of citizenship."

"Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon the occurrence of one of the following

conditions:

"Number (1) Upon the 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."

So that part is -- I think that's what we just -- we had just been talking about.

A. Right.

Q. That it was after the completion of all aspects of their sentence, this would just be an automatic process?

A. Right.

Q. Okay. And then number (2) just says, you know: "Or upon receiving an unconditional pardon." So that was just another -- another way, if somebody was -- got a full pardon, then they would also have this automatic restoration?

A. Correct.

Q. Okay. And just scrolling through this, you can see there's a section 13-2, and then that's pretty much the end of it. Section (2) is just about the effectiveness when it -- when

the statute becomes effective.

So what has been removed here, or at least one of the things that's been removed, was that additional section under the '71 law that had the procedure for going into court and swearing under --

A. Swearing an oath.

Q. Okay.

A. It cut out the two years, still.

Q. Okay. So this completely removes the court process and the fees that you mentioned would be associated with having to get an attorney and go to court; is that right?

A. That's correct. Right.

Q. Okay. And the -- any discretionary issue with -- with the judge making a determination, and, you know, possible prejudice there?

A. Correct.

Q. Okay. So what do you recall -- after you started working on this, though, what do you recall from the -- you know, the legislative process or the amendment process that took place?

A. That was -- nobody really wanted to do

it that way. We had to go in and start making, you know, compromises and whatnot, in order to try to get something passed in the way that the original bill in '73 called for. What the original bill in '73 called for was once you completed everything, your rights were automatically restored, period, in the report. That was it.

Q. Right.

A. Nobody -- nobody -- everybody was a little bit afraid that you were opening up the floodgates, that you were really opening up the floodgates, and they didn't really want to do that. So it went into a period of negotiations from that point on.

Q. Okay. But this -- but this particular bill here, this bill that we've been looking at, this is a fair representation of what it was you were trying to achieve?

A. That's exactly right.

Q. Okay. All right. I want to look at a little bit more of the legislative history documents here. So I'm going to scroll down. This is all still part of this what I've marked as Defendants' Exhibit Number 6. We were just

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looking at this original bill here. This is a Committee Substitute.
A. Right.
Q. So is this one of the documents that you reviewed also when you were looking at the legislative history yesterday?
A. Yes, it is.
Q. Okay. And this Committee -- this Committee Substitute, it adds a -- under 13-1, it adds an additional subsection, number (3), that says: "The satisfaction by the offender of all conditions of a conditional pardon."
A. Yes.
Q. Okay. But the first part there, if you look at sections (1) and (2), I believe are very similar to what came before.
So 13-1 says: "Restoration of citizenship. Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon the occurrence of any one of the following conditions."
So these (1), (2), and (3), these are each one in and of itself. It says "any one of the following conditions." So any of those are

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sufficient on their own. Is that your understanding?
A. Yes.
Q. Okay. And number (1) says: "The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Board of Juvenile Correction, of a probationer by the State Probation Commission, or of a parolee by the Board of Paroles; or of a defendant under a suspended sentence by the court."
A. Yeah. That -- that was added.
Q. That was added. Okay.
So what -- what is the -- what was added here that sticks out to you?
A. What was added was everything involving -- involving the satisfaction of all conditions of a conditional pardon. And that the involvement of the parole -- in other words, let's assume that the convicted felon served the sentence that was given to him. Say that sentence was a bifurcated sentence. He spent some time in jail, and then he spent some time on probation. He violated -- he got on -- he did his time in prison. He was now on

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probation. He violated his probation by not showing up for something, and they extended his probation under the original sentence. And that's what got put in there.
Q. Okay.
A. We didn't -- we didn't particularly care for that in there, but it was the only way we were going to get it to make sure that the bottom line was that there was -- that you still didn't have to go for a hearing or anything like that.
Q. Okay. So it still had that -- that main feature that you talked about, that it would, rather than involving the hearing, it would be -- it would be automatic?
A. Right.
Q. And it wouldn't be subject to the discretion of a judge or the requirement to hire an attorney here?
A. That's correct.
Q. Okay. I want to move on a little bit further down here. There is an amendment here. Is this -- is this also contained in the materials that you --
A. Yeah.

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Q. Okay. And what is your understanding of what this amendment was trying to insert into this bill?
A. I just wanted put back in what was taken out. This just follows the '71 legislation. It failed.
Q. Okay. So, in particular, this was trying to put back in the requirement that somebody go into court --
A. Right.
Q. -- in front of a judge, take an oath --
A. That's correct.
Q. -- which was in the 1971 legislation and which you guys had tried to remove --
A. Right.
Q. -- in this '73?
A. Right.
Q. Okay. And as you noted, this particular amendment failed?
A. Right.
Q. Okay.
A. But we had worked a deal. We had worked a deal by throwing in probation and parole.
Q. Okay. And even after, you know, that

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compromise was reached, you continued to -- you continued to sponsor and be in support and failed?

A. Yes.

Q. Okay. I'm going to go on and look at -- there's another amendment here. I'm going to try to make this just a little smaller so we can see this whole thing at once.

A. Yeah.

Q. Again, was this included in the materials that you looked at?

A. Yes. Yes, it was.

Q. Okay. Now, what was -- what was this amendment trying to accomplish here?

A. I have no idea.

Q. Okay. So I'll just go ahead and read it. It says "a new section to be added" that was going to say the following:

"Provided that this act shall not apply to a second conviction of any felony, or to any additional felony conviction after a first such conviction."

A. Kind of where you didn't get but one bite of the apple. If you got a second felony conviction, you couldn't have your citizenship

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rights automatically restored.

Q. Okay. So this would have been -- from your perspective, this would not have been an amendment you would have been in favor of?

A. Oh, no. No way.

Q. Okay. And this amendment failed?

A. Yes.

Q. Okay.

A. We had made the compromise, and this was -- this was done on the floor.

Q. Uh-huh. Okay.

Just to go back for a second before we move on. Scroll back up to the top. This is the bill as it was introduced. If you look at section 13-1, subsection (1) here, this includes -- the original proposal did include not only the active sentence -- the original proposal, first of all, talked about unconditional discharge. What does "unconditional discharge," there, mean?

A. Unconditional discharge. There are no conditions other than discharge.

Q. Okay.

A. Everything had been completed. Everything has been done.

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Q. Okay.

A. Nothing hanging over his head.

Q. So for an individual on probation, you know, probation oftentimes or, generally, comes with conditions involved.

A. Yes. Right.

Q. So this would -- this would mean -- in your mind, would it be fair to say that all conditions of probation would have been satisfied?

A. Yes.

Q. Okay. And I guess the same goes for parole, as well, that any conditions attached to parole would also have been satisfied?

A. That's correct.

(Defendants' 7 premarked.)

BY MR. RABINOVITZ:

Q. Okay. All right. I want to now go and look at -- this is the -- well, I've marked this as Defendants' Exhibit Number 7.

Are you able to identify what this is?

A. It looks like the ratified bill.

Q. Okay. And I'll just go ahead and do what we did with the 1971 bill. And scroll down to the bottom here so we can look at the

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last sentence here that says: "In the General Assembly read three times and ratified, this the 20th day of April, 1973."

A. Yeah.

Q. So that means that that is what we're looking at here, right?

A. Yes.

Q. We're looking at the ratified bill?

A. Yes.

Q. Okay. And if you look at -- well, what's your understanding of what was -- what was accomplished by this bill, by this 1973 bill?

A. What was accomplished, we got -- we got a confederate restoration of citizenship rights, but we had to add in there the fact that the Paroles -- Probation and Paroles Commission, they had to certify that there was nothing hanging over them. Like I say, in addition to probation or parole that may come back as a violation of probation and parole.

But other than that, once the individual has completed everything that he was sentenced to, on certification by everybody involved, his citizenship rights will restore.

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Q. Okay.
A. And he get a copy of it, by the way.
Q. Okay. And what was the -- what was the intent of that automatic restoration? What was the benefit of that?
A. That he would be -- he went back to being a citizen, a full-fledged citizen and could exercise all his constitutional rights and all rights provided to other folks who had never been convicted.
Q. Okay. You mentioned a minute ago in passing that the former felon would get a copy of that as well, you said, "by the way."
A. Yes.
Q. What's -- what's the significance of that to you?
A. Anybody who raised a question, he would have a certificate, an official certificate he could show. They did it in the form of a little card. I used to have one somewhere. I don't know where it is. But they were issued that certificate that could be shown to anybody who raised a question about that felony conviction, that their rights were restored.
Q. And what's the -- what's the importance

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of having that?
A. So if he went to register to vote, and somebody said, "He's a convicted felon," he could say, "No, my rights have been restored."
(Defendants' 8 premarked.)
Q. Okay. Okay. I want to go ahead and bring up another exhibit here.
So this had been premarked as Defendants' Exhibit Number 8. And I'll represent that this is a page from -- from The News and Observer back from March 24, 1973. And you can see there's an "Under the Dome" section there, which The News and Observer still has.
And I'm going to go and zoom in on this for you, because there's only one small part that we need to look at here.
So in this "Under the Dome" section it says here where I'm highlighting, "Felons Regain Right Under Bill in House."
A. Yeah.
Q. I'm going to continue to zoom in on that section so that we can hopefully look just at that.
Are you -- are you able to see that

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pretty well now?
A. I see it. Yeah.
Q. Okay. So this says: "A bill that would provide for full restoration of citizen rights to felons who have fulfilled their sentences received tentative approval by the House Friday."
So this was, obviously, before the final, final version. It says: "The bill will be up for final approval Monday night. It was introduced by the House's three Black members, Representative Michaux" -- so you from Durham, Henry Frye from Guilford, and Joy Johnson from Robeson.
A. They got my first initial wrong, but go ahead.
Q. Right. Right. And then it -- it reports what you said at the time: "Representative Michaux said the bill would eliminate the current legal requirement that felons appear before a judge, take an oath and request restoration of their citizenship."
Does that sound accurate, like something you would have said at the time?
A. Probably. Yeah. Yeah.

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Q. I don't imagine you remember specifically being interviewed for this all the way back in 1973?
A. You're right about that.
Q. Okay. But it does sound generally correct of what -- what you might have said back then?
A. Yes.
Q. You have no reason to doubt how it's been reported here?
A. No reason to doubt it.
Q. Okay. And I think these are all things we've talked about, that a major goal of the 1973 legislation was to remove these various things that you and your colleagues saw as impediments. So appearing before a judge, taking -- and taking an oath, which was an impediment for several reasons. Right?
A. Correct.
Q. And I think at least two of those reasons, again, you've mentioned the cost involved with getting an attorney to assist you in doing that. Is that one of the reasons?
A. That's one of the reasons, yes.
Q. And then you also mentioned the

possibility of bias or prejudice since this would be up to the discretion of a particular judge who might have a bias or prejudice?

A. That's correct.

Q. Okay. And then it quotes you here, and you say: "The problem is that many people who have served their time do not realize they've lost their rights of citizenship."

A. Right.

Q. Can you just -- I don't know that we've talked about that reason in particular. Can you just expound a little bit more on what you meant by that or what you understand you meant by that at the time?

A. Well, people who are not familiar with the law, but who come in contact with it, don't realize that they have the right to have their citizenship restored. And that's -- here, again, that's particularly true in the Black community. You might even find that true today. If you didn't have the automatic restoration, you would probably find that -- you know, folks don't know that their rights may be automatically restored, even with that little certificate that they have. They would

go down to the -- back then you would go down to the Board of Elections, and they would say, "You're a convicted felon. You've lost your citizenship rights." That's when they would find out.

Q. Okay.

A. Or try to get a job and find out they can't get a job because they're a convicted felon. They don't have a right to have a job.

Q. And you said, I believe a minute ago when talking about this, that this was a -- was or might have been a particular problem in the Black community. Can you explain why that is?

A. Because we didn't -- we didn't have the wherewithal to find out what all of our rights were at the time. We were told what our rights were.

Q. Okay. So there was -- access to information, I guess, would be maybe one way to put that?

A. That's a nice way to say it. Yeah.

(Defendants' 9 premarked.)

BY MR. RABINOVITZ:

Q. Okay. All right. Now, I want to look at another news article here. This -- so this

one I marked at the bottom, because I was trying not to cover over any of the text, but I've marked this one as Defendants' Exhibit Number 9. And this, I'll represent, is a news article from the Robesonian from -- again, a local North Carolina newspaper at the time. And it's talking about several -- several bills. So it says, "Baby Animals, Felon Citizenship Restoration Bill are Discussed."

And if I can -- I think if you look -- I'm going to mark the part here. No, that wasn't right.

A. I see it. You're talking about where it starts, "Representative Joy Johnson..."?

Q. Yeah.

A. Yeah.

Q. So I was trying to mark the part here that talks about -- that I believe talks about this -- this particular bill.

A. Yeah.

Q. I'm not doing a very good job of that. Let me try one more time.

Okay. There we go. And I'm going to zoom in on that a little bit. Which messes that up. Well, I just won't do it this way.

I'll just zoom in on it and you can --

A. I can -- I can read it.

Q. Okay. Great. Sorry about that. A little technical issue there.

So this says that: "The House passed legislation" -- so this is after the legislation was passed out of the House -- "which would automatically restore the citizenship rights of felons upon their unconditional discharge from state prison. Representative Joy Johnson of Robeson, the bill's sponsor, said if rights are taken away from felons automatically upon conviction, they should be restored automatically upon release."

Does that -- you would agree with that statement? That's the sentiment that he was expressing through that statement?

A. Yes.

Q. And that that was something that the bill sought to achieve?

A. Yes.

Q. Okay. And then it just characterizes the current law, which was -- at this time it would have been what the 1971 law was: "Current law permits restoration of citizenship

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upon the recommendation of the Office of Corrections upon the person's release, after two years have elapsed since release, or in the condition of an unconditional pardon."

So that's -- that's what this law -- again, these are other things that the -- that the 1973 law was trying to do away with because of the procedural complications?

A. That's correct.

Q. Okay. All right. So I want to go ahead and go back to Exhibit Number 1 here, which is your affidavit, and I just want to ask you about a few things in your affidavit here.

So I'm going to go down to paragraph 12 here. And so this is after an affidavit. You've talked about being elected to the House. And you say in paragraph 12: "At the time, Kelly Alexander, Sr., was president of the NAACP, and the state conference was very active. Their informal lobbyist at the general assembly was Peter Stanford. I recall that NC NAACP identified as one of its priorities for equal voting rights the need to inform our laws to enact a system of automatic restoration of rights to those formerly convicted of a

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felony, and we agreed."

So what do you recall about the conversations at the time or at least about that being a priority for the State NAACP?

A. It was identified as one of the priorities.

Q. Yes.

A. So there were, I guess, many priorities that we talked about. Kelly, Sr., and Peter Stanford, we talked about many of the impediments that were put before folks in order to get them to be able to vote. So, I mean, you know, we identified it as one of the things that -- Black folks, particularly convicted felons, didn't have any knowledge that they could have their citizenship rights restored in that, you know, form or fashion. I mean, it just came up in general conversation, as other things came up involving equal voting rights.

Q. Okay. And so you say "one of its priorities." And so the priority we're talking about here is the automatic restoration of rights?

A. Of citizenship rights for convicted felons, yes.

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Q. Okay. And that is something you were able to do in that 1973 amendment to the law?

A. Right.

Q. Okay. I want to look at the next paragraph. This is paragraph 13. It says: "In that session, I was assigned the bill to further extend the franchise to people formerly convicted of felonies, along with a major bill addressing Sickle Cell disease as a health crisis. I also worked closely with Representatives Frye and Johnson on advocating for Landlord-Tenant rights bill - a bill that was ultimately defeated based, I believe, on bias in the legislative body. All of these legislative actions were aimed at addressing the effects of racial and class discrimination in North Carolina."

I want to ask you first: What does it -- you use the language here, you say you were "assigned" the bill. What does it -- what do you mean by that?

A. Well, Henry, Joy, and I were the Legislative Black Caucus. And we assigned -- we looked at all the bills, and we assigned the bills that we had an interest in among the

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three of us to handle. That's what I meant by that.

Q. Okay. And you say --

A. Henry, for instance, took on the Landlord-Tenant Bill. He was assigned that and that bill in particular.

Q. Okay. So you just mean how you guys decided to divvy it up?

A. We divided the bills up of what we -- what we looked on as priorities; and to act on them, yes.

Q. Okay. And so you mentioned several bills here, including this bill that we've been talking about, the Automatic Restoration Bill, and you say all of the legislative actions were aimed at addressing the effects of racial and class discrimination in North Carolina. And I think we've talked about that at length related to this Automatic Restoration Bill.

Is there anything else on that related to the Automatic Restoration Bill that we haven't talked about, other ways that it addressed racial and class discrimination in North Carolina?

A. No.

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

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

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

sentence that you originally receive. Had we left it as it was, once the sentence is received, in spite of any extension, that would not have counted. What we had -- what we had to -- what we had to concede on was the fact that any -- that if probation or parole was extended for any violation at all, that had to be included in there also.
Q. Okay.
A. We did not want that -- we did not want that in there, because we knew that if you missed one session with the probation officer, you could be violated for that, and they would extend your probation, normally, in a situation, beyond what you were actually sentenced for.
Q. Okay.
A. And we wanted -- we didn't want -- we didn't want that extension after, keeping him from getting his restoration.
Q. Okay. And you ultimately, though, were able to reach a compromise; is that right?
A. That included everything. Yes.
Q. Okay. And what was the -- obviously, you -- there was something that you felt you

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achieved out of that compromise; not to put words in your mouth. But what was important in what you were able to get? What was -- what was most important to you then that you were able to get out of that compromise?

A. That you didn't have to jump through any hoops to get your rights restored. You didn't have to have a hearing. You didn't have to do anything. That the onus was on the State to provide you with the fact that your rights were automatically restored; that you didn't have to go begging for them. Just like Joy said, if you automatically took them away, you could automatically restore them. And that's what we got out of it.

Q. And those benefits to you were substantial enough that the compromise was worth it?

A. Yes, sir.

Q. Is there -- you were a legislator for a long time. Are compromises a part of the process when trying to get legislation through?

A. Yes. Yes. Everything that -- everything that comes out of that legislature is a compromise.

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Q. Right. That's what I was going to say. I would imagine that pretty much everything -- everything involves some kind of compromise.

A. I have seen very few pure bills.

Q. Right. Is that a -- is that a feature or a bug of the legislative process?

A. I think it's -- I think -- I think, to me, it's a -- it's an attribute. It's a significant attribute. That you could sit and compromise. That you're able to do that.

Q. And what are the benefits?

A. Why is that? Is that what you're asking?

Q. Well, I was just going to say: What are the benefits of that, the benefits of a compromise?

A. You're able -- you're able to sit down and look at all sides of the situation. I was Senior Chair of Appropriations for four years. I made so many compromises on what the budget should look like, that what I had originally in the budget wasn't anywhere near. But the budgets came out good because of the time that we were in. We were right in the middle of a depression, when I had to put that budget

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forward. And there were so many compromises made in the bill that it kept the state running. It kept the state moving. And that's why I say, the art of compromise is the art of politics, or vice versa.

Q. Sure.

A. Don't get me on this soapbox now because...

Q. I'm just seeing what else -- I'm just looking through my notes and making sure I don't miss anything else here.

One of the things that you mentioned, looking at the -- looking at the next paragraph, you're talking about some of the problems with it, the way that this was set up, the way that the system was set up, and you talk about perverse incentives and criminalization especially in the charging of African Americans.

What -- can you explain that a little bit more? What were the issues under the previous law that created this incentive in the charging of African Americans, I guess, to charge them more severely than would otherwise happen?

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A. I thought we went over that.

MS. THEODORE: Brian? Excuse me for a minute. Are you referring to a particular part of the affidavit; and if so, could you just let us know what that is?

MR. RABINOVITZ: Yeah. I'm sorry if I forgot to mention it.

BY MR. RABINOVITZ:

Q. I was talking about paragraph 17, in the -- in the -- I guess it's the third sentence there in paragraph 17. You say that you saw your efforts "as a step forward, understanding that it did not solve the original problem."

And so I was asking about that original problem, which you describe as follows: "The law was designed to suppress African-American voting power and it had created a perverse incentive to criminalize and charge African Americans differently to achieve that aim."

So I was just asking if you could explain that to me a little bit more.

A. Well, what I was saying was that in taking into account the attitudes that existed during that period of time, anything that you

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could do to stop African Americans from voting were on one side; what you could do to get the African Americans to vote on the other side. If you wanted to suppress the vote, you criminalize certain things that would make -- make their vote not count or not be able to cast that vote. And the attitude was that African Americans should not have the right to vote. And this was one of the laws that was designed, particularly, as I stated initially, because we didn't have the wherewithal to understand that we could have our rights restored. That it -- it suppressed that power that we had in that one person being able to vote.

Q. Okay. And so the 1973 legislation that added the automatic restoration, I guess would also, in some part, alleviate this problem? Is that accurate?

A. When you -- when you give -- pardon me -- when you give that person that certificate that says, "Your rights are restored," that you have the right to vote, then, yes, it solved that problem to an extent. Now, you don't want me to tell you that the way

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it's being applied now -- it's now -- really, it's yet again.

Q. Can you explain what you mean by that?

A. I mean by that, that we have found out in recent years that if you're a convicted felon, your Second Amendment rights were not restored, according to the North Carolina law. For instance, to own a weapon. A convicted felon could be put back in jail for owning -- for possession of a weapon by a convicted felon.

Q. Okay.

A. That same amendment gives you the right to own a weapon. So that right, really, has not been restored.

Q. Okay. So now you're talking about the Second Amendment and a potential conflict because restoration of citizenship, I gather, also affects somebody's Second Amendment rights. Is that -- is that what you're --

A. What we're saying is it's an automatic restoration of rights. That's the way the legislation -- it's citizenship restoration, an automatic restoration of citizenship.

Q. Right.

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A. And, anyway, when I said we -- if you look at 18 -- I said that was a "bitter pill to swallow," because I had -- and not that I'm any kind of fortune teller or anything like that -- we knew there were other problems that were going to come up with that.

Q. Right.

A. Any way -- any way you could -- any way you could dissuade or suppress that vote, any little change, and it's happening with that. Why is a convicted felon, who has been given his automatic restoration citizenship, why can't he own a weapon?

Q. Okay.

A. I mean, this is not in this suit, but --

Q. Sure.

A. -- but it's a part of it.

Q. Right. So it's a separate issue about --

A. And it still -- it still exists.

Q. Understood. Understood.

I guess that goes back, to some extent, to the compromise. You still felt like you achieved something significant through the

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legislation?

A. Yeah, until folks found out, you know, there were other ways to get around it.

Q. Okay.

A. We have to come back and fight for everything that's taken for granted by other folks.

Q. Okay. I want to look at paragraph 19.

A. Okay.

Q. You say here -- well, let me step back for a second, because you were talking a little bit about the Second Amendment. I just want to make sure that I've explored this.

You talked about other ways to get around it, to get around the legislation that you enacted.

Other than the Second Amendment issue that you mentioned, what other ways are you talking about that people have used to get around what you tried to do through that 1973 legislation?

A. Well, prior -- prior to -- prior to that -- you mean recently?

Q. I guess anytime since you -- since you enacted the --

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

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

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

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which was 2019 -- 2018, 2019.
Q. Okay. And when you say it was a -- it was a case, what was your role --
A. I had a client -- I had a client who was charged with, as a convicted felon -- possession of a weapon by a convicted felon.
Q. Uh-huh.
A. So I had represented him on his felony conviction, which occurred some eight, nine, ten years before.
Q. Okay.
A. And I had -- he had served all of his time under that and had gotten his certificate of citizenship restoration, which included on that certificate the fact that he could not possess a weapon.
Q. Okay. And so this, again, goes back to the -- the Second Amendment issue that you were mentioning before --
A. Yes, sir.
Q. -- as something that went against what you were trying to do with the 1973 law?
A. Yes, sir.
Q. Between 1973, though, and when you retired, were there any other bills that you

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introduced in -- in the House, or when you were over in the Senate for a short time, to try to correct the issues that you thought still remained with the 1973 legislation?

A. No.

Q. Okay. Are we okay to continue, or do you need a break?

A. No. We can continue.

Q. Okay.

MR. JOYNER: Brian, let me just ask you: How much longer do you intend to go? So that we can kind of navigate through some other break needs and lunch needs for people that are on the phone.

MR. RABINOVITZ: Sure. I think I'll probably just have 10 or 20 minutes left when I get back. I don't know what other folks need, but I'll probably just be another 10 or 20 minutes.

MR. JACOBSON: Paul and Olga, are you guys planning on asking additional questions, or no?

MR. COX: At this time, I don't think so. If we do, it's going to be very brief. But, more likely than not, no.

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MR. JOYNER: Okay. So can we, then, do another -- you say you can finish in about ten minutes -- and then take a brief break at that point?

MR. RABINOVITZ: Sure. Yeah. It will take me 10 to 20 minutes, but if you want to go ahead and just break on the hour, then, you know, we can come back and I'll finish up quickly.

I guess the same question for the plaintiffs' attorneys, if we're trying to gauge time: Do you folks anticipate having extensive questioning, or how extensive, after I'm through?

MS. THEODORE: We will -- we will certainly have some questioning, and I think it will take -- I think it will take longer than ten minutes. I think probably what will make sense is that we could do maybe a lunch break after you're finished and before we -- before we start the redirect, potentially.

MR. RABINOVITZ: Okay.

MR. JOYNER: So can we kind of look at maybe, once you finish, regrouping about a

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half an hour, 45 minutes after that? How does that schedule work?

Senator Michaux has, you know -- you know, he's been very gracious thus far, but I know that he needs to get a break in here.

MR. RABINOVITZ: Sure. Well, here is what I would propose. Like I said, I think I have 10 to 20 minutes left. Why don't I try and get through that, you know. If it seems like it's going overly long, you know, we can -- we can break. But, otherwise, I'll try and get through that, and then we can, you know, talk off the record about how we want to structure the rest of the time and make sure everyone gets any break they need and gets lunch if they need it, and then we can move on from there.

Does that sound acceptable?

MR. JOYNER: Senator Michaux, how is that for you?

THE WITNESS: Sounds fine with me. I'm retired.

BY MR. RABINOVITZ:

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Q. Okay. So at the time that you were passing the 1973 law -- let's go back to -- let's go back to paragraph 10 here in your affidavit.

So you mentioned there were only the three of you African-American legislators, and that, otherwise, the general assembly was all white. And then you go on to say in the last sentence there: "The majority of legislators, regardless of party, were conservative rather than progressive when it came to race, race relations, and the civil rights of African Americans, and many openly held racist views."

And then going back to the second sentence. Sorry to skip around. But you say: "By necessity, to be effective in that legislature you had to form coalitions around issues and make constant strategic determinations about legislative negotiations, compromises, and trade-offs."

And we talked about how, in this particular legislation, you had to make a compromise. Is that the type of compromise that you were talking about in this paragraph here?

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A. Yes.
Q. Okay. And it was because of the way you describe it here, I think, the makeup of the legislature at that time and racist views that were held by many of the white legislators who were in power at that time. Is that correct?
A. That's correct.
Q. Okay. I just asked you a few minutes ago about any other attempts to amend this legislation over the next, you know, almost -- almost 50 years, more than 40 years, and you said that there weren't other attempts.
But, certainly, during that time, would you agree that the makeup of the legislature and the views held by many of the folks in the legislature changed considerably on race issues? Is that right?
A. I would say they have changed, yes.
Q. And is it also correct that between 1992 and -- and up to -- well, not the entire time, but I guess from 1992 to 2017, there were 14 years during that time period when Democrats held the governor's office and majorities in both the Senate and the House?

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A. I would assume you're right on that.
Q. Okay. In fact, I think there was a stretch from 1991 -- or sorry, 1999 -- all the way up until 2010, when the Democrats held those three -- those three leadership positions?
A. No. What do you say? No.
Q. I said from 1999 to 2010, there was -- during that time period there was a Democratic governor and Democratic leadership in the Senate and the House.
A. No.
Q. Okay.
A. Because I'm trying to -- I'm trying to -- I'm trying to remember the year that Brubaker was Speaker of the House and when the speakership was -- was shared by the House.
Q. Right. Okay.
A. In the '90s. That was in the '90s.
Q. That was in the '90s. Okay.
A. It was in the '90s.
Q. So I'll leave out 1999, then. Why don't we say in the early 2000s through about 2010, at least, there was Democratic leadership in the governor's office, the House, and the

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Senate?
A. You're making me have to think about it.
Q. Okay.
A. I'm not sure I can answer that because I -- I'm sitting here trying to remember. You said between 2000 and 2010?
Q. Yes.
A. You may be -- you may be right on that. Yeah.
Q. Okay. You can't be sure as you sit here today, then?
A. I'm not sure.
Q. Okay. But there was, at least, some time period in there -- I'll narrow it -- some time period during the administrations of Governor Easley and Governor Perdue when there was also Democratic leadership in the House and the Senate?
A. That's correct. Yeah.
Q. Okay. And there also was not an attempt by you or your colleagues during those years to further amend this 1973 statute?
A. That's correct.
Q. Okay.

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A. As far as I know. As far as I can remember.
Q. Okay. And I think I'm just about wrapping up here, but I do want to make sure I cover my bases. I had initially sent out a subpoena for your experience that included some document requests, and your attorney represented to me that you didn't have any documents that were responsive to that request.
A. That is true.
Q. I just -- I just want to -- I just want to make sure that I've covered everything and that there's -- that there's nothing that I've left out that, you know, you might still have in your possession.
Do you have any letters or other papers -- other than what you printed out yesterday. I'm not talking about the statutes that you printed out yesterday.
MS. THEODORE: Brian, I'm going to object to all of these questions about document discovery, because, as you know, the document discovery requests that you sent in this case were -- were untimely.
MR. RABINOVITZ: Okay. Your --

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MS. THEODORE: Our position is that the document discovery requests that you sent us in this case were untimely, and those requests were withdrawn.

MR. RABINOVITZ: Yup, they were withdrawn, and your objection is noted. And I'll just note that I'm simply asking now during the deposition, orally, about whether he has any of those documents. So the request has been withdrawn. So I'll proceed.

BY MR. RABINOVITZ:

Q. Any documents in your possession that reflect any effort to address the voting rights of people convicted of felonies that would include letters of support or opposition to any policies or bills? Do you have anything like that in your possession?

A. I do not have them in my possession. No, sir. All the documents and everything that I have gathered over the years have been turned over to North Carolina Central University.

Q. Okay. Over to Central University, you said?

A. Yes, sir.

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Q. So all of your papers are in a collection at North Carolina Central University?

A. Yes, sir.

Q. Okay. So there's really, then, no need for me to go through and ask you about particular documents, because everything that you would have had, you've turned over. Is that right?

A. That's correct.

Q. Okay. And do you know if that collection is publicly accessible or not?

A. I have no idea.

Q. Okay.

A. I gave it to them unrestricted.

Q. Okay. And that's fine. Then I think that -- I think that will wrap up that line of questioning.

MR. RABINOVITZ: It's right at noon right now. So what I would propose is that we take another break off of the record to have a discussion about how we're going to proceed. I will check my notes and make sure I haven't left anything out; and if I have, maybe take five or ten minutes when we come back. But I anticipate that I, you know, will be able to very quickly turn it over to the other attorneys, and then I would only have follow-up questions if something comes up on their questioning that I needed to go back to.

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But in terms of taking a break now, does that work to take a break now to figure out how we're going to proceed?

MR. JOYNER: Well, why don't we go off the record now, and then we can figure out how to proceed. I mean, if we're going to take a break, then it ought to be one break, rather than breaking and trying to come back and figure out a strategy. So if we could just go off the record. And then I don't know what the schedules of others are, but, you know, I would propose moving that way.

MR. RABINOVITZ: Okay. That works for me.

Okay. So Madam Court Reporter, if we could just -- if we could go off the record at this time, I think -- I think that will work. We'll do it that way.

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THE REPORTER: We are now off the record.

(Recess from 12:03 to 12:55 p.m.)

MR. JOYNER: What is that 858 number? I'm sorry. I missed that.

MR. FARAJI: Yeah. This is Farbod Faraji for Protect Democracy. I joined earlier but I didn't want to interrupt the proceedings.

THE REPORTER: We can go back on the record at any time.

MS. VYSOTSKAYA: I think we could go back on the record unless there is an objection from plaintiffs.

MS. THEODORE: We're ready to go back on the record.

MS. VYSOTSKAYA. If we are back, the Board of Elections does not have any questions right now for Representative Michaux. We reserve the right to ask the questions after plaintiffs finish their examination.

EXAMINATION

BY MS. THEODORE:

Q. Okay. Good afternoon, Senator Michaux.

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I'm Elisabeth Theodore, one of the lawyers for the --
A. Yes, ma'am.
Q. -- North Carolina NAACP and the other plaintiffs.
So, Senator Michaux, you were asked some questions in your direct examination about the original bill proposed by Representative Johnson in 1971. Do you remember that?
A. Yes.
Q. And you testified that it was amended by a Committee Substitute, correct?
A. Correct.
Q. Okay. Now, I'm going to call up Defendants' Exhibit 5. I can try to do that right now.
Okay. Do you see here I have on the screen what's marked as Defendants' Exhibit 5? Do you see that, Senator?
A. Not yet.
MS. THEODORE: Am I not sharing?
MR. RABINOVITZ: It says -- it says you started screen-sharing, but there's nothing there. It's just a message that you're screen-sharing.

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MR. JACOBSON. Are you sure you clicked on the thing you want to share?
MS. THEODORE: I think so. Hang on. Let me try again.
MR. RABINOVITZ: There's also a second step. Once you click on it, you also have to click on "Share" too. So it's kind of a two-step thing.
MS. THEODORE: Is it working now?
THE WITNESS: No.
MR. RABINOVITZ: In the bottom right-hand corner, is there a little green "Share" button?
MS. THEODORE: I clicked on that. Yeah. Do you need to give me control or something like that?
MR. RABINOVITZ: No. No. But there is a Huseby tech person if we want to go off the record again for a second. We can ask them for help. They're live on the call.
MS. THEODORE: Yeah. Maybe we should go off the record for a second.
MR. RABINOVITZ: Okay.
(Brief discussion off the record.)
MS. THEODORE: Let's go back on the record.

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BY MS. THEODORE:
Q. All right. So Senator Michaux, you see this -- is this first page that you're seeing on this screen the first page of Defendants' Exhibit 5?
A. Yes.
Q. A copy of the original bill proposed by Representative Johnson?
A. Yes.
MS. THEODORE: Okay. And, Dan, can you scroll down to proposed section 13-11.
A. Okay.
Q. And, Senator Michaux, do you see there that proposed section 13-11 does not use the words "probation" or "parole"? Is that correct?
A. That's correct.
Q. Okay. And then --
MS. THEODORE: Dan, can you scroll to the second page of Defendant's Exhibit 5?
BY MS. THEODORE:
Q. All right. And if you would go to the top of that second page there, you see that it reads --

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MS. THEODORE: Go up a little more to the top, please, Dan.
BY MS. THEODORE:
Q. Do you see -- do you see, Senator Michaux, that it reads there "Committee Substitute for House Bill 285"?
A. Yes.
Q. Okay. So you recognize this as a copy of the Committee Substitute?
A. Yes.
Q. Okay. And let's go down to proposed section 13-1, "Restoration of citizenship." Do you see that, Senator Michaux?
A. Yes.
Q. Okay. And you see that -- you see that this Committee Substitute now includes the phrase "including any period of probation or parole" --
A. Yes.
Q. -- in section 13-1?
A. Yes.
Q. Okay. And that language from the Committee Substitute is what was eventually passed, correct?
A. That's correct.

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Q. Okay. And I'm going to move to a different exhibit, which we'll mark as Plaintiffs' Exhibit 1.

MS. THEODORE: Dan, can you call up that News and Observer article?

MR. JACOBSON: Yes. One second.

MS. VYSOTSKAYA: To the extent that we are introducing new exhibits, could you possibly share those with us as well, with all the defendants?

MS. THEODORE: Yes.

MS. VYSOTSKAYA: That would be great.

MS. THEODORE: I will -- I will send that to you right now as Dan is calling it up. It's -- this is a document that you've produced in discovery.

MR. JACOBSON: Can everyone see this?

THE WITNESS: Yes.

MS. THEODORE: All right, Senator Michaux.

And, Dan, do you want to scroll down to the article?

(Plaintiffs' 1 marked.)

BY MS. THEODORE:

Q. All right. Senator Michaux, I know

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this is hard to see, but I will represent to you that this is an article produced by the defendants in this case from The News and Observer dated July 8, 1971.

A. Yes.

Q. Okay. And so this is an article that would be concerning the 1971 bill; is that right?

A. That's what it appears to be, yes.

Q. Right. And you see it's entitled "Felon Citizenship Bill Gets House Approval"?

A. Yes.

Q. Okay. And I'm going to -- I'm going to direct your attention to the third paragraph of this article which I will read to you. It says: "Representative Henry Frye, D Guilford, told the House he favored the bill's provisions which called for automatic restoration of citizenship when a felon had served his prison sentence, but he would go along with the amendment if necessary to get the bill passed."

So do you understand Representative Frye to have understood the original proposed 1971 bill to restore voting rights upon release from a prison sentence, meaning release from

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incarceration?

A. I don't know. I don't know what Representative Odom's amendment was.

Q. All right. But when Representative Frye says in --

A. Okay. Okay. Okay.

Q. Sorry. When Representative Frye says in this newspaper article that he -- that he favored the bill's original provisions, which called for automatic restoration when a felon had served his prison sentence, would you understand that to refer to release from incarceration?

A. I don't know. The second part of the amendment still involved the two years, from what I'm reading. And I don't know what Representative Frye was thinking at the time.

Oh, oh. Oh. Oh. Oh.

Q. Representative Frye, here, is talking about the original proposed bill in 1971?

A. Yeah. I know he's talking about the original bill, but I'm not so sure, because the amendment that Representative Odom wanted in there was -- I don't know. Because the third part of that is that if he had received a full

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pardon. And I don't understand -- I don't know what -- I don't know. I can't answer that.

Q. All right. Let's -- okay, let's take this -- this exhibit down.

Okay. So, Senator Michaux, you testified on direct examination that the 1973 bill got you what you were trying to achieve. And I just want to clarify. You might have gotten what you were trying to achieve in terms of not having to go to court to get a judge to sign off on the restoration of rights to vote. Is that -- is that correct?

A. That's correct. Taking out all of the -- it took out what Joy really wanted, was the fact that since they were automatically taken away, they are now automatically restored. And you didn't have to go to the court, you know, to do that. Right.

Q. All right. And let's -- I'm going to turn you back to the affidavit you prepared in this case, which is Defendants' Exhibit 1.

Okay. And let's turn to paragraph 15 of that affidavit.

Okay. And in this paragraph 15, you're discussing your goals and Representative

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Johnson's and Frye's goals in 1973 with respect to the restoration of citizenship rights including voting rights; is that -- is that correct?

A. Yes. Uh-huh.

Q. Okay. And you say in the affidavit: "I remember we wanted automatic restoration applicable across the board." And you say "across the board" included, "at the least, the restoration of your citizenship rights after you completed imprisonment." And you say: "This was a priority for the North Carolina NAACP and it was a priority for us.

And that's correct, right?

A. That's correct.

Q. Okay. And so your original aim, and that of the NAACP, was to restore voting rights automatically as soon as someone had released -- was released from prison, regardless of whether they had probation or parole. Is that correct?

A. That's correct.

Q. Okay. And you testified on direct that one of the problems with conditioning restoration of voting rights on completion of

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probation or parole is that judges could extend the probation or parole, including for reasons like inability to pay fees. Is that correct?

A. That's correct.

Q. And so is that one of the reasons why you would have preferred a bill that restored citizenship rights after the completion of imprisonment?

A. Yes.

Q. Okay. Let's turn to page 16 of your affidavit. And you say there that you were able to convince your colleagues -- and we're talking about 1973 here -- that you were able to convince your colleagues "to only go so far" and that you will have to "compromise to reinstate citizenship voting rights only after completion of a sentence of parole or probation." Is that right?

A. That's correct.

Q. And, similarly, on direct, you testified that you reached a deal by throwing in probation and parole, I think, is what you said?

A. That's correct. Yes.

Q. And that deal was part of what you

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originally proposed in 1973, correct?

A. We didn't propose -- we didn't propose that in the original bill, in the '73 original bill. I don't think we did. No.

Q. Okay.

A. Joy -- you have to understand, Joy -- no, that wasn't in the original bill. Probation and parole was not in the original bill. It was in the Committee Substitute.

Q. Okay.

A. It was in the Committee Substitute.

Q. All right. I'll --

A. Yeah.

Q. I'll move on. So let's move on to paragraph 17.

So you say in paragraph 17 of your affidavit that the felony disenfranchisement law was "designed to suppress African-American voting power."

And you say in paragraph 18 of your affidavit that what you were able -- what you were able to achieve in 1973 was "to make the system practiced in North Carolina somewhat less discriminatory." Is that right?

A. That's correct.

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Q. So you think you were able to fix some of the worst parts of the law, but you weren't able to fix them all. Is that -- is that correct?

A. That's correct.

Q. Okay. So let's see.

Moving on. You testified on direct that the automatic restoration of rights that you were able to achieve in 1973 removed any issues about having to pay a fee to go to court, hire a lawyer, that sort of thing, correct?

A. That's correct.

Q. Okay. But the 1973 bill, it didn't remove issues with being able to pay fees relating to completing probation or parole or having your parole or probation extended because you couldn't pay court supervision fees, for example, right?

A. Right. That's correct.

Q. Okay. And, Senator Michaux, you were asked some questions related to impediments to disenfranchisement of African Americans in the years since 1973, in practice?

A. Yes.

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Q. You didn't attempt to comprehensively describe all of the impediments that exist today or that have existed since 1973, correct?
A. That's correct.
Q. And you would have no reason to dispute that conditioning restoration of voting rights on the payment of fees relating to completing probation and parole disproportionately affects African Americans even today. Is that right?
A. Yes, I would say that's correct. Yes.
Q. Okay. I just want to clear up one thing about your testimony on direct. I think there might have been some confusion about when lawyers for the North Carolina NAACP first spoke with you in connection with this particular lawsuit, specifically.
So this lawsuit was originally filed in November of 2019, which was eight months ago. And, in fact, the lawyers for the -- for the North Carolina NAACP spoke to you for the first time in connection with this particular case just a couple months ago, in May of 2020; is that right?
A. Yes. Yes.
Q. We spoke to you -- the lawyers for the

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North Carolina NAACP spoke to you shortly before filing the summary judgment motion, not the original lawsuit, not the original complaint. Is that -- is that right?
A. I'm not sure about that. I know that I talked -- that I've had several conversations over a period of time about this and other matters. And some were -- all of the -- a lot of the other matters were all brought in about the same time.
Q. Okay.
A. And I can't specifically say that was -- that was a part of the thinking, yes, but I can't say we specifically -- we recognized it, that that was one of the things, but I don't remember the full conversation, no.
Q. Okay. Senator Michaux, I just have one final question, which is: Can you just talk a little bit about the importance of the right to vote, in general, for African Americans, specifically, or just the importance of the right to vote, and why you felt so strongly about these issues? I know it's a big question.
A. That is a big question. Everybody

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cherishes the right to vote. Everybody understands that people with the power of the vote and with the right to vote have -- have the right to make changes in their lives. Everything is based on your being able to help foment whatever changes in the law you wanted to help you, not only yourself, but the rest of your constituency, for the rest of your community, for the rest of the country.
Voting -- voting is one of those cherished things in which you feel as though you have a -- you are a -- you are a participant in directing the way that you live your life in this country, or anywhere. I mean, it's -- it's a foregone conclusion in everybody's mind -- in my mind, in particular -- that if you don't express that right to vote, if you don't vote, you don't have anything to complain about. And this is one way of expressing your dissatisfaction or your satisfaction with the way you live your life. They say money -- they say "Money is the mother's milk of politics." That's not true. Voting is.
MS. THEODORE: Thank you very much,

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Senator. That's all that -- that's all that the plaintiffs have.
MR. RABINOVITZ: This is Brian Rabinovitz, again, for the Legislative Defendants. I would -- I don't have any other questions.
And Representative and Senator Michaux, I would just like to thank you very much for your time today. You've been very generous in giving us many hours out of your morning, and I very much appreciate that, and appreciate Professor Joyner's work in setting this all up and helping this go smoothly. So thank you very much.
THE WITNESS: No problem.
Ms VYSOTSKAYA: And for the Board of Elections, we don't have any follow-up questions. We very much appreciate Representative Michaux' testimony today, that somebody of that stature and importance in North Carolina would dedicate so much time to us this morning is great. I appreciate it.
THE WITNESS: Thank you.
THE REPORTER: Okay. Conclude the

record?

MS. VYSOTSKAYA: Yes, please. Thank you.

Thank you, Madam Court Reporter. We appreciate you hanging with us with the technological issues.

MS. THEODORE: Plaintiffs would like a copy.

MR. RABINOVITZ: And I would like a copy for the Legislative Defendants.

MR. COX: The State Board Defendants as well.

(Deposition concluded at 1:22 p.m.)

(Signature reserved.)

REPORTER'S CERTIFICATE

NORTH CAROLINA)
WAKE COUNTY)

I, Denise Y. Meek, a Court Reporter and Notary Public in and for the State of North Carolina, do hereby certify that prior to the commencement of the examination, SENATOR HENRY M. MICHAUX, JR., was duly remotely sworn by me to testify to the truth, the whole truth, and nothing but the truth.

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 date hereinbefore set forth, to the best of my ability.

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 a relative nor employee of such attorney or counsel hereto, and that I am not financially interested in the action.

IN WITNESS WHEREOF, I have hereto set my hand this 8th day of June 2020.

Denise Y. Meek

DENISE Y. MEEK
Court Reporter/Notary Public
State of North Carolina

COMMISSION: 201519500202
EXPIRATION: July 8, 2020

ERRATA SHEET

CAPTION: Community Success Initiative, et al. vs. Timothy K. Moore, et al.

JOB NO.: 298767

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:

PAGE LINE CORRECTION AND REASON THEREFOR

____:____:____

Senator Henry M. Michaux, Jr. Date

EXHIBIT J

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, et al.,

Plaintiffs,

v.

TIMOTHY K. MOORE, et al.,

Defendants.

REQUEST FOR CLARIFICATION REGARDING IMPLEMENTATION OF INJUNCTION

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

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

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

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

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

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

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

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

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

II. Administrative Considerations in the Implementation of this Court's Orders

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

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

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

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

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

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

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

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

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

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

This list will be over-inclusive in two ways.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This the 22nd day of August, 2021.

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CERTIFICATE OF SERVICE

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

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EXHIBIT 3

Expert Report of Orville Vernon Burton

in *Community Success Initiative v. Moore*, No. 19-cv-15941 (N.C. Superior Court)

May 8, 2020

TABLE OF CONTENTS

I. Summary of Opinions

My name is Orville Vernon Burton. I teach at Clemson University in South Carolina and am the Judge Matthew J. Perry Distinguished Professor of History. I have been asked by attorneys for the plaintiffs in this litigation to assist the court in assessing the history and intent underlying the North Carolina constitutional provision and statutes disenfranchising persons convicted of crimes. Based on my more than 49 years of experience as a historian focused on the American South, and my review and research of this question for the purposes of this report, it is my opinion that:

- North Carolina's authorization of felony disenfranchisement by constitutional amendment in 1875 was racially motivated, with the end goal being the total disenfranchisement of not just persons who had committed a felony, but of all African Americans.
- North Carolina's 1877 statutory disenfranchisement of persons who had committed a felony was motivated by a desire to disenfranchise black voters and maintain white supremacy in post-bellum North Carolina. At least as early as 1866, white North Carolinians had disfranchised black North Carolinians by rendering them "infamous" through corporal punishment, and the codification of felony disfranchisement was a continuation of that tactic.
- The 1875 constitutional amendment and the 1877 statute were importantly different from the pre-civil war disfranchisement statute. These new post-bellum laws disenfranchised all people with felony convictions, not just those convicted of "infamous" crimes like treason. It is no coincidence that after Reconstruction, when felony disfranchisement turned into a tool to disenfranchise African Americans, it was used much more broadly than it was before the war when it just applied to whites. Not only did white Democrats

expand the categories of crimes that exposed North Carolinians to disenfranchisement, they added additional punishments for voting by those with felony convictions.

- The latest iterations of North Carolina's felony disenfranchisement statutes (in 1971 and 1973) represent a compromise between the original aims of black legislators who hoped to make it easier for North Carolinians to regain the right to vote and countervailing interests invested in limiting African American's access to the elective franchise. Furthermore, these statutes recapitulate the 1875 constitutional felony disfranchisement and the 1876 statutory felony disfranchisement, both of which were infected by racially discriminatory aims.
- Felony disenfranchisement in North Carolina mirrors and intersects with the disenfranchisement of black voters throughout the state's history. As black political activism threatened the power of the white ruling elite, legislators turned not only to felony disenfranchisement, but also to segregation, suffrage restrictions, and other measures designed to break the political and economic power of black communities.
- While felony disenfranchisement was primarily used as a barrier to black political activism, it also served to restrict the citizenship rights of all economically disadvantaged North Carolinians. While the white ruling elite claimed to forge an alliance with less wealthy North Carolinians, felony disenfranchisement restricted the voting rights of economically disadvantaged North Carolinians, beginning in 1776 and continuing to the present. Reformers, from the 1870s to the 1970s, recognized that disenfranchising people who committed felonies would disproportionately impact working class North Carolinians, who could ill-afford the expense of having their citizenship rights restored.

These opinions are explained and supported in further detail in the discussion portion of this report.

BACKGROUND AND METHODOLOGY

II. Professional Background and Qualifications

I received my undergraduate degree from Furman University in 1969 and my Ph.D. in American History from Princeton University in 1976 and have been researching and teaching American History at universities since 1974. Currently I am a Professor of History, Pan-African Studies, Sociology and Anthropology, and Computer Science at Clemson University as well as the Director of the Clemson CyberInstitute. From 2008 to 2010, I was the Burroughs Distinguished Professor of Southern History and Culture at Coastal Carolina University. I am emeritus University Distinguished Teacher/Scholar, University Scholar, Professor of History, African American Studies, and Sociology at the University of Illinois. I am a Senior Research Scientist at the National Center for Supercomputing Applications (NCSA) where I was Associate Director for Humanities and Social Sciences (2004-2010). I was also the founding Director of the Institute for Computing in Humanities, Arts, and Social Science (I-CHASS) at the University of Illinois and currently chair the ICHASS Advisory Board.

I am the author or editor of more than twenty books and two hundred articles. I have received a number of academic awards and honors. I was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). My book *The Age of Lincoln*, published in 2007, won the *Chicago Tribune* Heartland Literary Award for Nonfiction and was selected for Book of the Month Club, History Book Club, and Military Book Club. One reviewer proclaimed, "If the Civil War era was America's 'Iliad,' then historian Orville Vernon Burton is our latest Homer." The book was featured at sessions of the annual meetings of African American History and Life Association,

the Social Science History Association, and the Southern Intellectual History Circle. Among the articles I have published are several related to the issues discussed in this report and at least two law review articles. I was one of ten historians selected to contribute to the *Presidential Inaugural Portfolio* (January 21, 2013) by the Joint Congressional Committee on Inaugural Ceremonies. I have been recognized by my peers and was elected president of the Southern Historical Association and of the Agricultural History Society and elected to the Society of American Historians. I edited two academic press series for the University of Virginia Press: *The American South* Series and the *A Nation Divided: Studies in the Civil War Era* Series. I was also elected by my university peers as president of the Faculty Senate at the University of Illinois. In 2007 the Illinois State legislature honored me with a special resolution for my contributions as a scholar, teacher, and citizen of Illinois, and in 2017, I received the Governor's Award for Lifetime Achievement in the Humanities from the South Carolina Humanities Council.

I have extensive experience in analyzing social and economic status, discrimination, and historical intent in voting rights cases, as well as group voting behavior. I have been qualified as an expert in the fields of districting, reapportionment, and racial voting patterns and behavior in elections in the United States. I have served as an expert witness and consultant in a number of voting rights cases beginning with *McCain v. Lybrand* (1984) and also as a consultant in state redistricting matters. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic analysis of the population, as well as on the history of discrimination and the discriminatory intent of laws. My testimony and reports have been cited by the courts. For example, in 2012 my report was cited by the Justice Department as a reason for their objection to the in-person South Carolina Voter ID law. *See* Dkt. 118-1, *South Carolina v. .United States*, No. 1:12-cv-00203-CKK-BMK-JDB (D.D.C. June

29, 2012). My testimony and my report were also cited in 2014 by the U.S. District Court for the Southern District of Texas in finding that the Texas in-person Voter ID Law was racially motivated and had a disparate effect on minorities. *Veasey v. Perry* (2:13-CV-193). I have been retained to serve as an expert witness and consultant in numerous voting rights cases by the Voting Section of the Civil Rights Division of the United States Department of Justice (DOJ), the Voting Rights Project of the Southern Regional Office of the American Civil Liberties Union, the Brennan Center, the NAACP, the Legal Defense Fund (LDF) of the NAACP, the Mexican American Legal Defense and Educational Fund, the California Rural Legal Association, the League of United Latin American Citizens, the Lawyers' Committee for Civil Rights Under Law, the Legal Services Corporation, the Southern Poverty Law Center, and other individuals and groups.

As a scholar, I have had a long-time relationship with North Carolina. I have researched and written about North Carolina, and I have researched in the archives of the State of North Carolina, at Duke University, and the University of North Carolina. I spent the 1994-95 school year at the National Humanities Center in Research Triangle and participated in seminars on Southern and North Carolina history with faculty at the University of North Carolina. I also keynoted the North Carolina Historical Annual meeting, and was a consultant for the University of North Carolina library on their Southern History collection as well as for their Mellon digital grant. I have been invited to present papers and talks and participate in seminars at a number of North Carolina colleges and universities including the University of North Carolina at Chapel Hill, at Greensboro, and at Charlotte, Duke University, and North Carolina State University, as well as the North Carolina Archives. I was one of two outside historians who were hired as consultants for the University of North Carolina at Greensboro to help develop their Ph.D. program. Following the

Shaw v. Reno North Carolina redistricting decision in 1993, Duke Historian John Hope Franklin and Judge Leon Higginbotham brought me from the University of Illinois for a workshop and to consult on how to apply the Voting Rights Act in light of the recent decision on redistricting and gerrymandering. I was invited to give the keynote for the new North Carolina museum for the Civil War and Reconstruction which was scheduled for April 21 and 22 in Fayetteville, but which is now being rescheduled.

I am being compensated at $300 per hour for my work on this case. My compensation is not contingent on or affected by the substance of my opinions or the outcome of this case.

To the best of my knowledge and memory, in the last five or so years I have given testimony and/or depositions in the following cases: (i) *Perez v. Perry* (5:11-CV-00360, W.D. Tex.) (the first report and deposition was in 2011 and the case continued so that I presented a second report, deposed again, and testified in 2017); (ii) *South Carolina v. United States* (1:12-cv-00203, D.D.C.); and (iii) *Veasey v. Perry* (2:13-CV-193, S.D. Tex.). In addition, I testified on the VRA in a Congressional Briefing on Friday, Dec. 4, 2015. A curriculum vitae and bio are attached to this report.

III. Aims, Methodology, and Materials Reviewed

In this report, I have employed the standard methodology used by historians and other social scientists in investigating the intent underlying the adoption, operations, and maintenance of election laws. When analyzing political decision-making, historians examine the circumstantial evidence regarding the political, institutional, and social context in which a decision is made, as well as direct evidence of the reasons asserted for the decision. We examine relevant scholarly studies, newspaper coverage of events, reports of local, state or federal governments, relevant court decisions, and the record in court cases, including expert reports,

deposition and trial testimony, and statistical data. In writing this report, I have examined a wide range of sources. I have relied on primary and secondary sources available to me at the time of writing this report. This report makes extensive use of primary sources, especially contemporary newspapers, which record debates and speeches, and help to provide a barometer of public sentiment. Where possible, I have consulted newspaper accounts from multiple perspectives, and checked for accuracy. I have also read the records of both houses of the North Carolina General Assembly, the journals and debates of the constitutional conventions of 1835 and 1875, bill histories, and public statutes. I have also used oral histories and videos that have been recorded and preserved, and have reviewed a declaration from Rep. Henry M. Michaux, Jr. I have also consulted secondary works on politics and race relations in North Carolina, specifically, as well as in the South as a whole. This report features extensive footnotes to allow readers to assess the accuracy and credibility of my evidence and my conclusions.

FINDINGS

IV. Introduction: The Struggle for Voting Rights in North Carolina

When the Voting Rights Act of 1965 (VRA) was enacted, less than half of North Carolina's one hundred counties were covered. More African Americans (estimated at 46.8 percent of eligible voters) were registered to vote in North Carolina before 1965 than in any of the other six states covered under the VRA.[1] Yet, in spite of North Carolina's image for years as more progressive than other southern states, North Carolina "has been most effective in belittling

[1] William B. Keech and Michael P. Sistrom, "North Carolina," in *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* Edited by Chandler Davidson and Bernard Grofman (Princeton: Princeton University Press), 155.

the voting strength of a sizable black population."[2] William B. Keech and Michael P. Sistrom, two scholars of North Carolina and the history of the Voting Right Act, suggest that for political leaders in the state, "projecting the progressive image was a less blatant and therefore more effective way to maintain a system of white supremacy." In 1984, one of the most important and successful voting rights cases, the landmark *Thornburg v. Gingles*, "was a response to the fact that rates of black officeholding still lagged, state election law and local government were slow to reform, and racially polarized campaigns and voting" were still rampant in North Carolina nearly two decades after passage of the 1965 Voting Rights Act.[3]

Felony disfranchisement in North Carolina has to be understood in this context. This report chronicles the disfranchisement of people convicted of a felony as a tool used to restrict the political activism of minorities (particularly African Americans) and poor North Carolinians, beginning with pre-Civil War statutes that established a process to allow those who had been convicted to have their citizenship rights restored even as those leaders denied those same citizenship rights to free black North Carolinians. Then, in the 1870s, in the face of the Reconstruction Act of 1867, which enfranchised black men, and the 14th Amendment (ratified in 1868) and 15th Amendment (ratified in 1870), which protected the right of all men to vote, Conservative Democrats turned to felon disfranchisement to "legally" deny black North Carolinians the right to vote. The disfranchisement of people convicted of a felony began a decades-long campaign to disfranchise African-American voters, which included the felony disenfranchisement provision added in the 1875 constitutional amendments and culminated in

[2] Minion K. C. Morrison, *Black Political Mobilization: Leadership, Power, and Mass Behaviour* (Albany: State University of North Carolina Press, 1987), p. 83; Keech and Sistrom, "North Carolina," pp. 155-56.
[3] Keech and Sistrom, "North Carolina," p,156.

the passage of the so-called "disfranchisement" amendment authorizing literacy tests and poll taxes in 1900.

The Civil Rights Movement came early to North Carolina, and Greensboro sit-ins in 1960 sparked student activists throughout the South.[4] The 1970s were a crucial juncture in North Carolina's history. Following the 1965 Voting Rights Act, the first African American in the twentieth century was elected to the state legislature and by 1973, black politicians in North Carolina sought to protect the right to vote for all North Carolinians by liberalizing the state's felony disfranchisement statute. As North Carolina was beginning to fulfill the "promissory note" to which every American could lay claim - the guarantee of the inalienable rights of life, liberty, and the pursuit of happiness - the forces of conservativism (bolstered by the War on Drugs and an emphasis on law and order) blunted this revolution and left it unfinished. The changes in North Carolina's disfranchisement of people convicted of felonies left significant hurdles in place from the original racially motivated 1875 statue that made it difficult for people formerly convicted of a felony, and particularly minorities and the economically disadvantaged, to have their rights restored even today.

V. Antebellum Felony Disfranchisement

In North Carolina, "[f]rom statehood (the American Revolution) to RECONSTRUCTION race and class lines deepened."[5] In the 1830s and 1840s, North Carolina's legislators made it easier for people convicted of a felony to regain the right vote, even as they simultaneously disenfranchised black North Carolinians. Until 1835, North Carolina's suffrage requirements

[4] See especially William H. Chafe, *Civilities and Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* (New York: Oxford University Press, 1981) and Andrew Walker, *The Ghost of Jim Crow: How Southern Moderates Used Brown v. Board of Education to Stall Civil Rights* (New York: Oxford University Press, 2009), 49-84.

[5] Raymond Gavins, "North Carolina," in *Civil Rights in the United State*s, Vol 2: p p. 566, Edited by Waldo E. Martin, Jr. and Patricia Sullivan (New York: MacMillian Reference, 2000).

were unclear in two respects. First, North Carolina's original 1776 constitution had allowed "all freemen" older than twenty-one years old who met the residency, tax, and property ownership requirements to vote – this, of course, included free African Americans. Free people of color were allowed to vote in North Carolina until 1835, even while the General Assembly passed legislation (in 1827) prohibiting "free negroes and mulattoes" from immigrating to North Carolina.[6] Second, the North Carolina General Assembly had neglected the question of whether or not "infamous persons" were stripped of their rights of citizenship, and, if so, how they could have those rights restored.[7] As historian Pippa Holloway observes, before 1835 the North Carolina law regarding felony disenfranchisement was "complicated and unclear," and until 1835 there is no mention of disenfranchising voters because of crimes.[8] Infamy, as Holloway notes, "could result from the commission of an infamous crime," such as treason, bribery, or perjury, "or from the receipt of an infamous punishment such as whipping," which could be inflicted for crimes like petty larceny. Between 1789 and 1835, however, the General Assembly refranchised more than eighty North Carolinians by private legislative act – clearly, North Carolinians were being disfranchised after committing "infamous crimes," even though there was no statewide statute that disfranchised citizens as a penalty for criminal offenses.[9]

As noted above, until 1835, North Carolina's legislature answered the problem of how to restore citizenship rights to "infamous persons" by resorting to "one-off" private legislation. In the 1830s, however, North Carolinians came to the consensus that private legislation should be limited, not only because they viewed it as being undemocratic, but also because it wasted

[6] "Captions of the Laws," *The Elizabeth-City Star and North-Carolina Eastern Intelligencer* (Elizabeth City, NC), February 17, 1827.
[7]. See Pippa Holloway, *Living in Infamy: Felon Disfranchisement and the History of American Citizenship* (New York: Oxford University Press, 2013), 6, 34, 91.
[8] Holloway, *Living in Infamy*, 20, n. 10.
[9] "Report of the Commission on Public-Local and Private Legislation Authorized by the 1947 General Assembly," *Popular Government*, February-March, 1949:3,5.

legislators' time and the state's money.[10] Delegates at North Carolina's 1835 Constitutional Convention were fiercely critical of the undemocratic nature, expense, and inconvenience of private laws. Congressman William J. Gaston, who represented Craven County, argued that private acts were "needless and pernicious," and even went as far as to describe them as "trash."[11] For these reasons, the 1835 Constitutional Convention prohibited private legislation on a number of issues, including "the restoration of citizenship to persons convicted of infamous crimes."[12] Legislation to "restore the rights of citizenship to any person convicted of infamous crime" was one type of private legislation, and curtailing private acts created uncertainty about how those who were convicted of "infamous crime" could be refranchised.[13]

While the Constitutional Convention of 1835 only complicated the question of the citizenship rights of those convicted of felonies, it resolved with crushing finality the uncertainty about the suffrage rights of free black North Carolinians. Free black voters were explicitly disenfranchised legislatively during the 1835 North Carolina Constitutional Convention. Article I, section 3, subsection 3 of the 1835 North Carolina Constitution stated that "no free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive" would be able to vote in state elections.[14] White slaveholders, who dominated North Carolina's

[10] In 1833, Hugh Welch, the editor of the Yadkin and Catawba Journal, argued that, by "favouring one person or ten persons . . . to the exclusion of one Hundred or one Thousand others," private legislation "is making an unrighteous and unconstitutional distinction between equals." See *The Yadkin and Catawba Journal* (Salisbury, NC), December 16, 1833; "State Convention," *The Fayetteville Weekly Observer* (Fayetteville, NC), July 21, 1835.
[11] Joseph Gales, ed., *Proceedings and Debates of the Convention of North Carolina, Called to Amend the Constitution of the State, Which Assembled at Raleigh, June 4, 1835, To which are Subjoined the Convention Act and the Amendments to the Constitution, Together with the Votes of the People* (Raleigh: Joseph Gales and Son, 1836), 176.
[12] William S. Powell, *North Carolina Through Four Centuries* (Chapel Hill, NC: The University of North Carolina Press, 1989), 280;Harold J. Counihan, "The North Carolina Constitutional Convention of 1835: A Study in Jacksonian Democracy," *The North Carolina Historical Review* 46, no. 4 (October 1969), 359.
[13] *The Charlotte Journal* (Charlotte, NC), July 24, 1835.
[14] North Carolina Constitutional Convention, *Journal of the Convention, Called by the Freemen of North-Carolina, to Amend the Constitution of the State, Which Assembled in the City of Raleigh, on the 4th of June, 1835, and Continued in Session Until the 11th Day of July Thereafter* (Raleigh: J. Gales and Son, 1835), 98.

legislature until the outbreak of the Civil War, were terrified about a potential violent slave rebellion, like Nat Turner's 1831 slave insurrection in Southampton County, Virginia (on North Carolina's northeastern border), and the actual threat of black political activism – particularly in eastern North Carolina – to white supremacy. In addition to disfranchising all black North Carolinians (free or enslaved), the General Assembly passed statutes that limited enslaved persons' economic independence and pathways to freedom. Laws prohibited slaves' ownership of domestic animals, hunting, buying and selling with either enslaved persons, free blacks, or white North Carolinians, and "hiring out" themselves. Laws also restricted African American potential political independence by banning enslaved persons preaching and making it illegal to teach enslaved people to read or write.[15] Moreover, the law made a clear distinction by race in the punishment: for whites who might teach enslaved people to read or write, the court had "discretion" to imprison or fine a convicted white man or woman a minimum of a hundred dollars and not more than two hundred, but "a free person of colour shall be whipped …not exceeding thirty nine lashes nor less than twenty lashes."[16]

The outright disenfranchisement of all black voters was justified as a response to fears that, as articulated by an assembly of the citizens of New Bern in 1831, "when the slave sees him whom he regards as his associate and equal . . . respectfully treated by men of high character" it could lead to "the most calamitous of all contests, *a bellum servile,* a servile war."[17] White North

[15] As noted by Paul D. Escott, "In 1860 more than 85 percent of the members of the general assembly were slaveholders (the highest percentage in the South), and more than 36 percent owned at least twenty slaves (one of the highest percentages in the South)" (Paul D. Escott, *Many Excellent People: Power and Privilege in North Carolina, 1850-1900* (Chapel Hill, NC: University of North Carolina Press, 1985), 15); Joan R. Sherman, "Introduction," in *The Black Bard of North Carolina: George Moses Horton and His Poetry,* John R. Sherman, ed. (Chapel Hill, NC: University of North Carolina Press, 1997), 17-18. For more on Nat Turner's insurrection, see David F. Allmendinger, Jr., *Nat Turner and the Rising in Southampton County* (Baltimore: Johns Hopkins Press, 2014).

[16] Legislative Papers, 1830–31 Session of the General Assembly see at https://docsouth.unc.edu/nc/slavesfree/slavesfree.html

[17] *The Sentinel* (New Bern, NC), December 7, 1831.

Carolinians, in the aftermath of Nat Turner's rebellion, claimed that allowing free black North Carolinians to vote would cause a slave rebellion. Some North Carolinians – like the pseudonymous "Citizen," who wrote to New Bern's *Spectator* – insisted that since the 1776 North Carolina Constitution stipulated that "all free men" were entitled to vote, and "free persons of colour certainly come under the denomination *free men,"* free African Americans were "entitled to this franchise."[18] It is unsurprising that resistance to free black voting – and objections to any attempt to disfranchise free blacks – emerged in New Bern. As John Hope Franklin observes, free African Americans were "active in politics" in New Bern, as well as other areas of eastern North Carolina.[19]

Historian Lacy K. Ford contends that the disfranchisement of free blacks in North Carolina was in part a reaction to the fact that "in eastern North Carolina . . . free black voting played a significant role in some local elections."[20] The Convention delegates who gathered in June 1835 were unconvinced that free African Americans were truly "free men." James Bryan, the representative from Carteret County, raised the specter of political corruption when he contended that enfranchising black North Carolinians would "make him the corrupt tool of the designing and ambitious demagogue, and subject him to a slavery *ten times* more ignominious than that of the disfranchised private citizen."[21] Jesse Wilson, of Perquimans County, argued that disfranchising free black voters was essential to maintain the barrier between black and white North Carolinians. During the Constitutional Convention, Wilson declared that "color is a

[18] "Citizen," "For the Spectator," *The Spectator* (New Bern, NC), December 9, 1831.
[19] John Hope Franklin, *The Free Negro in North Carolina* (Chapel Hill, NC: University of North Carolina Press, 1943), 106-107.
[20] Lacy K. Ford, *Deliver Us From Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 421.
[21] Joseph Gales, ed., *Proceedings and Debates of the Convention of North Carolina, Called to Amend the Constitution of the State, Which Assembled at Raleigh, June 4, 1835, To which are Subjoined the Convention Act and the Amendments to the Constitution, Together with the Votes of the People* (Raleigh: Joseph Gales and Son, 1836), 68

barrier," and "if you make it your business to elevate the condition of the blacks, in the same proportion do you degrade that of the poorer whites," with the ultimate outcome being "an *increase of mixed breeds* [emphasis in original]."[22] Delegates from eastern North Carolina strongly supported disenfranchising free black voters, and, by only five votes, as historian Harold J. Counihan writes, "by a vote of sixty-six to sixty-one, the right of free Negroes to vote was abrogated in toto."[23]

With the disfranchisement of free black North Carolinians accomplished, North Carolina's General Assembly eventually resolved the question of citizenship restoration. In the 1836-1837 legislative session of the North Carolina Assembly, the issue of "restoring to credit persons convicted of infamous crimes" was referred to the House of Commons Committee on the Judiciary.[24] This effort to pass legislation that would allow North Carolinians who had been disfranchised for "infamous crimes" culminated in the passage of a "Bill providing for restoring to the rights of citizenship persons convicted of infamous crimes" during the 1840-1841 legislative session. This legislation established a procedure whereby North Carolinians who had "forfeited their rights to citizenship" could have those rights restored by petitioning the Superior Court of Law.[25] This process for citizenship restoration made it possible for even those (white) North Carolinians to lose the taint of "infamy" and regain their rights as citizens. Ironically and

[22] "State Convention," *The Weekly Standard* (Raleigh, NC), June 19, 1835; Lacy K. Ford, "Making the 'White Man's Country' White: Race, Slavery, and State-Building in the Jacksonian South," *Journal of the Early Republic* (Winter 1999):732-734. This class argument is consistent with the argument about the origins of colonial slavery based on race, see Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal in Colonial Virginia* (New York: W. W. Norton, 1975) argued that class and class conflict led to slavery as the lifetime status for African Americans.

[23] Counihan, "The North Carolina Constitutional Convention of 1835: A Study in Jacksonian Democracy," 347. For a more detailed discussion of the debate over free black disenfranchisement at the 1835 Constitutional Convention, see Franklin, *The Free Negro in North Carolina*, 109-116

[24] *The Weekly Standard* (Raleigh, NC), November 30, 1836.

[25] *The Raleigh Register* (Raleigh, NC), December 22, 1840; "Captions of the Laws," *The Greensboro Patriot* (Greensboro, NC), January 19, 1841; Ch. 36, 1840 N.C. Sess. Laws 68.

notably, even as North Carolina's legislators disenfranchised all free black men, they allowed white men convicted of "infamous crimes" to regain the right to vote.

VI. Post-Civil War Felony Disfranchisement

The Civil War changed America and ended slavery, and the Reconstruction Amendments that followed redefined personal freedom in the United States by assuring that it was protected by federal law against the states. The 13th Amendment, adopted in 1865, outlawed slavery, and was soon interpreted in the courts and understood generally to uproot the badges and incidents of slavery. The 14th Amendment, adopted in 1868, granted citizenship and, no less momentous, it also gave all persons sweeping federal protections against the states—privileges and immunities, due process, and equal protection. The 15th Amendment, adopted in 1870, granted the right to vote and prohibited the states from denying or abridging male citizens' right to vote "on account of race, color or previous condition of servitude."

To emphasize the force of the new provisions, all three new amendments added clauses specifying that "Congress *shall have power to enforce*" the new amendment. The alteration in the Constitution was revolutionary, a transformation of a core American belief in the need to limit federal governmental power, which the historian Eric Foner recently aptly proclaimed a *"Second Founding.*[26] As a consequence of the 13th, 14th, and 15th amendments, as well as the Civil Rights Act of 1866, North Carolina could no longer rely on its pre-Civil War strategy of outright denying the vote to black citizens.

i. Presidential Reconstruction, Corporeal Punishment, and Black Codes, 1865 – 1867

As president during most of the Civil War, Abraham Lincoln espoused reconciliation along with resolve. Lincoln's perspective evolved on issues of race, and at various times, he

[26] Eric Foner, The *Second Founding": How the Civil War and Reconstruction Remade the Constitution* (New York: W. W, Norton, 2019).

supported the franchise for those African Americans who had fought for the Union, or "the most intelligent," and sometimes even hinting more. By the time General Grant accepted Lee's surrender, on April 9, 1865, the 13th Amendment had been ratified by 20 states (including four from the former Confederacy) of the 27 needed to make it part of the Constitution and radically change that venerable document of 1787. Lincoln delivered an impromptu speech from the White House balcony to the gathering crowd. He spoke about "some new announcement for the people of the South." One listener at this speech, John Wilkes Booth, understood where Lincoln was leading the nation. He told his companion, "That means Nigger citizenship. Now, by God, I'll put him through. That is the last speech he will ever make." And it was. The course of history was changed by a single gunshot that killed Abraham Lincoln on April 15, 1865, six days after Lee's surrender.[27]

Lincoln's successor was Andrew Johnson. Born in Raleigh, North Carolina, Johnson had been a Democratic Senator from Tennessee who had been added to the Republican ticket in 1864 as a "unity" measure. It proved a fateful choice. The two Presidents had very different views about the Nation, the South, African Americans, citizenship, liberty, and freedom, among others. Lincoln's assassination and Johnson's succession thus changed the nation's direction. President Johnson quickly began reversing Lincoln's policies. President Johnson set out the contours of his Reconstruction policies with his native state, North Carolina, the first state for which he oversaw readmittance to the Union. His terms for readmitting the rebel states to the Union were few: repeal the state's secession ordinance, repudiate the state's Confederative war debt, and

[27] Lincoln Speech from the Balcony, Last Public Address, April 11, 1865, Letter to Nathaniel P. Banks (Louisiana) on Reconstruction, Aug. 5, 1863 and Letter to Michael Hahn, March 13, 1864 in Orville Vernon Burton, *The Essential Lincoln*, pp. 171-77, 144-46, 162-63; Burton, *The Age of Lincoln* (Hill & Wang, 2007), pp.238-42, quote p. 240; ; James M. McPherson, *Battle Cry of Freedom*, p. 852. Lincoln lived to see ratification by 21 of the required 27 states ratify the 13th amendment, the other 6 came in under President Johnson's "North Carolina plan.".

recognize the end of slavery by ratifying the 13th Amendment and amending their own state constitutions likewise.

Johnson's view on African American suffrage was made clear to the nation in his May 29, 1865 "Proclamation Establishing Government for North Carolina." Lincoln's cabinet had split on whether to provide African Americans the franchise, but in his call for North Carolina's reconstruction, President Johnson mandated that the only eligible voters should be those who were qualified "before the 20th day of May, A. D. 1861, the date of the so-called ordinance of secession," effectively instituting a racial grandfather clause. That told North Carolina, and the other former Confederate states, that African Americans, who of course were not able to vote in 1861, must not be granted the right to vote. In office just 45 days, President Johnson announced to the country that the government of the United States of America was committed to making freedom for African Americans mean as little as possible. Johnson's achievement and legacy were to encourage many Southerners to believe that they could change the outcome of the War, and to spark a determination among enough of them to use fraud and violence to do just that. In the eyes of Republican Congressional leaders (such as Massachusetts Senator Charles Sumner), President Johnson had, by limiting suffrage to whites, thrown away the prospect of the southern states creating a more equitable society. Where once the South had seemed ready "to accept the *rule of justice,"* Sumner suggested to Treasury Secretary Hugh McCulloch, they now would recognize discrimination based on color.[28]

[28] Proclamation Establishing Government for North Carolina, May 29, 1865, *The Papers of Andrew Johnson,* LeRoy P. Graf, Ralph W. Haskins, and Paul H. Bergeron, eds. (Knoxville: University of Tennessee Press, 1967-1999), 8: 4, 136-138; Charles Sumner to Hugh McCulloch, July 12, 1865, Hugh McCulloch to Charles Sumner, August 15, 1865, Hugh McCulloch Papers, Library of Congress; On Johnson, see Eric L. McKitrick, *Andrew Johnson and Reconstruction* (Chicago: University of Chicago Press, 1960), esp. pp. 216-18, and Hans L. Trefousse, *Andrew Johnson: A Biography* (New York: Norton, 1997, reprint of 1989 edition). See also, Dan T. Carter, *When the War Was Over: The Failure of Self-Reconstruction in the South, 1865-1867* (Baton Rouge: Louisiana State University Press, 1985), 25; Eric Foner, *Reconstruction,* 183-184; Perman, *Reunion Without Compromise,* 61-62.

After the Civil War, white Democrats, who were no longer able to use explicitly racial barriers to disfranchise black North Carolinians, turned pre-emptively to felony disfranchisement and "Black Codes" as tools to disqualify African-American voters and quash rising black political activism in North Carolina. In early December 1866, General Daniel Sickles, who took command of the newly-formed Department of the Carolinas in the spring of 1866, issued an order to North Carolina Governor Jonathan Worth, a Conservative and the state treasurer during the Civil War, that prohibited all corporeal punishment by North Carolina courts. Almost immediately, Worth appealed Sickles's order to President Johnson.[29] The destruction of farms and disruption of commerce meant that hunger was a daily reality for many North Carolinians after the Civil War. A poem in the *Wilmington Daily Dispatch* in February 1866 opined that "the gaunt fiend of famine now prowls in the sun/To accomplish the ruin that war had begun;/And the moan of the starving, in unpitied pain,/Pray for mercy to God . . . in vain."[30] For some, theft became the only alternative, especially during the fall and winter months. Corporeal punishment – the "crack of the lash" – was justified as an important deterrent for petty theft.[31] Thirty-nine lashes, "the penalty prescribed by the Mosaic law," was a common penalty for "the paltry crime of stealing" even food for survival.[32]

Corporeal punishment also had a more insidious purpose – the disfranchisement of black North Carolinians. In 1866, Conservative Democrats in the General Assembly passed an "Act Concerning Negroes and Persons of Color," colloquially known as the "black code," which banned interracial marriages, imposed strict vagrancy laws and gave white sheriffs broad

[29] *The Wilmington Daily Dispatch* (Wilmington, NC), May 26, 1866; "Order from General Sickles to Governor Worth," *The Wilmington Daily Dispatch* (Wilmington, NC), December 9, 1866; Mark L. Bradley, *Bluecoats and Tarheels: Soldiers and Civilians in Reconstruction North Carolina* (Lexington, KY: University Press of Kentucky, 2009), 137.
[30] "Results of War in the South," *The Wilmington Daily Dispatch* (Wilmington, NC), February 14, 1866.
[31] "A Raid on Poultry," *The Weekly Progress* (Raleigh, NC), November 1, 1866.
[32] "North Carolina Items," *The Weekly Progress* (Raleigh, NC), April 14, 1866.

authority to prosecute freedman for vagrancy, and prohibited freedmen from voting.[33] Alongside North Carolina's black code, white North Carolinians turned to whipping to render freedmen "infamous" in the sight of the law. In the fall of 1866, reports began to come in from military headquarters in Charleston and Raleigh that "in all country towns the whipping of negroes is being carried on extensively," with "the real motive" being "to guard against their voting in the future, there being a law in North Carolina depriving those publicly whipped of the right to vote."[34]

Americans – especially in the North – were incensed that white North Carolinians were attempting to reinstate another form of slavery. Disfranchisement for criminal offenses, as the *Boston Daily Advertiser* noted, "may set to work . . . to disqualify the freedmen generally, and still it may be hard to find a violation of the letter of the civil rights act [of 1866]."[35] In a speech before the United States House of Representatives on January 7, 1867, Thaddeus Stevens used the situation in North Carolina as an example to support his proposal to prohibit disfranchisement for any crime "other than for insurrection or treason." According to Stevens, officials from the Freedmen's Bureau reported that "in North Carolina . . . they are now whipping negroes for a thousand and one trivial offenses . . . and in one county . . . they had whipped every adult male negro," the purpose of which was "preventing these negroes from voting."[36] *Harper's Weekly*, in January 1867, reported that "*every day* during about a *month*, while the State court was recently sitting at Raleigh, there was a crowd of nearly five hundred people outside the court-house witnessing the public whipping of colored men" [emphasis in

[33] Roberta Sue Alexander, *North Carolina Faces the Freedmen: Race Relations During Presidential Reconstruction, 1865-67* (Durham, NC: Duke University Press, 1985), 39-51.
[34] *The National Anti-Slavery Standard* (New York, NY), January 5, 1867.
[35] *The Boston Daily Advertiser* (Boston, MA), December 28, 1866.
[36] *The Congressional Globe*, 39th Congress, 2nd Session, 324 (1867); "Congressional Proceedings," *The Charleston Daily Courier* (Charleston, SC), January 8, 1867.

original]. It noted that "this sentence of whipping operates in North Carolina as a civil disqualification," meaning that, if African Americans were ever granted the right to vote, they would be "disqualified in advance." "Thus," *Harper's Weekly* concluded, "the freedmen are still pursued and sacrificed by the ancient laws of Slavery."[37] Contemporaries recognized the far-reaching consequences of this tactic. As the *Atlantic Monthly* noted in March 1867, "if equal suffrage should be imposed upon that State by the [eventual ratification of the] Constitutional Amendment . . . how much time it would require thus to disfranchise every negro in the State is a mere arithmetical problem for the consciences of slavery-loving and negro-hating juries."[38]

ii. Disfranchisement Following the 14th Amendment and Congressional Military Reconstruction Acts of 1867

In March 1867, the passage of the First Reconstruction Act began a new stage of Reconstruction in North Carolina. As part of the Second Military District (one of five military districts created by the Reconstruction Act), North Carolina was placed under a military government first led by Major General Sickles. Furthermore, the Reconstruction Act required that North Carolina write a new constitution which guaranteed universal manhood suffrage and ratify the 14th Amendment.[39] The scheme to disfranchise black voters through corporeal punishment appears to have been unimpeded by the Reconstruction Acts. In August 1867, in Murfreesboro, in Hertford County, "rebel sympathizers" insisted that "a man who had been whipped at the whipping post was disfranchised" and, even though these claims were "overruled by the Registrars," it "deterred" many African Americans from registering to vote.[40]

[37] "Whipping and Selling American Citizens," *Harper's Weekly*, January 12, 1867, 18. See also "Steven F. Miller, et al., "Between Emancipation and Enfranchisement: Law and the Political Mobilization of Black Southerners during Presidential Reconstruction, 1865-1867," *Chicago-Kent Law Review* 70, issue 3 (1995):1059-1077.
[38] "The True Problem," *The Atlantic Monthly*, March 1867, 374.
[39] Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 276.
[40] "Registration in North Carolina," *The Weekly Standard* (Raleigh, NC), August 21, 1867.

Disfranchisement via the whipping-post was relatively short-lived. Even though President Johnson overruled Sickles and ordered him to rescind his order shortly after it was issued, Sickles issued a new order, General Orders No. 10, which reaffirmed that "the punishment of crimes and offences by whipping, maiming, branding, stocks, pillory, or other corporeal punishment" was prohibited.[41] Nevertheless, disenfranchising for crimes proved to be a powerful tool to prevent black suffrage (even in the face of the Reconstruction Acts), and it provided a key tactic for white North Carolinians who sought to restore again the mastery of the white elite. As historian Pippa Holloway observes, "disenfranchisement for prior criminal convictions was among the first strategies employed to block African American suffrage in North Carolina," since "white southerners already believed that African Americans were degraded and infamous" and "whipping *restored* them to this status."[42]

iii. North Carolina's 1868 Enfranchisement Constitution

North Carolina's 1868 Reconstruction-era Constitution did not contain a provision specifically authorizing felony disenfranchisement, and adopted expansive suffrage provisions and protections. The 1868 Constitutional Convention was dominated by white delegates (there is disagreement about how many of the delegates were African Americans, ranging from thirteen to sixteen, but at least fourteen of the 121 delegates have been identified with certainty as African American). Albion Tourgée, a white Republican originally from Ohio, played a crucial role in shaping the suffrage provisions of the new state constitution, to the extent that the convention would become known as "Judge Tourgée's convention."[43]

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[41] "Official – The President Overrules General Sickles," *The Richmond Dispatch* (Richmond, VA), December 21, 1866; "General Order No. 10," *Wilmington Journal* (Wilmington, NC), April 19, 1867; Bradley, *Bluecoats and Tarheels,* 138.
[42] Holloway, *Living in Infamy,* 34.
[43] Richard L. Hume and Jerry B. Gough, *Blacks, Carpetbaggers, and Scalawags: The Constitutional Conventions of Radical Reconstruction* (Baton Rouge, LA: Louisiana State University Press, 2008), 118; "Daniels Makes An Appeal for the Tax Amendments," *The Greensboro Daily News* (Greensboro, NC), November 2, 1920.

Tourgée later became a nationally renowned white lawyer and writer, publishing in 1879 a best-selling novel, *A Fool's Errand,* sharply critical of white supremacy prevalent in the postwar South, and based on his experiences in North Carolina after the Civil War and during Reconstruction. The son of a devout Methodist farming family in Ohio, Tourgée had fought for the Union in the Civil War and was wounded at the first Battle of Bull Run. Since then, in addition to practicing law, Tourgée made unflinching admonitions against lynching, segregation, and disfranchisement. Tourgée ultimately went on to argue for the African American plaintiffs at the Supreme Court in the infamous *Plessy v. Ferguson* segregation case.[44]

The leadership of black delegates – particularly James W. Hood, a preacher with the African Methodist Episcopal Zion denomination who had presided over the Freedman's Convention in Raleigh which called for the franchise for African Americans in 1865 – was also key in shaping the 1868 Constitution.[45] These African-American delegates, with the support of white Republicans like Tourgée and other native North Carolina whites in this display of early "fusion governance," succeeded in making universal manhood suffrage part of the new constitution. Article VI of the 1868 Constitution guaranteed that "every male person born in the United States, and every male person who has been naturalized, twenty-one years old or upward"

[44] Mark Elliott, "Race, Color Blindness, and the Democratic Public: Albion W. Tourgée's Principles in *Plessy v. Ferguson*," *The Journal of Southern History,* vol. 67, no. 2 (May 2001), pp. 289-90 and *Colorblind Justice: Albion Tourgée and the Quest for Racial Equality from The Civil War to* Plessy v. Ferguson (New York: Oxford University Press, 2006); Albion W. Tourgée, *A Fool's Errand: A Novel of the South during Reconstruction* (New York: Waveland Press, 1991; initially published in 1879 by Fords, Howard & Hulbert in New York). Quoted in Thomas Brook, *Plessy v. Ferguson: A Brief History with Documents* (Bedford: St. Martins, 1997), p. 128. Otto H. Olsen, *Carpetbagger's Crusade: The Life of Albion Winegar Tourgée* (Baltimore: The Johns Hopkins University Press, 1965) and "Albion W. Tourgée and Negro Militants of the 1890's: A Documentary Selection," *Science and Society* 28:2 (1964): 183-208, and "Albion W. Tourgée: Carpetbagger," *The North Carolina Historical Review,* vol. 40, no. 4 (October 1963), pp. 434-54; Sidney Kaplan, "Albion W. Tourgée: Attorney for the Segregated," *The Journal of Negro History,* vol. 49, no. 2 (April 1964), pp. 128-33; John David Smith and Mark Elliott, *Undaunted Radical: The Selected Writings and Speeches of Albion W. Tourgée* (Baton Rouge: Louisiana State University Press, 2010)

[45] See Leonard Bernstein, "The Participation of Negro Delegates in the Constitutional Convention of 1868 in North Carolina," *The Journal of Negro History,* Vol. 34, No. 4 (Oct., 1949): 391-409.

would be granted the right to vote.[46] As historian Mark Elliott notes in his biography of Tourgée, the convention's decision to "adopt universal suffrage" was something of a compromise, as Tourgée had initially argued for the (temporary) disfranchisement of ex-Confederates.[47] As noted, significantly, the 1868 Constitution had no provisions for the disenfranchisement based on felony conviction.

iv. Klan Violence, "Redemption," and Adoption of Disenfranchisement Based on All Felony Convictions in North Carolina

Almost as soon as the 1868 Constitution was ratified, however, Democrats began to agitate against the universal manhood suffrage established by Article VI. Democratic Conservatives were pejorative in their descriptions of the 1868 Convention, describing it as the "Gorilla Convention" and the "Unconstitutional Convention."[48] An editorial in *The Watchman and Old North State* published in November 1868 observed that "among the many objectionable provisions which the new Constitution contains the one regulating suffrage seems to be attracting the most attention." *The Watchman and Old North State* despaired that "as the Constitution now stands tens of thousands of persons will vote who have never paid, and never intend to pay, one cent of taxes for the support of the State government."[49]

The objections to universal suffrage were part of a broad, violent effort to disenfranchise African Americans in North Carolina. Alongside election fraud, Conservative Democrats and the Ku Klux Klan turned to vigilante violence to suppress Republican voters, particularly African Americans. As the famous North Carolina Republican Albion W. Tourgee memorably observed,

[46] NC Constitution of 1868, Article VI, Subsection 1.
[47] Mark Elliott, *Colorblind Justice: Albion Tourgée and the Quest for Racial Equality from The Civil War to* Plessy v. Ferguson (New York: Oxford University Press, 2006), 128; Richard L. Hume and Jerry B. Gough, *Blacks, Carpetbaggers, and Scalawags: The Constitutional Conventions of Radical Reconstruction* (Baton Rouge, LA: Louisiana State University Press, 2008), 126-127.
[48] "The Gorilla Convention," *The Wilmington Morning Star* (Wilmington, NC), January 11, 1868.
[49] "The Future," *Watchman and Old State* (Salisbury, NC), November 6, 1868.

"It is no crime for a white man to cut a colored man open in Alamance [County]."[50] In the spring of 1870, North Carolina erupted into outright civil war, known as the Kirk-Holden War, between Klansmen and the North Carolina militia. This war was a political disaster for Governor William W. Holden, who Conservatives successfully impeached, and in the elections in November 1870, the Democrats, using intimidation, violence, terrorism. and fraud, regained control of North Carolina's General Assembly.[51]

They soon began a systematic campaign to end black political activism and reassert white supremacy in the Old North State that culminated in the disfranchisement amendment of 1900, which restricted voting rights through literacy tests and poll taxes. White Democrats, who according to Duke historian Ray Gavins, "defended the interests of planters and businessmen" in North Carolina, characterized their fight against "negro rule" as a campaign for the purity of the ballot box. Democrats began to fashion a false narrative attributing their own methods to regain political control to the integrated and progressive Republican party. According to white Democrats, Republican rule in North Carolina was only made possible by fraud and violence. In 1868, the *Wilmington Journal* argued that "the ballot-box" was "corrupted to defeat the popular will," and that Republicans had only achieved power through "the most unblushing rascality."[52] Democrats claimed that the "Radicals" had taught "the negroes to perpetrate frauds upon the ballot box."[53] In the mind of Conservatives in North Carolina, the "unconstitutional negro rule" was "backed by the sword" and "by fraud."[54] An announcement from the Conservative

[50]Quoted in Rachel Hampton, "The Ku Klux Klan in Reconstruction North Carolina: Methods of Madness in the Struggle for Southern Dominance," available at http://history.ncsu.edu/projects/cwnc/exhibits/show/kkk-methods In Civil War Era NC, last accessed 5-1-2020

[51] Jim D. Brisson, "'Civil Government Was Crumbling Around Me':The Kirk-Holden War of 1870," *The North Carolina Historical Review* 88, no. 2 (April 2011), 123-124.

[52] *The Wilmington Journal* (Wilmington, NC), November 6, 1868.

[53] *The Semi-Weekly Raleigh Sentinel* (Raleigh, NC), June 15, 1867.

[54] *The Wilmington Journal* (Wilmington, NC), July 3, 1868.

Democrats of Buncombe County for a mass meeting in Asheville on March 21, 1868 helps to explain what exactly Conservatives believed they would prevent by ending "fraud" and "purifying" the electoral process. The Conservatives of Buncombe county warned that "negro rule" would mean that the "DAUGHTERS of our poor white people" would be "forced into social equality with negro BOYS at School" and military service "under negro officers."[55] Simply put, Conservatives' calls to purify elections – including the disfranchisement of felons – served the ultimate goal of preventing racial equality and reestablishing and maintaining white supremacy in North Carolina.

In the reapportionment of 1872, Democrats packed black voters into eastern North Carolina's Second Congressional District, the so-called "Black Second," effectively quarantining black Republican voters into one district out of eight congressional districts. The Republican Governor Tod Caldwell condemned the Democrat gerrymander, describing the second district as "extraordinary, inconvenient and most grotesque," and characterizing the map drawn by Democratic legislators as "absurd and ridiculous."[56] In 1874, after the Democratic Conservatives captured seven out of eight of the state's congressional seats, six of the eight seats on the North Carolina Supreme Court, and two-thirds of the membership of both Houses of the General Assembly, Democrats sought to overthrow the "unjust and oppressive" 1868 Constitution with a new constitutional convention. One of the chief provisions targeted by the Conservatives was Article VI, as Democrats decried the suffrage provision that allowed "felons" to "vote equally with the best and purest of the land."[57]

[55] "Mass Meeting," *The Asheville News* (Asheville, NC), March 12, 1868.
[56] Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge, LA: Louisiana State Univ. Press, 1981); "Governor Caldwell on the 'Conservative' Gerrymander," *The Daily Era* (Raleigh, NC), November 22, 1872; Gavin quote "North Carolina," p. 566.
[57] "Let Us Have a Convention," *The Daily Journal* (Wilmington, NC), August 22, 1874.

After the passage of the Fifteenth Amendment in 1870, it became more difficult to disfranchise African Americans outright. White supremacists instead turned to techniques that were not racially discriminatory on their face – namely, the criminal exemption of the 13th Amendment and felony disfranchisement. Conservative North Carolinians, like other white southerners, relied on the 13th Amendment's exception allowing denial of the rights of citizenship "as a punishment for crime," which was based on a similar provision in the Northwest Ordinance of 1787, and which still has consequences for the North Carolina felony disfranchisement law today.

In North Carolina's neighbor to the South, an upcountry South Carolina delegate at the state's provisional constitutional convention objected to the "except as a punishment for crime," and explained "it will be easily possible for the Legislature, if so disposed, to re-establish the condition of slavery by a system of crimes and punishments impliedly authorized by that clause."[58] Historian Eric Foner notes that the prisoner exemption clause of the 13th amendment "did not go unnoticed among white Southerners. In November 1865, former Confederate general John T. Morgan pointed out in a speech in Georgia that the Thirteenth Amendment did not prevent states from enacting laws that enabled 'judicial authorities' to consign to bondage blacks convicted of crime." The former Confederate states immediately enacted Black Codes, and "involuntary black labor" justified by the criminal exemption of the 13th amendment "was central to these laws."

The 15th amendment barred disenfranchisement on the basis of "race, color, or previous condition of servitude," but it did not contain a provision on felony disenfranchisement. As Foner explained about the 15th amendment, "when the number of felons was quite small, no one

[58] Sidney Adrews, *The South Since the War* (Boston: Houghton Mifflin, 1971 [orig 1866]), p. 323-24, and for another quote on General Morgan in Georgia cited below, see p. 324.

would have anticipated the consequences of subsequent increases in incarceration." He continued, "A truly positive Fifteenth Amendment (one that did not allow for the disenfranchisement of those convicted of crimes) might have prevented the manipulation of criminal laws after Reconstruction to disenfranchise blacks, not to mention the situation today in which millions of persons, half of them no longer in prison cannot vote because of state felony disfranchisement laws."[59]

In North Carolina, Conservative Democrat David Coleman of Buncombe County introduced a constitutional amendment to disfranchise felons on September 22, 1875.[60] Colonel Coleman was a leader among Conservative Democrats in western North Carolina, and he had been given a mandate by the Conservatives of Buncombe County to lead a crusade against the "Radicals" at the 1875 Constitutional Convention. The Conservative Democratic Party of Buncombe County, which had unanimously nominated Coleman and his fellow representative, Thomas L. Clingman, hoped that their delegates would "make the radical civil rights office holder's party tremble." [61] Even before the nominating convention, a letter to the editor of Asheville's *North Carolina Citizen* predicted that Coleman would "move the mud-sills of radicalism."[62] Coleman, as a representative of the Committee on Suffrage and Eligibility to Office, offered an ordinance to disfranchise felons to the Convention. The amended suffrage requirements would require that voters "have resided . . . ninety days in the county in which he

[59] John Richard Dennett, *The South as It Is, 1865- 1866* , originally series of articles in Nation between July 8, 1865 and April 11, 1865 (Tuscaloosa: University of Alabama Press, reprint 2010); Foner, *Second Founding,* pp. 47-48, 110.
[60] Coleman served as colonel of the 39th North Carolina Infantry, Bruce S. Allardice, *Confederate Colonels: A Biographical Register* (Columbia, MO: University of Missouri Press, 2008), 105-106; *Journal of the Constitutional Convention of the State of North Carolina, Held in 1875* (Raleigh, NC: Josiah Turner, 1875), 112.
[61] *The Greensboro Patriot* (Greensboro, NC), July 14, 1875; *The Carolina Watchman* (Salisbury, NC), July 8, 1875; *The North Carolina Citizen* (Asheville, NC), May 13, 1875; "Our County Nominating Convention!" *The North Carolina Citizen* (Asheville, NC), July 8, 1875.
[62] "Copperhead," "Convention Candidates," *The North Carolina Citizen* (Asheville, NC), May 27, 1875.

offers to vote," and prevent any otherwise eligible voter who had been "adjudged guilty of felony, or of any other crime infamous by the laws of this State" from participating in "any election . . . unless such person shall be restored to the rights of citizenship."[63] As the *Wilmington Journal* observed, this ordinance "excludes felons and ex-penitentiary convicts from . . . voting unless restored to citizenship."[64] Unlike the 1840 statute that had disfranchised those who had committed "infamous crimes," this new restriction on suffrage extended to all North Carolinians who committed any felony. And it was coupled with a new system of incarceration of freedmen for such "crimes" as vagrancy and bad attitude.[65]

Democrats praised the changes to suffrage requirements. As the *Cape Fear,* a short-lived Conservative Democratic newspaper, advocated, "this amendment offers a reward for honesty, and a punishment for crime, and it is calculated to check much of the stealing that is going on in the country."[66] The *Tarborough Southerner* made the same argument.[67] Likewise, the Executive Democratic Central Committee claimed that "a purification of the ballot box" would be a consequence of felon disfranchisement.[68]

Democrats did not dispute that the effects of the law would be to disfranchise African Americans, but particularly at this earlier stage of Reconstruction and before the Supreme Court had weighed in on what was permissible and what was not, Democrats used coded language like "purification" of the ballot box and "fraud." Democrats were generally careful to use words like "fraud," "criminal," and "purification" as code words for racism in fear that it would otherwise

[63] "Constitutional Convention," *The Wilmington Morning Star* (Wilmington, NC), October 8, 1875.
[64] "Ordinances of the Convention," *The Wilmington Journal* (Wilmington, NC), October 22, 1875.
[65] Peter Wallenstein, "Slavery Under the Thirteenth Amendment: Race and the Law of Crime and Punishment in the Post-Civil War South," *Louisiana Law Review,* Vol 77, 2016, see esp. p. 6
[66] "The Constitutional Amendments," *The Cape Fear* (Wilmington, NC), October 18, 1876.
[67] "The Amendments," *The Tarborough Southerner* (Tarboro, NC), November 24, 1876.
[68] "Address of the Executive Democratic Central Committee to the People of North Carolina," *The Raleigh News* (Raleigh, NC), June 23, 1875.

be clear that they were acting in violation of the 13th, 14th, or 15th amendments of the Constitution and the Civil Rights Act of 1866, which explicitly gave rights of equality and protection of those rights to African Americans.

Implicit racial appeals, like those used by the Conservative Democrats in justifying broad felony-based disenfranchisement, communicate the same ideas as explicit racial appeals but do so without using racial nouns or adjectives. They obliquely reference race and allude to "racial stereotypes or a perceived threat" from racial or ethnic minorities. Political scientist Tali Mendelberg defines an implicit racial appeal as "one that contains a recognizable – if subtle – racial reference, most easily through visual references."[69] Legal historian Ian Haney Lopez describes implicit racial appeals as a "*coded* racial appeal," with "one core point of the code being to foster deniability." One characteristic of implicit racial appeals is that they are usually most successful when their racial subtext goes undetected.[70] Implicit racial appeals make use of coded language to activate racial thinking.[71] Racial cues, in the form of code words, such as "lazy," "manipulated," "criminal," "bestial," "taking advantage," "corruption," "poverty," and "fraud" are racial code words that even when used in political campaigns today have their origins in and often refer directly back to the Reconstruction era when African Americans successfully asserted their citizenship rights and attained elected office, and prime racial attitudes in some white voters.[72]

The white Democrats' 1875 Constitutional Convention would also put other barriers to racial equality in place, including, as historian Mark L. Bradley notes, "amendments that

[69] Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* (Princeton: Princeton University Press, 2001), 9, 11.
[70] Lopez, *Dog Whistle Politics*, 130, 4.
[71] Nicholas A. Valentino, Vincent L. Hutchings, and Ismail K. White. "Cues that Matter: How Political Ads Prime Racial Attitudes During Elections," *American Political Science Review* 96 (2002), 75-90.
[72] Valentino, Hutchings, and White, "Cues that Matter," 87.

outlawed secret political organizations" – a blow to groups like the Union League and Equal Rights League that acted to organize black political activism – alongside prohibitions on racially integrated schools and interracial marriages.[73] Furthermore, amendments to the North Carolina Constitution in 1876 also legalized a system of convict-leasing, described by historian Douglas Blackmon as "slavery by another name." All of these other amendments were also racially motivated, as was the decision to strip counties of the right to appoint judges. The judge-stripping provision meant that the rights restoration process still governed by the 1840 statute was unlikely to result in rights restoration for African Americans, since that process was discretionary and depended on the individual judges, which voting disfranchisement laws ensured would be white Democrats.[74]

The suffrage requirements of the 1876 Constitution were asserted to be a way to protect "freedom of elections and the purity of the ballot box."[75] *The Centennial* of Warrenton, North Carolina, also acknowledged that the new legislation would disproportionately impact black North Carolinians when it claimed that "the great majority of the criminals are negroes." Nevertheless, *The Centennial* claimed, "the negro should vote for the ratification of the amendment, because its adoption will tend to restrain their race from crime."[76] The Democratic press used the debate over felony disfranchisement to characterize so-called "Radical" Republicans as "unscrupulous" and criminal. The *Raleigh News* argued that "the debate on the proposition to disfranchise for felony . . . shows the little regard the radicals have for the purity

[73] Bradley, *Bluecoats and Tar Heels*, 260. For more information on black poltical organization during Reconstruction, see Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South From Slavery to the Great Migration* (Cambridge, MA: Belknap Press, 2003).
[74] John V. Orth, *The North Carolina State Constitution* (New York: Oxford University Press, 2011), 26, 1783, 1875 Amendments to the NC Constitution of 1868, Amend. XXV, XXVI, XXX; Douglas A. Blackmon, *Slavery By Another Name: The Re-Enslavement of Black People in America From the Civil War to World War II* (New York: Doubleday, 2008).
[75] "How to Prevent Fraud at the Ballot Box," *The Daily Journal* (Wilmington, NC), August 4, 1876.
[76] *The Centennial* (Warrenton, NC), August 25, 1876.

of the ballot," and the *Goldsboro Messenger* accused Republicans of "rallying to the defence of rogues and felons."[77]

It is clear that felon disfranchisement was designed to destroy the power of the "radical" Republicans in North Carolina, end "negro rule," and reinstate white supremacy in the Old North State. Professor William Alexander Mabry, in his study of black activism in North Carolina, argues that these changes to suffrage requirements could "be used by the dominant party to disfranchise considerable numbers of Negroes and to render less effective those votes actually cast by the Negroes," as they were "discriminations . . . against certain assumed characteristics of his race." Felony disfranchisement could be an especially powerful weapon against black voters, since, as Mabry contends, "white registrars could be counted on to charge . . . that certain Negroes seeking to register had been guilty of a crime and hence were ineligible to vote." In other words, the felonies selected were the felonies that white Democrats believed African Americans more than whites committed, thus giving the law what one historian when observing these same actions in South Carolina in 1895 called the "black squint of the law."[78] And the white registrars and whites running the elections at the polling place provided the last step in disfranchising potential African American voters.

Republicans strenuously opposed Coleman's amendment, filibustering and attempting to "clog the business of the Convention."[79] African American members of the Convention – including James E. O'Hara, from Halifax in eastern North Carolina, John H. Smythe, from Wilmington, and John O. Crosby, from Warrenton - were outspoken in their opposition to the

[77] *The Raleigh News* (Raleigh, NC), October 8, 1875; *The Goldsboro Messenger* (Goldsboro, NC), October 11, 1875.
[78] William Alexander Mabry, *The Negro in North Carolina Since Reconstruction* (Durham, NC: Duke University Press, 1940), 16-17; for "black squint," see Orville Vernon Burton, "'The Black Squint of the Law': Racism in South Carolina," pp. 161-185, in *The Meaning of South Carolina History: Essays in Honor of George C. Rogers, Jr.* Edited by David R. Chesnutt and Clyde N. Wilson. (Columbia: University of South Carolina Press, 1991).
[79] "Proceedings of the Convention," *The Gleaner* (Graham, NC), October 12, 1875.

new restrictions. Black delegates to the Convention warned that these new restrictions would "operate against the poor people" and "work hardship to both whites and blacks."[80] Smythe argued that "this measure was intended to disfranchise his people," and condemned the amendment as "villainous," a remark that led to him being "ruled down by the chair."[81] Oliver H. Dockery, a white Republican from Rockingham, North Carolina who had served in the Forty-first Congress as the chairman of the Committee on the Freemen's Bureau, also condemned the suffrage amendment. During an address to the Third District's Republican Convention in Troy in June 1876, he argued that "the amendment disfranchising felons is brutal and cruel," since "the court house is the place to punish. After the criminal has suffered his punishment, for God's sake give him some chance."[82]

North Carolina Republicans recognized that the new restrictions on suffrage – particularly felony disfranchisement – specifically targeted black voters. White southerners in the post-Civil War South "were convinced," as historian Edward Ayers notes, of black criminality, and white political leaders argued that African Americans were responsible for "a rising tide of crime."[83] Although there is a distinct difference in a truly held belief, this trope was part of the "othering" of African Americans by whites, and whites used and argued this stereotype for political gain.[84] In the years after the Civil War, white southerners claimed that "all negroes will steal."[85] Even Daniel L. Russell, the Republican governor of North Carolina from 1897 to 1901,

[80] *The Newbern Weekly Journal of Commerce* (New Bern, NC), October 16, 1875.
[81] "Constitutional Convention," *The Wilmington Morning Star* (Wilmington, NC), October 8, 1875.
[82] *The Randolph Regulator* (Asheboro, NC), June 21, 1876; George Presbury Rowell, ed., *George P. Rowell and Company's American Newspaper Directory* (New York: George P. Rowell & Company, 1877), 235.
[83] Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), 153.
[84] The literature on "othering" developed from Edward W. Said, *Orientalism* (New York: Random House, 1978; Vintage ed. New York, 1994).
[85] Theodore D. Bratton, "Race Cooperation in Church Work," in *Battling for Social Betterment: Southern Sociological Congress, Memphis, Tennessee, May 6-10, 1914*, James E. McCulloch, ed. (Nashville, TN: Southern Sociological Congress, 1914), 152.

reportedly claimed that "all Negroes are natural born *thieves* [emphasis in original]" who would "steal six days in the week." [86] This racial stereotype helped to prop up white supremacy in North Carolina and the South as a whole. Immediately after the end of the Civil War, white North Carolinians had increased the penalties for petty larceny, making even "the intent to steal" a crime, and prosecuting attempted theft as larceny.[87] As historian Leon Litwack contends, "by the late nineteenth century, the criminal justice system operated with particular efficiency in upholding the absolute power of white people to demand and obtain the submission . . . of black men and women."[88]

Republicans also opposed felony disfranchisement because they believed that it would discriminate against poor whites, since they lacked the resources to petition to have their citizenship rights restored. Frank Woodfin, a white Republican from Henderson County, argued that the suffrage amendment was "unjust and calculated to work harm to the poor people."[89] At a meeting in Alexander County in May 1876, Republicans adopted a resolution stating their opposition to the "partizan [sic]" suffrage amendment, as it was "depriving many of the poor people of the State of that sacred right."[90] White Democrats, meanwhile, supported felony disenfranchisement as a tool of wealth-based disenfranchisement, because a "coalition of lower-class white farmers and African Americans" were "posing a serious threat to the political power of white Democrats in the state."[91]

Because they understood that the suffrage amendment would disproportionately impact African Americans and poor North Carolinians, Republican legislators overwhelmingly opposed

[86] "To The Colored People of New Hanover County," *The Daily Review* (Wilmington, NC), August 17, 1888.
[87] Foner, *Reconstruction,* 202.
[88] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: A.A. Knopf, 1998), 248.
[89] "State Constitutional Convention," *The Evening Review* (Wilmington, NC), October 8, 1875.
[90] "Public Meeting in Alexander," *The Statesville American* (Statesville, NC), May 27, 1876.
[91] Holloway, *Living in Infamy*, at 92.

the new suffrage limitations. As the *Goldsboro Messenger* noted, "the Republicans generally opposed the passage and spoke against it."[92] Indeed, the suffrage amendment was opposed by all but two Republicans in the 1875 Constitutional Convention. Notably, the two Republicans who voted for the amendment – Thomas J. Dula of Wilkesboro and B. R. Hinnant of Micro, North Carolina (in Johnston County) – were both white. Every African American representative voted against the felony disenfranchisement provision, as they were aware that, despite the protests of white Democrats, this provision was a calculated and deliberate attempt to disfranchise black voters in the face of the Fifteenth Amendment.[93]

After the 1875 Amendments to the North Carolina Constitution were ratified on November 7, 1876, and as federal troops withdrew from North Carolina, the General Assembly got down to the business of enforcing these new restrictions on suffrage.[94] The Legislature of 1876-1877 passed "an act to regulate elections" in March 1877, which provided that "persons who . . . have been adjudged guilty of felony or other crime infamous by laws of this state" would "not be allowed to register to vote."[95] White Democrat John S. Henderson, of Rowan, chaired the committee of the House of Representatives that prepared this legislation.[96] Henderson was an outspoken supporter of felony disfranchisement. In January 1876, he had argued that "none but the most obstinate, hardened and inveterate felons and thieves ought to object to the denial of the privilege of voting to those, who shall . . . be adjudged guilty of felony or other infamous crime."[97] Henderson was also deeply committed to maintaining the

[92] "The Constitutional Convention," *The Goldsboro Messenger* (Goldsboro, NC), October 11, 1875.
[93] "Republican Record on the Amendments," *The People's Press* (Salem, NC), October 19, 1876; "The Convention," *The Newbern Journal of Commerce* (New Bern, NC), September 4, 1875.
[94] *The Observer* (Raleigh, NC), December 22, 1876.
[95] "The Legislature," *The Wilmington Morning Star* (Wilmington, NC), March 9, 1877; "The Election Law," *The Carolina Watchman* (Salisbury, NC), March 29, 1877.
[96] "Our Next Congressional Election," *The Observer* (Raleigh, NC), November 8, 1877.
[97] John S. Henderson, "The Proposed Constitutional Amendments," *The Carolina Watchman* (Salisbury, NC), January 6, 1876.

boundaries of Jim Crow. In 1906, he presided over the lynching of three African-American men accused of murdering the Lylerly family at Barber Junction, near Salisbury, North Carolina. On the evening of August 6, 1906, Nease Gillespie, John Gillespie, and Jack Dillingham were paraded down Main Street to the Henderson baseball ground, across the street from Henderson's house, and lynched before a "bloodthirsty" mob of more than two thousand white citizens.[98]

Alongside the felon disfranchisement statute, Henderson and the General Assembly also imposed stricter penalties for North Carolinians who attempted to vote without having their citizenship rights restored. Chapter 275, Section 63 of the Public Laws of the State of North Carolina decreed that "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." This would have been an onerous penalty – in 1900, $1000 had the same buying power as more than $30,000 in 2020, and, in the South as a whole, the per capita income of blacks was $40.01, and the per capita income of whites was $65.43.[99]

The 1875 constitutional amendment and the 1877 statute were different from the 1840 felony disfranchisement statute because these new postbellum laws disenfranchised all felons, not just those convicted of "infamous" crimes like treason. It is no coincidence that after Reconstruction, when felony disfranchisement turned into a tool to disenfranchise black people, it was used much more broadly than it was before the war when it just applied to whites. Not only did white Democrats expand the categories of crimes that exposed North Carolinians to

[98] "Three Are Lynched," *The Madison County Record* (Marshall, NC), August 10, 1906.
[99] *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session 1876-'77* (Raleigh, NC: The Raleigh News, 1877), 537; Kenneth Ng and Nancy Virts, "The Black-White Income Gap in 1880," *Agricultural History* 67, no. 1 (Winter 1993), 8.

disenfranchisement, they added the punishment for voting just described. During the pre-civil war period when felony disenfranchisement only applied to whites, because black people were disenfranchised in general, the laws did not provide for the same harsh punishments that were imposed when North Carolina started using felony disenfranchisement as a tool to disenfranchise blacks.[100]

The 1875 Constitutional Convention marked the beginning of a decades-long process of the undermining of the democratic reforms of the interracial North Carolina legislature of Reconstruction in what some historians, borrowing the term coined by white southerners, call "Redemption," but what is better understood not in the beautiful and symbolic language of religion, but as a counterrevolution by white Democrats to restore white supremacy and the old order in North Carolina, especially as they systematically sought to undermine voting rights for black North Carolinians. Felon disfranchisement was just the beginning. As legal scholar Daniel S. Goldman notes, "felon voting restrictions were the first widespread set of legal disenfranchisement measures imposed on African Americans."[101] The calls that followed to build on these measures to further "purify the ballot box" were closely linked to white North Carolinians' paranoia of "negro domination."[102]

v. Emergence of Fusion Political Power, the Resurgence of White Supremacy, and the Disfranchisement Constitutional Amendment

In the 1890s, white Populists, mostly aggrieved non-elite farmers, and black and white Republicans enjoyed a short-lived return to power in the form of a fusion coalition party. In 1892, raising issues with the Democratic Presidential nominee Grover Cleveland and the North

[100] *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session 1876-'77* (Raleigh, NC: The Raleigh News, 1877), 537
[101] Daniel S. Goldman, "The Modern-Day Literacy Test?: Felon Disenfranchisement and Race Discrimination," *Stanfrod Law Review* 57, no. 2 (Nov., 2004): 625.
[102] "Benefits of the Amendment," *The Semi-Weekly Messenger* (Wilmington, NC), June 8, 1900.

Carolina Democratic Party's refusal to allow votes on split tickets, Marion Butler, from a yeoman background, became president of the North Carolina Farmers Alliance and led some white Farmers Alliance members out of the North Carolina Democratic Party into the People's Party, or Populist Party. Working together, the Populists and Republican allies, despite suffrage restrictions, successfully took control of the 1895 General Assembly. They sent two white men, a Populist, Marion Butler, and a Republican, Jeter Pritchard, to the United States Senate; elected a Republican governor, Daniel L. Russell; and gained majorities on the supreme court and the superior courts.[103] Fifty-nine African Americans were in the North Carolina House and 18 in the Senate between 1876 and 1900, and from 1868 to 1901, four African Americans were elected to Congress from North Carolina's "Black Second," including George White, who was the last black representative from the American South until 1973.[104]

Such success proved ephemeral. With a battle cry of "Negro Domination," a political debacle created by the Populist Party's endorsement of Democratic candidate William Jennings Bryan in the 1896 presidential campaign, and a terrorist campaign of white supremacy, the interracial alliance splintered. The Democratic message of white supremacy continued to gain political value while white violence, terrorism, and suppression removed African American political power. Ultimately, when George White lost his seat in 1901, he prophesized: "This, Mr. Chairman, is perhaps the Negro's temporary farewell to the American Congress, but let me say that, Phoenix-like, he will rise up and come again."[105]

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[103] Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill, NC: University of North Carolina Press, 2001), 149.
[104] Keech and Sistrom, "North Carolina," p. 157.
[105] Congressional Record, 56th Cong., 2d session, vol. 34, pt. 2 (Washington D.C.: Government Printing Office, 1901), pp. 1635, 1636, 1638. Speech is online at University of Washington, An Online Reference Guide to African American History, blackpast.org at http://www.blackpast.org/?q=1901-gorge-h-white-s-farewell-address-congress

A series of Supreme Court decisions would help keep that phoenix from rising any time soon by encouraging further racist legislation to prevent African Americans from voting. The implicit stamp of approval from the federal government's own Justices eliminated any doubts about the viability of disfranchising schemes. North Carolina (1900), Louisiana (1898), Alabama (1901), Virginia (1902), and Georgia (1908) joined Mississippi (1890) and South Carolina (1896) in legally disenfranchising African Americans by adopting new disfranchising constitutions, adding disfranchising amendments to existing constitutions (as was done in North Carolina), or by adding statutes designed to eliminate black political activism. By the end of the 1880s, the United States Supreme Court's decisions effectively neutered the Reconstruction-era constitutional amendments and laws designed to protect the freed people.

In 1896 and in 1898, the Supreme Court sent a clear message to the former Confederate states when they blessed racial disfranchisement and racial apartheid, the twin pillars of white supremacy, in *Plessy v. Ferguson* (1896) and *Williams v. Mississippi* (1898). Following the Court's lead, racist rhetoric became even more blatant. From North Carolina's neighbor to the north, Carter Glass, a leader of the Virginia constitutional convention in 1902, used the words approved by the Supreme Court in *Williams v. Mississippi* ("permissible action under the limitations of the federal constitution") to explain how driving African Americans from the voting booth fit perfectly within the Supreme Court's conception of the 15th Amendment: "Discrimination! Why that is precisely what we propose, that, exactly, is what this convention was called for – to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution." Glass stated the purpose was "the elimination of every Negro voter who can be gotten rid of legally without materially impairing the numerical strength of the white

electorate."[106] By the word "legally," he simply meant that it was with the Supreme Court's approval. In Louisiana the leader of the state's constitutional convention, Ernest B. Kruttschnitt, got to the bottom line in fewer words when he spoke about the literacy test: "What care I whether it be more or less ridiculous or not? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?"[107]

In 1898 the leaders of North Carolina's state Democratic Party – in particular, state chairman Furnifold Simmons – organized a campaign designed to destroy the alliance between Populists and Republicans and forever break the power of black political activism. As historian Michael Perman observes, "Simmons unleashed an election campaign of extraordinary belligerence and intensity," where "race . . . was the essence of the Democrats' attack."[108] On the eve of the election in November 1898, Simmons, in an address to the voters of North Carolina, declared that "North Carolina is a White Man's State, and White Men will rule it, and they will crush the party of negro domination beneath a majority so overwhelming that no other party will ever dare to attempt to establish negro rule here."[109] The "white supremacy" campaign in 1898 was brought to a conclusion in an outrageous explosion of racial violence in Wilmington, North Carolina, where a black majority and an active "fusion" biracial coalition of Republicans and Populists had previously succeeded in rising to power in the municipal government, including the mayor's office. White Democrats were determined to end "negro domination" in their city. Colonel Alfred M. Waddell, the leader of the white supremacy movement in Wilmington, declared that "we will not live under these intolerable conditions," and announced their

[106] Paul Lewinson, *Race, Class, and Party: A History of Negro Suffrage and White Politics in the South*(New York: Oxford University Press, 1932), p. 86.

[107] Michael Perman, *Pursuit of Unity: A Political History of the American South* (Chapel Hill: University of North Carolina Press, 2010) p. 177.
[108] Perman, *Struggle for Mastery*, 158.
[109] "The Campaign In North Carolina," *The Wilmington Morning Star* (Wilmington, NC), November 3, 1898.

intentions to "change it, if we have to choke the current of the Cape Fear river with carcasses."[110] Beginning on November 10, 1898, white supremacists in Wilmington went on a two-day rampage, murdering African Americans, ransacking their community, and destroying a prominent black newspaper. They installed themselves in the "elected" positions, and neither state nor federal forces intervened in this coup d'état.[111]

In the wake of this massacre, in the election of 1898, the Democrats, determined to "rescue" North Carolina from "low-born scum and quondam slaves," recaptured the General Assembly. When the new Democratic-controlled legislature convened in January 1899, one of its first orders of business was the disfranchisement of black voters. In February 1899, the General Assembly passed an amendment to the North Carolina Constitution that imposed literacy tests and poll taxes and introduced a "grandfather clause" exception for any voter "who was on January 1, 1866, or any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided" or a "lineal descendant of any such person."[112] (Very similar to President Andrew Johnson's grandfather clause in his May 29, 1865 "Proclamation Establishing Government for North Carolina"). Democrats in North Carolina in 1898 -99 made no attempt to disguise the purpose of the suffrage amendment – its intent was "to secure white supremacy."[113]

Even as they implemented broad suffrage restrictions, Democrats emphasized the need

[110] Alfred M. Waddell, "The Story of the Wilmington, North Carolina, Race Riots," *The Farmer and Mechanic* (Raleigh, NC), November 29, 1898.
[111] Orville Vernon Burton, *The Age of Lincoln* (New York: Hill & Wang, 2007), p. 358; David S. Cecelski and Timothy B.Tyson, eds., *Democracy Betrayed: The Wilmington Race Riot of 1898 and its Legacy* (Chapel Hill: University of North Carolina Press, 1998); H. Leon Prather, *We Have Taken a City: The Wilmington Racial Massacre and Coup of 1898* (Cranbury, NJ: Farliegh Dickson University Press, 1984); LeRae Silks Umfleet, *A Day of Blood: The 1898 Wilmington Race Riot* (Raliegh: North Carolina Office of Archives and History, 2009)
[112] "Some Verses for North Carolina," *The Charlotte Observer* (Charlotte, NC), July 26, 1900; "The Suffrage Amendment," *The County Union* (Dunn, NC), February 22, 1898.
[113] "To Secure White Supremacy," *The Smithfield Herald* (Smithfield, NC), April 14, 1899.

for "rigid safeguards" concerning the suffrage of "ex-convicts." In their 1898 *Democratic Hand Book,* prepared by the State Democratic Executive Committee, they argued that "the Democratic registration laws required particularity" because the Republican Party had registered "ex-convicts and boys under twenty-one years of age." The Democrats claimed that felon disfranchisement, along with other suffrage restrictions, was necessary "to suppress fraud and protect white suffrage" and prevent "the honest vote of a white man in North Carolina" from being "off-set by the vote of some negro."[114] In the general election of 1900, North Carolina approved the disfranchisement amendment by a 59% to 41% margin. The effort was successful - by 1910 "almost no blacks voted," and white voting decreased "substantially."[115]

With "white supremacy" all but guaranteed, Democrats in North Carolina began to take a more relaxed attitude towards the issue of felony disfranchisement. On Wednesday, January 18, 1899, William Houston Carroll, of Burlington (in Alamance County), introduced H.B. 349, "an act to . . . facilitate the restoration to the rights of citizenship in certain cases." Less than two weeks before, on January 9, Francis D. Winston of Bertie County had introduced what would become North Carolina's 1900 suffrage amendment.[116] During the debate over H.B. 349, Carroll explained his justification for the legislation. In a story that Raleigh's *Morning Post* described as "not unlike the reading of a good novel," the representative from Alamance County related that, in 1897, Charles E. McLean, the mayor of Burlington, along with the board of commissioners, had disinterred the body of Nathaniel Small, who had been buried in a lot in the town cemetery,

[114] State Democratic Executive Committee of North Carolina, *The Democratic Hand Book, 1898* (Raleigh: Edwards and Broughton, 1898), 84.
[115] William R. Kreech and Michael P. Sistrom, "North Carolina," in *Quiet Revolution in the South,* ed. Chandler Davidson and Bernard Groffman (Princeton, NJ: Princeton University Press, 1994), 158; J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party south, 1880-1910* (New Haven, CT: Yale University Press, 1974), 183-195.
[116] *Journal of the House and Representatives of the General Assembly of North Carolina, Session 1899* (Raleigh, NC: Edwards and Broughton, and E.M. Uzzell, 1899), 32; 139;

after his next-of-kin had refused to pay for his plot, and reinterred Small's body into the free part of the cemetery reserved for indigent citizens. Small's family, who were (justifiably) outraged by the actions of McLean and the commissioners, "had them arrested and convicted of felony," thereby disfranchising almost the entire municipal government of Burlington. This conviction was upheld by the North Carolina Supreme Court, in *State v. McLean et al.,* though McLean and the six commissioners were pardoned by Governor Daniel L. Russell a month later, in December 1897. Carroll was quick to reassure his colleagues that this legislation was "to cover the Alamance case," rather than to apply to any other counties. Nevertheless, legislators from Swain, Lenoir, Wake, Mitchell, and Greene counties introduced amendments to exempt their counties from being covered by the statute. These amendments were rejected, and the House passed the bill on January 26.[117] The Senate passed the legislation on February 1.[118] H. B. 349 amended chapter 26, section 2941 of the Code of North Carolina, and stipulated that:

> Section 1. That section two thousand nine hundred and forty- one of The Code be amended by adding thereto the following: *Provided*. That any person who may have been heretofore, or shall hereafter be convicted of any crime whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the

[117] *The Morning Post* (Raleigh, NC), January 27, 1899; "The State Supreme Court," *The Charlotte Observer* (Charlotte, NC), November 11, 1897; *The Southeastern Reporter*, vol. 28 (St. Paul, MN: West Publishing Co., 1898), 140-144; "Only Technically Guilty," *The News and Observer* (Raleigh, NC), December 17, 1897; *Journal of the House and Representatives of the General Assembly of North Carolina, Session 1899* (Raleigh, NC: Edwards and Broughton, and E.M. Uzzell, 1899), 240-241; "A Busy Day With Rather Small Bills," *The Morning Post* (Raleigh, NC), January 27, 1899.

[118] *Journal of the Senate of the General Assembly of North Carolina, Session 1899* (Raleigh, NC: Edwards and Broughton, and E.M. Uzzell, 1899), 223.

superior court held for the county in which the conviction was had, one year after such conviction.

Sec. 2. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also, that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the Verified by oath affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent.

H. B. 349 allowed for a more speedy restoration of citizenship rights in certain cases, as before 1899 persons convicted of felonies or infamous crimes were required to wait for four years after being convicted before submitting a petition to the Superior Court to have their citizenship rights restored.[119] The legislation proposed by Carroll could potentially help to expedite the restoration of citizenship rights to former convicts, but, as noted above, his intention was merely to solve a specific political conundrum relating to white politicians, and certainly not to enfranchise African Americans. In fact, in 1900 Carroll, who was the chairman of the Democratic Party in Alamance County, was praised for leading "the good white people of Alamance" in defeating "the possibility of a return to negro domination" and succeeding in "the elimination of the great bulk of the negro vote from politics."[120]

The next change to the process by which former convicts could have their citizenship rights restored came in 1905, when Walter C. Feimster, an attorney from Newton who

[119] *Public Laws and Resolutions of the State of North Carolina Passed By the General Assembly At Its Session of 1899, Begun and Held in the City of Raleigh on Wednesday, the Fourth Day of January, A.D. 1899* (Raleigh, NC: Edwads and Broughton and E.M. Uzzell, 1899), 139-141; *The Code of North Carolina, Enacted March 2, 1883*, vol. II (New York: Banks and Brothers Law Publishers, 1883), 271.
[120] "A Glorious Victory!," *The Alamance Gleaner* (Graham, NC), August 9, 1900.

represented Catawba County in the House as a Democrat, proposed a bill, H.B. 1764, designed to allow citizens to reclaim their citizenship rights if the court suspended judgment. Feimster's legislation, proposed on February 28, passed by the House on March 3 and by the Senate on March 6, seems to have seen little debate – no discussion of the bill was recorded in either the Raleigh *News and Observer* or *Morning Post*'s daily legislative summaries, and no amendments were offered to the legislation in either the House or the Senate.[121] It is significant that, as white Democrats' "white supremacy" campaign came to fruition, those same Democrats evidenced a willingness to make it easier for some people with felony convictions to vote. With "the elimination of the great bulk of the negro vote from politics," felony disfranchisement was no longer the essential bulwark of democracy in North Carolina.[122] Instead, the disenfranchisement of felons was a recipe for inconvenient situations (as *State v. McLean, et al.* illustrates) where the ruling class could lose their suffrage rights. Simply put, white Democrats were concerned about felony disenfranchisement when it was an important part of their toolkit to keep black North Carolinians from voting, and once Democrats were able to reassert white supremacy in North Carolina (beginning in 1898) they made the process of restoring citizenship rights more easily achievable (especially for white North Carolinians who had the clout in their communities to secure ten witnesses who could testify that their crime had been committed without felonious intent or the connections to acquire a pardon from the governor).

[121] "The County Democratic Ticket," *The Newton Enterprise* (Newton, NC), September 9, 1904; "Representative W.C. Feimster," *The Newton Enterprise* (Newton, NC), March 10, 1905; "House Passed Ward Bill By Vote of 74 to 35," *The Morning Post* (Raleigh, NC), March 1, 1905; "Legislature Has Ended Its Work," *The News and Observer* (Raleigh, NC), March 7, 1905; *Journal of the House and Representatives of the General Assembly of North Carolina, Session 1905* (Raleigh, NC: E.M. Uzzell & Co., 195), 1042, 1226; *Journal of the Senate of the General Assembly of North Carolina, Session 1905* (Raleigh, NC: E.M. Uzzell, 1905), 967; *Public Laws and Resolutions of the State of North Carolina Passed By the General Assembly At Its Session of 1905, Begun and Held in the City of Raleigh on Wednesday, the Fourth Day of January, A.D. 1905* (Raleigh, NC: E.M. Uzzell & Co., 1905), 139-141.

[122] "A Glorious Victory!," *The Alamance Gleaner* (Graham, NC), August 9, 1900.

VII. Felony Disfranchisement in the Twentieth Century

Between 1905 and 1971, statutory felony disfranchisement remained virtually untouched. At the same time, though largely disfranchised, African Americans continued to fight the twin pillars of Jim Crow, disfranchisement and segregation. In 1917, there were three branches of the National Association for the Advancement of Colored People (NAACP), by 1955 there were 12,000 members in 83 branches in North Carolina. The NAACP in *Horcutt v.* Wilson (1933) challenged *Plessy v. Ferguson* (1896) separate but equal, but lost at the North Carolina Superior Court which upheld the denial of the admission of Thomas R. Horcutt, an African American, to the University of North Carolina Pharmacy School. But in 1953 the NAACP prevailed at the U.S. Court of Appeals for the Fourth Circuit where Floyd B. McKissick (future executive director of the Congress of Racial Equality --CORE) sued for admission to the University of North Carolina Law school. In 1942 the NAACP supported the "Durham Manifesto," denouncing segregation. In 1947, the NAACP assisted CORE's "The Journey of Reconciliation," their first freedom ride where 16 black and white riders of the bus were jailed. During the volatile years of the 1960s and 70s, following *Brown v. Board of Education* (1954), black North Carolinians protested through the sit-in movement, most famously in Greensboro in February 1960, and began to achieve greater access to their rights as citizens. The achievements of this period included the momentous passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But it was also a time of great peril to African Americans asserting their rights, a time which saw the revitalization of the Klan in North Carolina, the assassination of Martin Luther King, Jr. in 1968, the rise of the Black Power Movement, and the escalation of the War in Vietnam. The Klan was particularly virulent in North Carolina, where more progressive governors, like Terry Sanford, allowed the Klan, which became the largest and most powerful

KKK in the era, to claim that they, not the state government, were the only "authorities" who could be depended on to defend white supremacy. In 1958, a Klan rally near Maxton, North Carolina in Robeson County was broken up by local Lumbee Indians, and in Monroe, North Carolina, civil rights leader Robert F. Williams and other members of the Monroe NAACP were forced to arm themselves to repel the Klan.[123] In 1972, national attention was drawn to North Carolina by accusations of "politically charged" convictions of the "Wilmington Ten," including the Rev. Benjamin Chavis, and the "Charlotte Three." When *Swann v. Charlotte-Mecklenberg County* (1971) allowed busing to end segregated schools, the segregationist Alabama Governor George Wallace won the 1972 North Carolina Democratic Presidential Primary, and there was a decided shift towards the Republican Party among white voters.[124]

As African Americans began to eliminate other barriers to voting, the United States Congress passed legislation protecting all Americans' civil rights and the United States Supreme Court struck down discriminatory laws, felon disfranchisement came again to be used as a tool to prevent African Americans and poor North Carolinians from exercising their citizenship rights. By 1970, in North Carolina the constitutional provisions disfranchising felons, as well as the statutory restrictions on felons' citizenship rights, had been largely unchanged for almost a century. In part, this reflects the fact that, as legal scholar John L. Sanders argues, "with the passage of time and amendments, the attitude towards the Constitution of 1868 had changed

[123] David Cunningham, *Klansville, U.S.A.* (New York: Oxford University Press, 2012), ix; "Bad Medicine for the Klan," *LIFE* , January 27, 1958; Timothy B. Tyson, *Radio Free Dixie: Robert F. Williams and the Roots of Black Power* (Chapel Hill, NC: The University of North Carolina Press, 2009).
[124] Gavins, "North Carolina," pp. 567-68.

from resentment to a reverence so great that until the second third of the twentieth century, amendments were very difficult to obtain."[125]

By the 1950s, felon disfranchisement was regarded by many North Carolinians as an often ignored and seldom enforced legislative oddity. A 1957 article in the *Charlotte Observer* claimed that "despite the fact that felony convictions roll monthly from Superior Courts all over the state, it's nobody's job to tell the local election boards about it." Mecklenburg County's Election Board's secretary, Mrs. R. O. Fortenbery, remarked that "no one connected with the courts ever sends the board a list of convictions." R.C. Maxwell, the chairman of the State Board of Elections, asserted that "there's no administration set up . . . because there aren't enough convictions to justify it." Instead, Maxwell said, "it's handled mainly on the basis of handling the individual voter." Furthermore, according to Superior Court Judge (and future governor) Dan K. Moore, relatively few convicted felons petitioned to have their citizenship restored. Moore claimed that "usually they just go on and vote, and nobody knows the difference."[126] While this suggests that this statute may have been seldom enforced (at least in Mecklenburg County), it also makes it clear that it was enforced arbitrarily, at the whim of local election officials. In 1940, just 5 percent of eligible African Americans were registered to vote, but by 1956, 20 percent were registered, and by 1960 a third. But it is also in the 1950s that "the state legislature mounted a more concentrated effort to dilute black votes," when "the threat of the black vote loomed larger and the national legal campaign disfranchisement gained momentum."[127]

[125] John L. Sanders, "A Brief History of the Constitutions of North Carolina," in *North Carolina Government, 1585-1979: A Narrative and Statistical History,* John L. Cheney, Jr., ed. (Raleigh, NC: North Carolina Department of the Secretary of State, 1981), 798.
[126] Loye Miller, "Extra Penalty For Felons: They Lose the Right to Vote," *The Charlotte Observer* (Charlotte, NC), January 13, 1957.
[127] Kreech and Sistrom, "North Carolina," p. 159.

Disenfranchising people convicted of felonies mainly served two purposes in North Carolina in the 1950s and 1960s – as a threat for would-be offenders, and as a justification for the state's resistance to voting rights legislation. An editorial in the *Daily Times-News* of Burlington, North Carolina warned young people that if they were convicted of a felony they would "have no voice in public affairs," and that it would "be humiliating" to petition to have their citizenship rights reinstated.[128] Obviously some North Carolinians saw the risk of disfranchisement as a deterrent from committing felonies. But as national attention turned to the South, with national legislation attacking vote disfranchisement and segregation in the South, with the end of the white primary in *Smith v. Alright* in 1944, and then the landmark case on public school desegregation *Brown v. Board* in 1954, many white southern Democratic party leaders clung to felony disfranchisement as a pretext for southern states' control of the elective franchise.

Democrats and white supremacists normalized disenfranchising people convicted of felonies and built support for resistance to voting rights legislation by twisting the past into a mirror image of reality. The histories taught in the North Carolina public schools derived from the distorted story white Democrats had told of the horrors of the integrated Republican party emphasized the "tragedy of Reconstruction" as part of the "lost cause ideology" that dominated white southern culture and still resonates among many. Naming Reconstruction the "tragic era" solidified that interpretation in the historiography. A Democratic Party apparatchik dubbed Reconstruction the "tragic era" following the 1928 election because Democrats feared losing the South in future elections.[129] History written after the overthrow of Reconstruction and during the time of Jim Crow continued this particularly noxious and wrong-headed interpretation of

[128] "Judge's Remarks to Two Youths," *The Daily Times-News* (Burlington, NC), June 17, 1969.
[129] Charles Bowers, *Tragic Era: The Revolution after Lincoln* (New York: Houghton Mifflin, 1929).

Reconstruction where supposedly northern "carpetbaggers" (derisively called so because they supposedly carried all their earthly belongings in those cheap bags as they came South to exploit fallen Confederates), turncoat poor white "scalawags," and ignorant former slaves, who were manipulated by their white partners in crime, all made a mockery out of "honest government".

This interpretation was wrong—both morally and intellectually—but public schools of the former Confederacy taught this narrative well into the 1980s.[130] Thus, schooled in this "tragic era" propaganda, the argument – that voting rights legislation would allow "unqualified" citizens to vote – was popular among opponents to the Civil Rights Movement. Senator Herman Talmadge of the neighboring state of Georgia was an advocate of "states' rights" who helped to formulate the strategy of interposition and who, while serving as governor of Georgia, declared that "as long as I am your Governor, Negroes will not be admitted to white schools," resorted to this argument.[131] Talmadge insisted that erasing literacy tests and other limits on suffrage "would even permit people who were lunatics and idiots and imbeciles and convicted felons to vote."[132] White Democrats in North Carolina also found this *reductio ad absurdum* argument convincing, since it allowed them to claim that even "unconfined idiots and unconfined felons" would be allowed to vote if voting rights legislation passed.[133] This argument about felon voting persisted, even after the passage of the Voting Rights Act in 1965. J. Brian Scott, a moderate Democrat

[130] David Earl Morgan, "The Treatment of the Reconstruction Period in United States History as Reflected in American High School History Textbooks, 1890-1983." Dissertation. Loyola University Chicago, 1985 Available from https://ecommons.luc.edu/luc_diss; Thomas B. Bailey, "Historical Interpretation of the Reconstruction Era in United States History As Reflected in Southern State Required Secondary School Level Textbooks of State Histories." Dissertation. University of New Mexico, 1967; John David Smith and J. Vincent Lowery, eds., *The Dunning School: Historians, Race, and the Meaning of* Reconstruction (Lexington: The University of Kentucky Press, 2013).
[131] Aucoin, "The Southern Manifesto and Southern Opposition to Desegregation," 179; M.L. St. John, "Segregation to Remain – Talmadge," *The Atlanta Constitution* (Atlanta, GA), June 6, 1950.
[132] 86th Cong., 2nd Session, *Congressional Record* 106, pt. 5: 6722 (1960).
[133] "Proposed Amendment Is Unwise," *The Asheville Citizen-Times* (Asheville, NC), October 1, 1959; Brent J. Aucoin, "The Southern Manifesto and Southern Opposition to Desegregation," *The Arkansas Historical Association* 55, no. 2 (Summer 1996): 173-193.

from Rocky Mount who was a local chairman for Robert W. Scott's gubernatorial campaign in 1968 (and who in turn was appointed as the chairman of the North Carolina Board of Elections by Scott in 1969), complained in 1970 that amendments to the Voting Rights Act "abolished all prerequisites for voting as we know them," and warned that while "right now felons are not allowed to vote, but under the new act this prerequisite may well be abolished."[134]

With passage of the Voting Rights Act of 1965, Henry Frye, a Democrat from Guilford County, was elected to the state House of Representatives in 1968, becoming the first African American elected to the state legislature in the twentieth century (and later Chief Justice of the state Supreme Court from 1999-2001).[135] Frye tells a telling and compelling story about being denied voter registration due to the state's literacy test as recently as 1956, although he was a college graduate and a Korean War veteran of the U.S. Air Force.[136] In 1970, North Carolina voters rejected a proposal, sponsored by Henry Frye, to repeal the literacy test. In a referendum held on November 3, 1970, voters defeated the proposal by margin of 44% for and 56% against.[137]

In 1971, the suffrage requirements of the North Carolina Constitution were amended, but the provision for felony disenfranchisement first added in 1875 remained. The revised Article VI states that:

> "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

[134] "Mrs. Scott Will Attend Headquarters Opening," *The Rocky Mount Telegram* (Rocky Mount, NC), April 3, 1968; 'Scott Names to NC Election Board," *The Rocky Mount Telegram* (Rocky Mount, NC), November 19, 1969; "Elections Chief Flays Voting Act," *The Charlotte Observer* (Charlotte, NC), September 12, 1970.
[135] Keech and Sistrom, "North Carolina," 166.
[136] Howard Covington, *Henry Frye: North Carolina's First African American Chief Justice* (McFarland, 2013), 50. See the Southern Oral History Project, UNC, interview, https://dc.lib.unc.edu/cdm/compoundobject/collection/sohp/id/7856/rec/4
[137] Literacy Test Proposal Loses," *The News and Observer* (Raleigh, NC), November 5, 1970; Rob Christensen, *The Paradox of Tar Heel Politics: The Personalities, Elections, and Events that Shaped Modern North Carolina* (Chapel Hill, NC: University of North Carolina Press, 2010), 264.

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."[138]

The amended Article VI was substantively similar to the North Carolina constitution's felony disenfranchisement provisions from the Jim Crow era.[139]

Felony disfranchisement became a controversial issue in North Carolina in the 1970s, in part because of increased policing of illicit drug possession. John R. Friday, a judge in the North Carolina Superior Court for Gaston County (and the brother of William C. Friday, the president of the University of North Carolina system from 1956 to 1986), viewed the disfranchisement of felons – particularly of young people – as "tragic." Friday deliberately asked "young drug offenders" if they were aware that, by committing a felony, they had forfeited their citizenship rights under North Carolina law. In North Carolina, state law made possession of more than five grams of marijuana, and the possession of any amount of heroin, a felony. Even though Friday insisted that "it breaks my heart to see them in court knowing they're ruining their lives," he still believed that "the law about citizenship loss is a good one," since "it is a deterrent to further crime." Friday argued that, since "felonies are serious crimes and possession of drugs is serious," it was fitting for former convicts to have to go through the arduous and emotional process of having their citizenship rights restored.[140] It is key to note, however, that Friday's views were not held by all of North Carolina's public officials. John A. Faircloth, the chief of the Greensboro Police Department, argued that, "to give our children a second chance, the first offense possession of marijuana should be a misdemeanor, not a felony." He believed that it was

[138] N.C. Const., Art. VI, § 2, cl. 3.
[139] "The Suffrage Amendment," *The County Union* (Dunn, NC), February 22, 1899; 1875 Amendments to the N.C. Constitution of 1868, Amend. XXIV.
[140] "Drug Violators Lose Citizenship," *The Charlotte Observer* (Charlotte, NC), October 28, 1972; "Citizenship Loss Hit By Attorney," *The Charlotte News* (Charlotte, NC), November 22, 1972.

not fair that "the 16 or 17-year-old who tried one marijuana cigarette . . . could . . . lose his right to vote . . . all because he smoked on marijuana cigarette."[141] North Carolina Attorney General Robert Morgan recommended to the Governor's Committee on Drug Abuse in 1970 that "the committee consider the merits of legislation which would expunge the record of a young first offender."[142] It is unsurprising that white public officials would have comfort calling for the selective decriminalization of marijuana, since, as historian Matthew D. Lassiter points out, beginning in the 1950s a "cultural and political script of racialized pushers and white middle-class victims" shaped the policing of marijuana use, possession, and distribution, leading to more lenient attitudes towards victimized (white) marijuana users and harsher penalties for "urban and foreign 'pushers.'"[143]

Perhaps because of the bureaucratic and legal hurdles in the way of regaining full citizenship, relatively few North Carolinians seemed to have been able to have their rights restored. For example, in 1971 an official at the Gaston County superior court observed that "a half dozen or less" had petitioned for the restoration of their citizenship rights in the past twenty years.[144] On February 23, 1971, Representative Joy Johnson from Robeson County (who at the time was one of two black representatives in the General Assembly) introduced H.B. 285, titled "an act to amend chapter 13 of the General Statutes to Require the Automatic Restoration of Citizenship To Any Person Who Has Forfeited Such Citizenship Due to Committing a Crime and Has Either Been Pardoned Or Completed His Sentence."[145] *The Rocky Mountain Telegram*

[141] "Official Asks Review of Marijuana Laws," *The Asheville Citizen* (Asheville, NC), June 23, 1969.
[142] "N.C. Official Proposes Bill To Regulate Drug Delivery," *The Charlotte Observer* (Charlotte, NC), August 22, 1970.
[143] Matthew D. Lassiter, "Impossible Criminals: The Suburban Imperatives of America's War on Drugs," *The Journal of American History* 102, 1 (June 2015): 128.
[144] "Convicted Felon Can Regain Citizenship," *The Gastonia Gazette* (Gastonia, NC), July 4, 1971.
[145] *Journal of the House of Representatives of the General Assembly of the State of North Carolina*, Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 169.

described Johnson as "an apostle for equality and open participation in citizenship without regard to race, creed, or sex."[146] *The Robesonian* of Lumberton, North Carolina, characterized Johnson's proposal as "a humanitarian gesture" to "make former felons feel more welcome as restored citizens."[147] Johnson introduced the legislation "when he became acquainted with instances in which persons were released from prison, lived law-abiding lives, yet had to go through expensive, embarrassing, and lengthy court procedures to regain citizenships."[148] Johnson's bill would ensure that "the citizenship rights of a convicted felon would be automatically restored when he had served his sentence or when he had received an unconditional pardon."[149] H.B. 285, as introduced by Johnson, stipulated that "any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon full completion of his sentence or upon receiving an unconditional pardon."[150]

After being referred to the Committee on Judiciary, the bill was reported unfavorably by the committee, and the committee instead offered a substitute bill on July 2.[151] The Committee Substitute was authored by Jim Ramsey, a Democrat from Person County and the Chair of the House Judiciary Committee, and made several significant changes to Johnson's original legislation. First, the Committee Substitute removed any automatic or immediate restoration of citizenship upon release from prison. Instead, felons would have their citizenship rights "restored to him upon the full completion of his sentence *including* [emphasis added] any period of

[146] "This Afternoon in North Carolina," *The Rocky Mount Telegram* (Rocky Mount, NC), May 2, 1973.
[147] "Restoring Citizens," *The Robesonian* (Lumberton, NC), July 22, 1971.
[148] "Rep. Johnson Zeroes In On State Social Issues," *The Robesonian* (Lumberton, NC), April 8, 1975.
[149] "Bill Offered to Raise Pay of Lt. Governor," *The Asheville Citizen-Times* (Asheville, NC), February 24, 1971; "Citizenship Bill," *The Robesonian* (Lumberton, NC), February 26, 1971.
[150] 1971 Bill
[151] *Journal of the House of Representatives of the General Assembly of the State of North Carolina*, Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 1216.

probation or parole or upon receiving an unconditional pardon."[152] Second, the Committee Substitute inserted that ex-convicts had to take an oath before the Clerk of the Superior Court "or any judge of the General Court of Justice . . . in the county where he resides or in which he was last convicted." This oath required the petitioner to swear that he had "fully completed any and all sentences," that he was "not now under any court for any criminal offense" (including, presumably, misdemeanors), that "he desires to have his citizenship restored," and, finally, "that he will support and abide by the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith."[153] The Committee Substitute for H. B. 285 was considered by the House on July 7.

Representative Mary Odom, a white Democrat from Scotland County who, along with Joy Johnson, was part of the delegation from the 24th North Carolina State House District (which comprised Hoke, Robeson, and Scotland Counties) offered an amendment which "provided that a person could get his citizenship restored on taking an oath of allegiance if (1) restoration was recommended by the State Department of Corrections at the time the prisoner was released from prison, or if (2) he had gone for two years after release without violating a state or federal law, or if (3) he had received full pardon." This amendment was perhaps an attempt to rescue some aspects of Johnson's original bill, which clearly had the intent to make the restoration of citizenship automatic. Odom's amendment provided more routes to the restoration of voting rights than the Committee Substitute for H.B. 285, including allowing former convicts to have their citizenship restored upon recommendation of the Department of Corrections, which would help to expedite the process of re-enfranchising these voters.[154] But Odom's amendment, unlike

[152] 1971 Bill
[153] 1971 Bill
[154] 1971 Bill

Johnson's original bill, still conditioned automatic re-enfranchisement upon completion of the terms of probation and parole, rather than simply release from prison.

Representative Henry Frye recognized that the bill ultimately passed by the General Assembly was a far cry from Johnson's original bill. Frye noted that he "favored the bill's original provisions which called for automatic restoration of citizenship when a felon had served his prison sentence."[155] But Odom's amendment was adopted, and the General Assembly passed the legislation in July 1971.[156] The revised statute allowed citizenship rights (including the right to vote) to be restored if either A) "the Department of Correction . . . recommends restoration of citizenship; B) "two years have elapsed since release by the Department of Correction, including probation or parole"; or, (C) the ex-felon was granted "an unconditional pardon."[157] While, in some ways, this statute is an example of, as social scientists Angela Behrens, Christopher Uggen, and Jeff Manza suggest, "relative liberalization," the fact remains that, even after individuals had been released from incarceration, they still were denied the rights of citizenship.[158]

[155] "Legislative Wrapup," *The Charlotte Observer* (Charlotte, NC), July 15, 1971; "State Briefs," *The Rocky Mount Telegram* (Rocky Mount, NC), March 25, 1971; "House Passes Ex-Con Citizenship Measure," *The Charlotte Observer* (Charlotte, NC), July 8, 1971; "Felon Citizenship Bill Gets House Approval," *The News and Observer* (Raleigh, NC), July 8, 1971. *Journal of the House of Representatives of the General Assembly of the State of North Carolina,* Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 6. Odom, newly elected to the House of Representatives in 1971, was opposed to "the unfair practice of requiring an ex-offender to hire a lawyer and legally reclaim his citizenship after his release from prison" and believed that "we've still got a great deal more to do."(Pat Borden, *The Charlotte Observer* (Charlotte, NC), January 23, 1971; "Legislators, Grand Jury Take Look at Prison Camp," *The Robesonian* (Lumberton, NC), November 17, 1970.

[156] *Journal of the House of Representatives of the General Assembly of the State of North Carolina,* Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 1272; *Journal of the Senate of the General Assembly of the State of North Carolina,* Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 837; *Journal of the House of Representatives of the General Assembly of the State of North Carolina,* Session 1971 (Winston-Salem, NC: Winston Printing Company, 1971), 1407

[157] http://ncleg net/enactedlegislation/sessionlaws/pdf/1971-1972/sl1971-902.pdf

[158] Angela Behrens, Christopher Uggen, and Jeff Manza, "Ballot Manipulation and the 'Menace of Negro Domination': Racial Threat and Felon Disfranchisement in the United States, 1850-2002," *The American Journal of Sociology* 109, no. 3 (November 2003): 591.

Even as Johnson and his allies in the North Carolina General Assembly sought to make it easier for citizens convicted of a felony to regain their voting rights, North Carolina experienced a Republican party insurgence grounded on fiscal conservatism, opposition to integration (particularly busing), and a growing demand among white suburbanites for "law and order." The rallying cry of "law and order" became a racist dog whistle for many North Carolinians. As the *Charlotte Observer* argued in 1968, "to many North Carolinians, law and order means 'keep the niggers in their place.'"[159] The leader of the Republicans in the late 1960s and early 1970s was James E. Holshouser, Jr., a young legislator from Boone, North Carolina, who chaired the North Carolina Republican Party from 1966 to 1972. Holshouser summed up the Republican agenda in a 1970 interview, noting that "the people are really gripped off about taxes," and "concerned about education in general and desegregation in particular." Finally, he asserted that "people are alarmed about crime in the streets."[160] By adopting "law and order" as part of the platform of the North Carolina Republican Party, Holshouser was following the leadership of Richard Nixon and the Republican National Committee. As historian Matthew D. Lassiter observes, "the law-and-order platform at the center of Nixon's suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery."[161] John Ehrlichman, President Nixon's domestic policy advisor, admitted in 1994 that the war on drugs – a key part of law-and-order campaigns – had an ulterior motive. He observed that "the Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people." While the

[159] J.A.C Dunn, "Law and Order Depends . . . ," *The Charlotte Observer* (Charlotte, NC), October 27, 1968/
[160] "Republican Chairman Attacks State's Surplus," *The Statesville Record and Landmark* (Statesville, NC), October 7, 1970.
[161] Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006), 234.

Nixon campaign "couldn't make it illegal to be either against the war or black," they knew that, "by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities."[162]

The "problem of law and order" was a chief concern of both Democrats and Republicans in the 1970s in North Carolina. In 1970, the Democratic Attorney General of North Carolina, Robert Morgan, declared that Democrat leaders in North Carolina "are doing something about the problem of law and order." He argued that "while the Republicans have been dragging their feet, Democrats have been doing something about law and order in North Carolina" before rattling off a list of the Democrats' accomplishments, including "prevention of destructive disorder on college campuses, improvement and enlargement of the State Bureau of Investigation, and state assistance to upgrade local law enforcement."[163] Pulitzer Prize-winning journalist Robert S. Boyd observed that, in the early 1970s, "Democrats were able to minimize the 'social issue by pinning on a law and order badge of their own."[164]

Ramsey, the chair of the North Carolina House Judiciary Committee who added more stringent requirements to Joy Johnson's citizenship restoration bill in 1971, seems to have been willing to wear the "law and order badge." Before he graduated from the University of North Carolina Law School in 1958, he served as the president of the Law School Association. Ramsey served as a recorder's court judge, and he was a member of the North Carolina State bar, the North Carolina Bar Association, and the Person County Bar Association, and he served a term as the president of the Person County Bar. [165] Ramsey was fundamentally a moderate. When he ran

[162] Dan Baum, "Legalize It All," *Harper's* (April 2016).
[163] 'At Nash Democratic Rally – Morgan Pushes Law-Order Theme," *The Rocky Mount Telegram* (Rocky Mount, NC), October 27, 1970.
[164] John S. Knight, "The Voters Are More Sophisticated," *The Charlotte Observer* (Charlotte, NC), November 8, 1970.
[165] "James E. Ramsey Speaks at (COFC) Annual Dinner," *The News-Journal (*Raeford, NC), May 17, 1973; "Heck Lecture Series to Present Winbourne," *The Daily Tar Heel* (Chapel Hill, NC), September 20, 1957

as a candidate in the Democratic primary for North Carolina's Fourth Congressional District, he emphasized that he was for "more jobs and more job opportunities to make our people independent economically and less dependent on government stipends," unlike his rival African American "Mickey" Michaux, who he accused of being "for more government spending and more grants.[166] In 1969, Ramsey introduced legislation to "eliminate the mercy provisions" in North Carolina's capital punishment provisions which prevented second-degree murder from being a capital offense. He also introduced legislation that would raise the penalty for second-degree murder, rape, arson, and burglary from a thirty-year prison sentence to life imprisonment.[167]

For North Carolina Democrats, however, the "law and order badge" could not prevent the state from going "red" in 1972. In a tidal change in North Carolina politics, in 1972, Holshouser defeated the Democratic gubernatorial nominee, Hargrove Bowles, Jr., to become the first Republican governor of North Carolina since 1901. Holshouser's victory was part of a "Republican sweep" that also led to the election of political commentator Jesse Helms to the United States Senate, as well as a Republican majority in the General Assembly.[168]

In March 1973, the House passed legislation, H.B. 33, that amended the 1971 re-enfranchisement legislation in certain respects, but retained the requirement that those convicted of felons complete all conditions of parole, probation, or other supervised release before obtaining automatic restoration. Again, it was Representative Joy Johnson, who had introduced H.B. 285 in the last legislative session, who sponsored the legislation, since he believed that "if

[166] "Jim Ramsey Hopes to Increase Job Opportunities," *The Rocky Mount Telegram* (Rocky Mount, NC), June 24, 1982.
[167] Tom Eamon, *The Making of a Southern Democracy: North Carolina Politics From Kerr Scott to Pat McCrory* (Chapel Hill, NC: University of North Carolina Press, 2014), 195-196; "Law Vague," *The Charlotte Observer* (Charlotte, NC), March 17, 1969
[168] Bryan Haislip, "Holshouser: Mountaineer, Lawyer, and Stubborn Political Fighter," *The Robesonian* (Lumberton, NC), November 13, 1972.

rights are taken away from felons automatically upon conviction, they should be restored automatically upon release."[169] Johnson's legislation, as noted by the *Robesonian* of Lumberton, "removes the financial hardship involved with reclaiming this right."[170] H.B. 33 was also co-sponsored by two other African-American legislators, Henry Frye and Henry M. "Mickey" Michaux, of Durham County. Michaux, Frye, and Johnson were the first three African Americans elected to the General Assembly and were derisively described as "smart Negroes." In response to this racial harassment, Michaux, Frye, and Johnson formed the first black caucus of the General Assembly.[171] H.B. 33, like H.B. 285 in the last legislative session, was intended to allow the automatic restoration of citizenship rights. H.B. 285 was again amended by the Committee; as passed on April 19, 1973, it provided that:

> "§ 13-1. Restoration of citizenship.—Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon the occurrence of any one of the following conditions: (1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Board of Juvenile Correction, of a probationer by the State Probation Commission, or of a parolee by the Board of Paroles; or of a defendant under a suspended sentence by the Court. (2) The unconditional pardon

[169] "Baby Animals, Felon Citizenship, Restoration Bill Are Discussed," *The Robesonian* (Lumberton, NC), March 28, 1973.
[170] Toni Goodyear, "Sickle Cell Anemia Detection Center Proposal Tops New Bills By Johnson," *The Robesonian* (Lumberton, NC), January 17, 1973.
[171] Will Doran and Dawn Baumgartner Vaughan, "Durham Politician, Civil Rights Leader Mickey Michaux to Retire From General Assembly," *The Herald-Sun* (Durham, NC), February 8, 2018 < https://www.heraldsun.com/news/local/counties/durham-county/article199194364 html> (accessed April 17, 2020). On Michaux, see his interview for the Southern History Oral History Project at the University of North Carolina Library, here: https://dc.lib.unc.edu/cdm/compoundobject/collection/sohp/id/21384/rec/1.; he was more recently interviewed for a Duke University Oral History project, - http://livinghistory.sanford.duke.edu/interviews/henry-m-mickey-michaux-jr/.

of the offender. (3) The satisfaction by the offender of all conditions of a conditional pardon.[172]

As one of the leaders of the reform efforts, African American representative Henry Michaux, explains, Michaux, Johnson, and Frye worked with the NAACP throughout this period to try to obtain automatic restoration of the rights of citizenship upon release from incarceration. But they were ultimately unsuccessful in eliminating conditions that targeted African Americans and economically disadvantaged people, including the condition of an unconditional discharge from parole or probation. They believed that they were unable to fully purge the original felony disenfranchisement provisions of their racist intent and effects.[173]

The following August, the North Carolina Court of Appeals ruled that the new law "must be applied retroactively."[174] Even as Johnson sought to "liberalize" felon disfranchisement, however, the United States Supreme Court "upheld a North Carolina statute which denies felons the right to vote."[175] Fred Fincher, who had been prohibited from voting by the Scotland County, North Carolina election board, argued that his disfranchisement was a violation of the Equal Protection Clause of the Fourteenth Amendment.[176] The U.S. Supreme Court affirmed the decision of the US District Court for the Middle District of North Carolina in *Fincher v. Scott*, which found that "the states are not constitutionally required" to "give felons the right to vote."[177]

VIII. Conclusion

Felony disfranchisement was one part of a systematic campaign to deny minorities and poor North Carolinians the right to vote in North Carolina. In many ways, it is a kind of

[172] https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/1973-1974/SL1973-251.pdf
[173] Affidavit of Henry M. Michaux, Jr. (May 7, 2020).
[174] "Charlotte Record Firm Loses Suit," *The Charlotte News* (Charlotte, NC), August 23, 1973.
[175] "No Voting Rights For Felons Upheld," *The Gastonia Gazette* (Gastonia, NC), May 9, 1973; "Felon Voting Bill Upheld," *The Daily Times-News* (Burlington, NC), May 8, 1973.
[176] "Felon Voting Bill Upheld," *The Daily Times-News* (Burlington, NC), May 8, 1973.
[177] *Fincher v. Scott*, 352 F. Supp. 117 - Dist. Court 1972

legislative "living fossil" – a fact recognized by North Carolinians from the 1950s onward. Unlike white-only primaries, literacy tests, and poll taxes, felon disfranchisement has yet to be repudiated, despite its obvious intent of disfranchising black voters. Black North Carolinians during Reconstruction recognized that felony disfranchisement could be a powerful tool in the hands of a white ruling class - who both wrote and enforced the law, and who, as John Dennett, a traveling correspondent for the *Nation*, noted, "unaffectedly and heartily hate the negroes" - and steadfastly opposed stripping convicts of their citizenship rights.[178]

Felony disfranchisement represented one of many ways that the ruling party – the Democrats, in the nineteenth century – sought to maintain their power and disfranchise minorities and poor voters. Gerrymandering, literacy tests, poll taxes, the white-only primary, and even electoral fraud, voter intimidation and outright violence were all tools used by the state of North Carolina after the Civil War to prevent minority and poor voters from exercising the rights guaranteed to them by the Fifteenth Amendment. Even after the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, felony disfranchisement was an important tool for preventing North Carolinians from exercising their right to vote – in addition to its immediate effect on black voting strength, it was used to discredit civil rights legislation and as a weapon in the campaign for "law and order" and the War on Drugs.

Finally, when black leaders – most notably, African American state representatives in the early 1970s, Joy Johnson, Henry Frye, and Henry M. "Mickey" Michaux – sought to liberalize the felony disfranchisement statute because they recognized that it erected barriers to prevent African Americans and poor North Carolinians from exercising their right to vote, moderates and conservatives blunted the full impact of this reform effort. In short, the current North Carolina

[178] John Richard Dennett, *The South As It Is*, ed. Henry M. Christman (New York, 1965), 119.

disfranchising law was adopted with racial animus following the white Democratic party's overthrow of Reconstruction, and though modified over the years, it still maintains its origins in racial discrimination and still disproportionately negatively affects African Americans in North Carolina.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 8th day of May, 2020.

Orville Vernon Burton

Dr. Orville Vernon Burton

ORVILLE VERNON BURTON

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vburton@clemson.edu https://ageoflincoln.app.clemson.edu

Education: 1976, Ph.D. Princeton University Ph.D. dissertation: "Ungrateful Servants? Edgefield's Black Reconstruction: Part I of the Total History of Edgefield County, South Carolina." Advisors Sheldon Hackney and James McPherson
1969, B.A. Furman University, magnum cum laude

Military Service: active service 1969, 1974 U.S. Army, Honorably Discharged as Captain, 1977

Academic Positions:
Clemson University, 2010-
The Judge Matthew J. Perry, Jr. Distinguished Professor of History
Professor Sociology and Anthropology, Clemson University, 2014-
Creativity Chair of Humanities, Clemson University, 2013-15
Professor Pan-African Studies, 2012-
Professor Computer Science, Clemson University, 2011-
Director Clemson CyberInstitute, 2010-
Associate Director Humanities, Arts, and Social Sciences, Clemson CyberInstitute, 2010
Professor of History, Clemson University, 2010-
Burroughs Distinguished Prof. Southern Hist. & Culture, Coastal Carolina University, 2008-10
University of Illinois at Urbana-Champaign (UIUC), 1974-2008
2009- Chair, Advisory Board for Institute for Computing in Humanities, Arts, and Social Science (I-CHASS)
2008-11, Consultant for Humanities to Chancellor's and Provost's Office
2004-09, Founding Director I-CHASS
2008 - Emeritus University Distinguished Teacher/Scholar, University Scholar, and Professor History, African American Studies, and Sociology
2006-08, Professor African American Studies
1989-2008, Professor History
1989-2008, Professor Sociology
1988-2008, Graduate College Statistics Faculty
1986-2008, Campus Honors Program
1985-2006, Faculty Affiliate, African American Studies and Research Program
1982-1989, Associate Professor, History
1976-1982, Assistant Professor History
1974-1976, Instructor
National Center for Supercomputing Applications (NCSA)
2002-10, Associate Director, Humanities and Social Sciences
1993-2002, Head, Initiative for Social Sciences and Humanities
1986- Senior Research Scientist
Princeton University
1972-74, Assistant Master, Woodrow Wilson Residential College
1971-72, Instructor, Mercer County Community College, NJ

College of Charleston

2001-, Executive Director, Program in the Carolina Lowcountry and the Atlantic World (CLAW) http://claw.cofc.edu

1987, Professor of History, Governor's School of South Carolina

Selected Honors, Fellowships, Awards

U.S. Professor of the Year, Outstanding Research and Doctoral Universities Professor (Council for Advancement and Support of Education and Carnegie Foundation for the Advancement of Teaching), 1999

American Historical Association Eugene Asher Distinguished Teaching Prize, 2004

Chicago *Tribune*'s Heartland 2007 Literary award for nonfiction for *The Age of Lincoln*

Illinois House Resolution of Congratulations, HR 0711, 2007. The Illinois State legislature passed a special resolution acknowledging my contributions as a scholar, teacher, and citizen of Illinois.

South Carolina Governor's Award for Lifetime Achievement in the Humanities, presented by the SC Humanities Council, 2017 (selected 2016)

Society of American Historians, Elected 2012

Fellow, National Humanities Center (NEH Senior Scholar Award), 1994-95

Fellow, Woodrow Wilson International Center for Scholars, 1988-89

Fellow, Pew Foundation, 1996

National Fellowship Program for Carnegie Scholars, 2000-2001

Rockefeller Humanities Fellowship, 1978

Earl and Edna Stice Lectureship in the Social Sciences at the University of Washington, 2005

Strickland Visiting Scholar, Department of History, Middle Tennessee State University, 2006

Pew-Lilly Foundation Graduate Professor, Notre Dame University, 2001

Mark W. Clark Distinguished Chair of History, The Citadel, 2000-01

Elected to honorary life membership in BrANCH (British American Nineteenth-Century Historians)

Organization of American Historians Distinguished Lecturer, 2004-

Choice Outstanding Academic Book for *The Age of Lincoln*, 2008

Choice Outstanding Academic Title for *Slavery and Anti-Slavery: Transnational Archive*, 2009

Booklist's Editors' Choice Title for *Slavery and Anti-Slavery: A Transnational Archive*, 2009

Choice Outstanding Academic Book for *Computing in the Social Sciences and Humanities*, 2003

Richard F. Fenno Prize, Legislative Studies Section, American Political Science Association, for *Quiet Revolution*, 1995

President Southern Historical Association, 2011-12

President Agricultural History Society, 2001-02

Elected to the South Carolina Academy of Authors, 2015, inducted 2016.

Certificate of Excellence from the Carnegie Academy for the Scholarship of Teaching and Learning for Work that Advances the Practice and Profession of Teaching In Support of Significant Student Learning, 2001

H-Net received the James Harvey Robinson Prize for teaching from the American Historical Association, 1997 (I was one of the founders, and the first treasurer).

Award of Distinction in the Film/Video-History/Biography category from the International Academy of the Visual Arts, 16th Annual Communicator Awards, for "People: A Lincoln Portrait" television interstitial series (The Communicator Awards is the leading international awards program honoring creative excellence for communications professionals), 2010 (part of program I put together for Lincoln commemoration at

UIUC).
SC African American Heritage Commission's 2009 "Preserving Our Places in History" Project Award for Claw's (Executive Director, College of Charleston Carolina Lowcountry and Atlantic World) work in commemorating the banning of the international slave trade
Florida Historical Society, Medallion Lecture, 2002
Auburn University, Eminence in the Arts and Humanities Fellows Lectures Medallion, "awarded to persons of distinguished achievement in the arts and humanities: writers, artists or renowned scholars in one or more of the liberal arts disciplines," 2012
Senior Research Fellow, Southern Studies, University of South Carolina, 1988
Phi Beta Kappa, Furman University, 1986
Princeton University Scholar Award, 1969
National Defense Educational Award Title IV Fellowship, 1971 (Princeton University)
Clark Foundation Scholarship, 1966-69 (Furman University)
Wicker Award for Outstanding Student (sophomore), Furman University, 1967
Endel History Award, Furman, 1969
Bradshaw-Feaster General Excellence Award (Furman's highest honor for the graduating senior selected by faculty), 1969

Honors Clemson University and Recognition
College of Architecture, Art, and Humanities (CAAH), Dean's Award for "Outstanding Service," 2019
Inaugural Class 2018 University Research Scholarship and Artistic Achievement Award
Inaugural Judge Matthew J. Perry Distinguished Chair of History, 2017-
CAAH, Dean's Award for "Excellence in Research," 2016
CAAH, Creativity Professor Humanities, 2013-15
Featured Clemson Homepage 2017, "Meet a Tiger," http://newsstand.clemson.edu/meet-a-tiger-vernon-burton/

UIUC Honors and Teaching Awards and Recognition
Inaugural University "Distinguished Teacher/Scholar," 1999-2008
University Scholar, 1988 – 2008
Campus Award for Excellence in Public Engagement, 2006
Graduate College Outstanding Mentoring award, 2001-02
Fellow, Center for Advanced Study, 1982, Associate, 1994
Burlington Northern Faculty Achievement Award (UIUC), 1986
Study in a Second Discipline, Statistics and Demography, 1984
All-Campus Award for Excellence in Undergraduate Teaching, 1999
LAS Dean's Award for Excellence in Undergraduate Teaching, 1999
LAS Award for Distinguished Teaching, 1986
School of Humanities Teaching Award, 1986
George and Gladys Queen Excellence in Teaching Award in History, 1986
Undergraduate Instructional Award (UIUC), 1984
Every semester and for every undergraduate course that I taught at the University of Illinois (excluding large survey classes of between 300-750 students), I was deemed excellent in the UIUC "Incomplete List of Excellent Teachers." I was noted on the list for more than twenty different courses. I was noted as "outstanding" from 1979 as long as they used that designation.
Recognized by the Pan-Hellenic Council at as an "outstanding staff member for furthering scholastic achievement"

Selected by History Department as the "one instructor whom you believe best at creating intellectual excitement in students" for an educational study of teaching practices of college teachers, 1978

Received the Resident Hall Association Award for the Best Educational Program for lectures/discussion on *Gone With the Wind* and *Jubilee* for Black History Month, 1996

The Honor Society of Phi Kappa Phi, UIUC, Vice President, 2002-03; President, 2003-04

Ronald E. McNair Scholars Program Dedicated Service Award for Minority Students, 1996

Associate Vice Chancellor Academic Affairs award for contributions to the Student Research Opportunities Program and work with minority students (1995, 2006)

Publications:

Books:

Penn Center: A History Preserved. Athens: University of Georgia Press, 2014; paperback edition, 2017.

The Age of Lincoln. NY: Hill and Wang, 2007. (Audio: Blackstone Audio Books). Paperback edition 2008. Selection for Book of the Month Club, History Book Club, Military Book Club. *The Age of Lincoln* was nominated by Farrar, Straus, and Giroux for the Pulitzer Prize. Three historical associations featured sessions on the book, Association for the Study of African American Life and History, 2008; Social Science History Association, 2008; The Southern Intellectual History Circle, 2009.

(with Judy McArthur) "*A Gentleman and an Officer": A Military and Social History of James B. Griffin's Civil War*. NY: Oxford University Press, 1996; second printing 1999.

In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina. Chapel Hill: University of North Carolina Press, 1985. Paperback edition 1987; 5th printing 1998. *In My Father's House* was nominated by the University of North Carolina Press for the Pulitzer Prize. Two Historical Associations featured this book in sessions at their annual meetings: Social Science History Association, 1986; Southern Historical Association, 1987.

(with Armand Derfner) "*Justice the Guardian of Liberty*": *Race and the Supreme Court.* Cambridge: Harvard University Press, expected 2021.

Air Conditioning and the Voting Rights Act: The Voting Rights Act of 1965 in Historical Perspective. Stice Lectures University of Washington. Seattle: University of Washington Press, (withdrawn from press to include recent challenges to Section 5, Voter Id controversies, and partisan redistricting challenges), expected 2022.

Lincoln and the South Revisited. (Carbondale: University of Southern Illinois Press, expected 2021).

The South as Other: The Southerner as Stranger—The Contradictions of Southern Identity. Columbia: University of South Carolina Press, expected 2021.

(edited with Brent Morris) *Reconstruction at 150: Reassessing the Revolutionary "New Birth of Freedom*. Charlottesville: University of Virginia Press, expected 2020.

(edited with Peter Eisenstadt) *Lincoln's Unfinished Work* (expected 2021)

Editor, *Becoming Southern Writers: Essays in Honor of Charles Joyner*. Columbia: University of South Carolina Press, 2016.

(edited with Ray Arsenault) *Dixie Redux: Essays in Honor of F. Sheldon Hackney*. Montgomery, AL: New South Books, 2013.

(edited with Jerald Podair and Jennifer L. Weber) *The Struggle for Equality: Essays on Sectional Conflict, the Civil War, and the Long Reconstruction in Honor of James M. McPherson.* Charlottesville: University of Virginia Press, 2011.

Editor, *The Essential Lincoln*. NY: Hill and Wang, 2009.

(edited with David O'Brien) *Remembering Brown at Fifty: The University of Illinois Commemorates Brown v. Board of Education*. Urbana: University of Illinois Press, 2009.

(edited with Winfred B. Moore, Jr.) *"Toward the Meeting of the Waters": Currents in the Civil Rights Movement in South Carolina during the Twentieth Century.* Columbia: The University of South Carolina Press, 2008. Paperback 2011.

Editor, *Slavery in America: Gale Library of Daily Life,* 2 vols. NY, Detroit: Gale Cengate Learning, 2008.

(edited and annotated with Georganne B. Burton, introduction pp. 1-48) *"The Free Flag of Cuba": The Lost Novel of Lucy Pickens* [orig. pub. 1854] in the Library of Southern Civilization series, edited by Lewis P. Simpson. Baton Rouge: Louisiana State University Press, 2002. Paperback 2003.

Editor, *Computing in the Social Sciences and Humanities*. Urbana: University of Illinois Press, 2002.

(edited with David Herr and Terence Finnegan) *Wayfarer: Charting Advances in Social Science and Humanities Computing*. Urbana: University of Illinois Press, 2002. This CD-ROM contains more than 65 essays and research and teaching applications, including illustrative interactive multimedia materials.

(with et al.) *Documents Collection America's History*, vol. 1, to accompany James Henretta, et al., *America's History*, 2nd ed. NY: Worth Publishers, 1993.

(edited with Robert C. McMath, Jr.) *Class, Conflict, and Consensus: Antebellum Southern Community Studies*. Westport, Conn: Greenwood Press, 1982.

(edited with Robert C. McMath, Jr.) *Toward a New South? Studies in Post-Civil War Southern Communities*. Westport, Conn: Greenwood Press, 1982.

(with Beatrice Burton and Megan Shockley) *An Administrative History of Fort Sumter and Fort Moultrie* (Washington, DC: The National Park Service, expected July 2019)

Plays:

(with Georganne Burton) "Abraham Lincoln's Beardstown Trial: The Play" Premiered Sept. 29, 2009, Beardstown, IL. (Endorsed by the Congressional Abraham Lincoln Bicentennial Commission, November 2009; Play available upon request); http://www.lincolnbicentennial.gov/calendar/beardstown-trial-11-10-09.aspx; http://www.civilwar.org/aboutus/events/grand-review/2009/almanac-trial.html

Editor, Book Series, *A Nation Divided: Studies in the Civil War Era Series*, University of Virginia Press, 2011-

Editor, Book Series, *The American South Series*, University of Virginia Press, 2013-

Introductions and Forewords to Books:

"Foreword," pp. ix-liv to *Born to Rebel: An Autobiography* by Benjamin Elijah Mays. Athens: University of Georgia Press Brown Thrasher edition, 1987, also in paperback edition (book without foreword originally published by Charles Scribner's Sons, 1971). Revd. Foreword 2003.

"Introduction," pp. 9-11 to *Roll the Union On: Southern Tenant Farmers Union*. As told by its Co-founder, H.L. Mitchell. Chicago: Charles H. Kerr Publishing Company, 1987.

"Introduction," pp. xiii-xviii to *Soldiering with Sherman: The Civil War Letters of George F. Cram*. Jennifer Cain Bohrnstedt, ed., DeKalb: Northern Illinois University Press, 2000.

"Introduction," pp. x-xxxiv to *Pitchfork Ben Tillman: South Carolinian* by Francis Butler Simkins, for the reprint edition of the Southern Classics Series of the Institute for

Southern Studies. Columbia: University of South Carolina Press, 2002 (book without Introduction originally published by Louisiana State University Press, 1944).

(with James Barrett) "Foreword," pp. xi-xxv to paperback edition of *Cause at Heart: A Former Communist Remembers* by Junius Irving Scales with Richard Nickson. Athens: University of Georgia Press, 2005 (book without Foreword originally published 1987).

"Foreword," pp. vii-xi to *Recovering the Piedmont Past: Unexplored Moments in Nineteenth-Century Upcountry South Carolina History*, edited by Timothy P. Grady and Melissa Walker. Columbia: University of South Carolina Press, 2013.

"Foreword," pp. vii-xiii to *Our Ancestors – Our Stories: The Memory Keepers*, edited by Harris Bailey, et al. Suwanee, Georgia: The Write Image, 2014.

"Foreword," pp. iv-xiv, to Kevin M. Cherry, *Virtue of Cain, Biography of Lawrence Cain* Washington: *From Slave to Senator:* Takoma Park, MD: Rocky Pond Press, 2019.

Journals Edited:

Special issue on the Digital South, *Southern Quarterly*, expected 2021.

"Three Articles from a Century of Excellence: The Best of *The South Carolina Historical Magazine*," pp. 182-89 for *South Carolina History Magazine* 101: 3 (July 2000).

"Introduction," pp. 161-65 for *Social Science Computer Review* 12:2 (Summer 1994).

Co-editor, "Technology and Education," *International Journal of Social Education* 5:1 (Spring 1990).

History Articles, Chapters, and Essays:

"The South as Other, The Southerner as Stranger," Presidential address for the Southern Historical Association, *The Journal of Southern History* LXXIX:1 (February 2013): 7-50.

"Reaping What We Sow: Community and Rural History," Presidential address for the Agricultural History Society in *Agricultural History* (Fall 2002): 631-58.

"Building the Transcontinental Railroad," *Presidential Inaugural Portfolio*, Joint Congressional Committee on Inaugural Ceremonies, January 21, 2013.

"The Creation and Destruction of the Fourteenth Amendment During the Long Civil War," *Louisiana Law Review*, Vol. 79 (Fall 2018): 189-239.

Review essay of Edward L. Ayers, *The Thin Light of Freedom: The Civil War and Emancipation in the Heart of America*,*The Journal of the Civil War Era*, Vol 9, no. 3, September 2019, pp. 493-496.

"Mystery and Contradiction: My Story of Ninety Six," in *State of the Heart: South Carolina Writers on the Places They Love*, Vol. 3, pp. 18-27. Edited by Aida Rogers (Columbia: University of South Carolina Press, 2018)

"Reconstructing South Carolina's Reconstruction," keynote South Carolina Historical Association, 2017 (Columbia: Proceedings of the South Carolina Historical Association, 2018), pp 7-40.

"The Birth of a Nation: A Roundtable," (Roundtable Discussion of film on 1831 Nat Turner Insurrection), edited Ryan Keating in *Civil War History* 64 (March 2018), pp. 56-91.

(with Anderson R. Rouse) "Southern Identity," pp. 40-53, in *The Routledge History of the American South*. Edited by Maggi M. Morehouse (New York: Routledge, 2018).

(with Anderson R. Rouse) "Religious Practices," pp. 111-26, in *The Routledge History of the American South*. Edited by Magi Morehouse (New York: Routledge, 2018).

"Reconstructing South Carolina's History Through the South Caroliniana Library, 80th Annual Meeting Address by Dr. Orville Vernon Burton," The University South Caroliniana Society 81st Annual Meeting, 22 April 2017, pp. 2-32.

"From Clarendon County to the Supreme Court," pp. 84-88 and "Eating with Harvey Gantt and Mathew Perry: Myth and Realities of "Integration with Dignity," pp.139-40 accompanying Cecil Williams' photographs of South Carolina's Civil Rights Movement in Cecil Williams, *Unforgettable, Life Hope Bravery, 1950-1970: Celebrating a Time of Bravery* (Orangeburg: Cecil J. Williams Photography/Publishing, 2017).

"Localism and Confederate Nationalism: The Transformation of Values from Community to Nation in Edgefield, South Carolina," pp. 107-123, 233-39 in Robert H. Brinkmeyer, Jr., ed., *Citizen Scholar: Essays in Honor of Walter B. Edgar* (Columbia: University of South Carolina Press, 2016).

"Lincoln, Secession, and Emancipation," pp. 81-104 in Paul Finkelman and Donald R. Kennon, eds., *Lincoln, Congress, and Emancipation*, for the U.S. Capitol Historical Society (Athens: Ohio University Press, 2016).

"Stranger Redux," pp. 38-49 in Orville Vernon Burton, Editor, *Becoming Southern Writers: Essays in Honor of Charles Joyner* (Columbia: University of South Carolina Press, 2016)

"Tempering Society's Looking Glass: Correcting Misconceptions About the Voting Rights Act of 1965 and Securing American Democracy" *Louisiana Law Review* Lead article for Vol. 76:1 (2015): 1-42.

"Perceptions and Meaning of the Confederate Flag," *The Proclamation* (President Lincoln's Cottage), XXVIII (Summer 2015): 8- 14 (longer unedited version on-line at: http://www.lincolncottage.org/perceptions-and-meaning-of-the-confederate-flag-an-interview-with-two-scholars/ and with Edna Medford)

"Revisiting the Myth of the Black Matriarchy," pp. 119-65 in Orville Vernon Burton and Ray Arsenault, eds., *Dixie Redux: Essays in Honor of F. Sheldon Hackney* (Montgomery, AL: New South Books, 2013).

"The Passage of Lincoln's Republic: Providence in Progress," pp. 13-36 in Stephen Engle, ed. The War Worth Fighting: *Abraham Lincoln's Presidency and Civil War America* (Gainesville: University of Florida Press, 2015).

"Bertram Wyatt-Brown: An Honorable Man and a Man of Grace," *Georgia Historical Quarterly* XCIX, No. 3(Fall, 2015): 2013-18.

(with Michael LeMahieu), "Civil War Memory in the Civil Rights Movement and Contemporary Commemoration," *Journal of American Studies* (with American Studies International, *AMSJ*) 53:4 (2014): 107-18.

Remembering the Civil War," pp. 278-85 in *The Civil War as Global Conflict*. Edited by Simon Lewis and David Gleeson (Columbia: University of South Carolina, 2014).

"The Gettysburg Address Revisited." In *1863: Lincoln's Pivotal Year*. Edited by Harold Holzer and Sara Vaughn Gabbard (Carbondale: Southern Illinois University Press, 2013), pp. 137-55.

(with Ian Binnington) "And Bid Him Bear A Patriot's Part": National and Local Perspectives on Confederate Nationalism in *Deconstructing Dixie*, pp 126-155. Edited by Jason Kyle Phillips (Athens: University of Georgia Press, 2013).

"The Silence of a Slaveholder: The Civil War Letters of James B. Griffin," in *The Battlefield and Beyond: Essays on the American Civil War*. Edited by Clayton E. Jewett (Baton Rouge: Louisiana State University Press, 2013), pp. 13-27.

"Abraham Lincoln," in *The Oxford Encyclopedia of American Political and Legal History*. Edited by Donald T. Chritchlow and Philip R.VanderMeer, 1:560-64. 2 vols. (NY: Oxford University Press, 2012).

(with Lewie Reece) "Abraham Lincoln," Essential Civil War Curriculum, http://www.essentialcivilwarcurriculum.com/. Edited by William C. Davis and James I. Robertson, Sesquicentennial Project of the Virginia Center for Civil War Studies and the

History Department of Virginia Polytechnic Institute and State University (Virginia Tech, 2013).

"Family," in *Enslaved Women in America: An Encyclopedia*. Edited by Daina R. Berry and Deleso Alford Washington (Santa Barbara & Westport, CN: Greenwood Press, 2012), pp. 83-87.

"Lincoln at Two Hundred: Have We Finally Reached Randall's Point of Exhaustion?" In *The Living Lincoln: Essays from the Harvard Lincoln Bicentennial Symposium*, pp. 204-25. Edited by Thomas A. Horrocks, Harold Holzer, and Frank J. Williams (Carbondale: Southern Illinois University Press, 2011), pp. 204-25.

(with Nick Gaffney) "South Carolina," Vol. 2: pp. 745-764 in *Black America: A State by State Encyclopedia*. Edited by Alton Hornsby (Westport, CN: Greenwood Press, 2011).

"Mays, Benjamin" *in The New Encyclopedia of Southern Culture.* Vol. 19 *Education*, Edited by Clarence Mohr. (Chapel Hill: University of North Carolina Press, 2012), pp. 254-255.

"The Age of Lincoln: Then and Now," Keynote for the South Carolina Historical Association Annual Meeting, *The Proceedings of the South Carolina Historical Association*, 2010, pp. 7-22. Edited by Robert Figueira and Stephen Lowe (Columbia: South Carolina Department of Archives and History, 2010). Reprinted pp 11- 26 in Michael Bonner and Fritz Hamer (eds.) *South Carolina in the Civil War and Reconstruction Eras: Essays from the Proceedings of the South Carolina Historical Association* (Columbia: University of South Carolina Press, 2016).

(with Larry McDonnell and Troy D. Smith) "Slavery and Anti-Slavery: A Transnational Archive," pp. 121-26 in L'abolition de l'esclavage au Royaume-Uni 1787-1840 : débats et dissensions The abolition of slavery in Britain 1787-1840 : debate and dissension." Edited by Susan Finding (Paris: ArmandColin, November 2009).

"Abraham Lincoln at Two Hundred," *OAH* (Organization of American Historians) *Newsletter*, 37:4 (November 2009), pp. 1, 8, 12.

"Author's Response to the Southern Intellectual History Circle Forum on *The Age of Lincoln*." *The Journal of the Historical Society* IX:3 (September 2009): 355-72.

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"Abraham Lincoln, Southern Conservative: An Interview with Orville Vernon Burton" (2 Parts), posted by Allen Barra, October 2, 2007. http://www.americanheritage.com/blog/200710_2_1259.shtml and http://www.americanheritage.com/blog/200710_2_1260.shtml

Interview by Roy A. Rosenzweig, 2001, "Secrets of Great History Teachers," *History Matters*, at http://historymatters.gmu.edu/browse/secrets/.

"Keeping Up With the e-joneses: Information Technology and the Teaching of History," *Proceedings for First Annual Charleston Connections: Innovations in Higher Education*

Conference. Learning from Each Other: The Citadel, The College of Charleston, The Medical University of South Carolina, Charleston Southern University and Trident Technical College. June 1 and 2, 2001, The Citadel, Charleston, South Carolina, p. 63.

(with Terence Finnegan and Barbara Mihalas) "Developing a Distributed Computing U.S. Census Database Linkage System," Technical Report 027 (December 1994). National Center for Supercomputing Applications, UIUC.

"On the Study of Race and Politics," *Clio: Newsletter of Politics & History, An Organized Section of the American Political Science Association* 3:1 (Fall & Winter, 1992/1993): 6.

"Benjamin Mays of Greenwood County: Schoolmaster of the Civil Rights Movement," *South Carolina Historical Society* News Service, published in various newspapers, 1990.

"Quantitative Historical U.S. Census Data Base" in *Science: The State of Knowing*. National Center for Supercomputing Applications, Annual Report to the National Science Foundation 1987, p. 29.

"Computer-Assisted Instructional Database Programs for History Curricula" *Project EXCEL*. 1986-87 Annual Report. Office of the Chancellor, UI at Urbana-Champaign, pp. 41-42.

"Postmodern Academy," *The Octopus*, January 24, 1997, p. 6.

(with David Herr and Ian Binnington) "Providing Lessons in Mississippi River Basin Culture and History: riverweb.ncsa.uiuc.edu," in *Touch the Future: EOT-PACI*, 1997, p. 43.

"The Coming of Age of Southern Males During Reconstruction: Edgefield County, South Carolina," Working Papers in Population Studies, School of Social Sciences, University of Illinois at Urbana-Champaign, 1984.

In Memorial – Essays for Charles Joyner, F. Sheldon Hackney, Bertram Wyatt-Brown in the American Historical Association (AHA) *Perspectives*; Thomas Krueger and Philip Paladin in Organization of American Historians *OAH Newsletter*, and F. Sheldon Hackney JSH LXXXI:2 (May 2015), pp. 350-52, and Ernest L. "Whitey" Lander, in *Journal of Southern History*.

"Creating a Major Research Archive on Southern History," *Caralogue: The Journal of the South Carolina Historical Society*, June, 2015.

A number of brief essays about the Clemson CyberInstitute, for example, "Clemson's CyberInstitute encourages Collaboration," http://features.clemson.edu/inside-clemson/inside-news/clemson%E2%80%99s-cyberinstitute-encourages-collaboration/

In addition, I have written a number of reports as expert witness for minority plaintiffs in voting rights and discrimination cases.

Accepted and In Press:

"Liberty," in the Fetzer Institute's *Booklet of Notable Lincoln Quotations*, expected 2018.

Digital Publications and Projects:

Editor in Chief, *The Long Civil War: A Digital Research and Teaching Resource*, Alexander Street Publishers, 2013-

Editor in Chief, *Slavery and Anti-Slavery: A Transnational Archive.* The Largest Digital Archive on the History of Slavery. Farmington Hills, MI: Thompson-Gale, 2007--14. http://www.galetrials.com/default.aspx?TrialID=16394;ContactID=15613. Advisory Board: Ira Berlin, Laurent Dubois, James O. Horton, Charles Joyner, Wilma King, Dan Littlefield, Cassandra Pybus, John Thornton, Chris Waldrep.

Part I: Debates Over Slavery and Abolition, 2009
Part II: Slave Trade in the Atlantic World, 2011
Part III: Institution of Slavery, 2012
Part IV: Age of Emancipation, 2014

Webmaster for the Abraham Lincoln Bicentennial Commission Website, 2007-10, now maintained by the ALB Foundation. http://www.lincolnbicentennial.gov/

"Does Southern Exceptionalism Exist," Inside Clemson, May 14, 2014 http://newsstand.clemson.edu/does-southern-exceptionalism-exist/

Lincoln Remembered: Nine essays – "Lincoln and the Founding of Democracy's Colleges," "Lincoln: America's "First and Only Choice," "Picturing Lincoln," "Putting His Politics on Paper," "Belief in the Rule of Law," "Taking a Stand Against Slavery," "The Movement Toward Civil Rights," "Political Brilliance on the Path to the Emancipation Proclamation," "Lincoln's Last Speech," commemorating the bicentennial of Lincoln's birth, February 2009 to February 2010. A monthly blog for the Illinois LAS On-line Newsletter; available at http://www.las.illinois.edu/news/lincoln/.

Writing the South in Fact, Fiction and Poetry: A Conference Honoring Charles Joyner. Thursday and Friday Sessions. DVD produced of Conference I organized at Coastal Carolina University, Conway, SC, Feb. 17-19, 2011. Produced CD Aug. 2011.

Editor, "Slavery in America in Sources in U.S. History Online." Farmington Hills, MI: Thompson Gale, 2007.

"The Mississippi River in American History," for *Mark Twain's Mississippi*, including essays with Simon Appleford and Troy Smith, on "Economic Development, 1851–1900," "Politics, 1851–1900," "African Americans in the Mississippi River Valley, 1851–1900," "Native Americans in the Mississippi River Valley, 1851–1900," "Religion and Culture, 1851–1900," and "Women in the Trans-Mississippi West,1851–1900." Edited by Drew E. VandeCreek, Institute of Museum and Library Services *(IMSL)* Project (2007). Online Resource: http://dig.lib.niu.edu/twain/.

RiverWeb: An interdisciplinary, multimedia, collaborative exploration of the Mississippi River's interaction with people over time (now redone as Cultural Explorer). CD-ROM and Website http://riverweb.ncsa.uiuc.edu/.

The Illinois RiverBottom Explorer (IBEX). Part of the East Saint Louis Action Research Project (ESLARP) where Faculty and East St. Louis neighborhood groups and local churches work on tangible and visible projects that address the immediate and long-term needs of some of the city's poorest communities. (More is available at http://www.eslarp.uiuc.edu/). IBEX serves as a resource for historical documents, primary and secondary sources, and oral history interviews. Website: http://www.eslarp.uiuc.edu/ibex/archive/default.htm.

Text96. A collection of primary source electronic texts for teaching American History. Website http://www.history.uiuc.edu/uitext96/uitexttoc.html.

"Database Exercises and Quantitative Techniques: Exercise I: Colonial America." Madison, WI: Wiscware, 1987. (for IBM and compatible computers, 1 disk, Instructional Workbook, and Teacher's Instructional Sheet).

"Lessons in the History of the United States." Wentworth, NH: COMPress, 1987 (1989 with QUEUE, Fairfield, CT). For IBM color monitor; originally 50 computer exercise modules on 25 computer disks + instructor's manual. An interactive electronic textbook of U.S. history.

Automated linkage and statistical systems Unix Matchmaker, AutoLoad, RuleMatch, DisplayMatch, ViewCreate (Urbana: UI NCSA, 2000). Website http://www.granger.uiuc.edu/aitg/maps/1870/htm/default.htm

"Illinois Windows Dataentry System for U.S. Census." University of Illinois, 1988 (for IBM PS2 and compatible computers with Windows applications, 1 disk, Instructional Sheet)

The Age of Lincoln website at https://ageoflincoln.app.clemson.edu.

Current Digital Projects include Social Media Learning Center Studies of Elections, Redistricting, Minorities, and Discussions of the American South, Race, and the Civil

War. Also text and data analytics (mining) – developing techniques using the HathiTrust, Internet Archive II Digital Book Collection, and Library of Congress Chronicling America U.S. newspaper archive to study "DNA" of writings of Abraham Lincoln, changing views of American South over time, interpretations of Civil War and development of "Lost Cause Mythology."

In addition, I continue to use Edgefield County, South Carolina to investigate, "large questions in small places." I have accumulated a quantitative database that includes every person and farm recorded in the U.S. manuscript census returns linked from 1850 to 1880 for old Edgefield District, South Carolina (a region now comprising five different counties). With this unique database I (and my students) can study, test, and suggest themes in American History with details and specificity related to the lives of ordinary folks.

Selected Grants:

National Science Foundation (NSF), GK-12: Ed Grid Graduate Teaching Fellows Program, 2003-09 ($4,990,015)

NSF, EAGER: Prototype Tool for Visualizing Online Polarization (co-Pi), 2012-14 ($262,654)

NSF CISE/IRIS Division Award, Grant No. ASC 89-02829, Automated Record Linkage, 1991

NSF Grant No. CDA-92-11139, "Historical U.S. Census Database with High Performance Computing," 1992

NSF, EPIC Grant, 2006-08 ($20,000)

NSF Catalyst Grant for Social Science Learning Center (with MATRIX, Michigan State University), 2006-09 ($175K)

NSF, Senior Investigator on the MRI award, Award #1228312 MRI: Acquisition of High Performance Computing Instrument for Collaborative Data-Enabled Science ($1,009,160) See: http://nsf.gov/awardsearch/showAward?AWD_ID=1228312&HistoricalAwards=false

Abraham Lincoln Bicentennial Foundation, Lincoln's "Unfinished Work": Conference on The South and Race," 2012-2018 ($27,000)

National Parks Service, "*Administrative Histories of Fort Sumter National Monument and Charles Pinckney National Historic Site*," $110,000.00

Clemson University, "Tracking Themes Across Time and Space," 2012 ($10,000)

National Endowment for the Humanities (NEH) Challenge Grant for Institute for Computing in Humanities, Arts, and Social Science, 2008-11 ($750,000, 3 mil. Total with challenge matches)

NEH Educational Technologies Grant, ED-20758, 1997-99

NEH Humanities High Performance Computing Advance Research and Technology (HpC): Coordinating High Performance Computing Institutes and the Digital, 2008-09 ($249,997). To support a total of nine institutes and one joint conference for humanities scholars, to be hosted by three different high-performance computer centers: the National Center for Supercomputing Applications, the Pittsburgh Supercomputing Center, and the San Diego Supercomputer Center.

NEH, NSF, and the Joint Information Systems Committee, "Digging Into Image Data to Answer Authorship Related Questions," 2009-11 ($100,000).

(with Max Edelson) NEH, The Cartography of American Colonization Database Project, To support the development of a database of 1000 historical maps illustrating the trajectory of colonization in the Americas. The database will provide a searchable introduction to the mapping of the western hemisphere in the era of European expansion, ca. 1500-1800. 2008-09 ($24,997)

NEH Conference Grant (with R. C. McMath, Jr., History and Social Sciences, Georgia Institute of Technology), 1978
NEH Summer Research Fellowship, 1983
American Council of Learned Societies (ACLS) Travel grant, 1977
American Council of Learned Societies (ACLS) Grant- to Recent Recipients of the Ph.D., 1977
PT3/Technology Across Learning Environments for New Teachers grant, U.S. Department of Education, 2002-03, 2003-04
Academy of Academic Entrepreneurship, 2006-08
National Archives Record Administration grant for digital records, 2003-05
IBM Shared University Research Grant, 1994
IBM Innovations grant, Educational Technologies Board, 1992
IBM Technology Transfer IBM grant, 1988
IBM EXCEL II, History Database Teaching Project, 1987
IBM EXCEL Project, History Database Teaching Project, 1986
Partnership Illinois Award, 1998 (with Brian Orland, Pennsylvania State University Landscape Architecture, East St. Louis Research Project), RiverWeb 2002-03, 2003-04
East Saint Louis Action Research Program Grant, 2005-06, 06-07, 07-08
Andrew Carnegie Foundation 3-year Baccalaureate Study Grant, 1976
Sloan Center for Asynchronous Learning Environment Grant, 1998
South Carolina Humanities Grant for Lincoln's Unfinished Work, $7,000, 2018-19
The Humanities Council (South Carolina) Outright Grant ($8,000), THC grant #10-1363-1 (Writing the South in Fact, Fiction, and Poetry), 2011
South Carolina Humanities Council Conference Grant (with Tricia Glenn), 2005
South Carolina Humanities Council Conference Grant (with Winfred Moore), 2002-03
South Carolina Humanities Council Conference Grant (with Bettis Rainsford), 2000-01
(with Ian Brooks, University of Illinois) "Improving patient outcomes by listening to their social media communications," **H**omecare **E**ducation **A**nd **R**esource **T**eam **S**upport (**H/E/A/R/T/S**), $15,000, 2017-
Grant for Conference on "Lincoln's Unfinished Work," Thomas Watson Brown Foundation, $17,560, 2017- 18
Self Family Foundation, $6,000 for Lincoln's Unfinished Work, 2018-19

Selected Grants from University of Illinois
Office of Continuing Education Grant, 2005-06, 06-07
Chancellor, Provost, and Vice Chancellor Research, RiverWeb Grant, 2004-05 ($30K)
Advanced Information Technologies Group Research Award, 1994, 96, 97, 2000
Applications of Learning Technologies in Higher Education grant for UI--Text96 Project, 1995--2000 (co-principal investigator with Richard Jensen of UIC campus)
Educational Technologies Board Grant for RiverWeb 1998
Guided Individual Study Grant for RiverWeb, 1997-98
Program for the Study of Cultural Values and Ethics, Course Development Award, 1993
Arnold O. Beckman Research Grant Award, UIUC Research Board, 1989, 1992
Language Laboratory Computer Assisted Instruction Award, 1988
Research Board Humanities Faculty Research Grant, 1986
Graduate Research Board, support for various projects, 1976-08

Selected Grants from Clemson University
2011/2012 University Research Grant Committee (URGC) Program ($10,000)
2013-14 CAAH & Library Digital Humanities Grant ($4000)

2018- Clemson Humanities Hub Short Term Visiting Humanities Fellowship, a grant to help fund the Conference on Lincoln's Unfinished Work ($5,000)

Selected Professional Activities and Service:

Officer Congressional Abraham Lincoln Bicentennial Commission Foundation, 2008-2010; Board of Directors, Abraham Lincoln Bicentennial Foundation, interim President, 2010, vice-chair 2010-

Southern Historical Association, President 2011-12, President Elect, 2011, Vice President Elect, 2010, Executive Council, 2005-08, 09-15; Program Committee 1989, 1998; 2005 (Chair); Membership Committee, 1986-87, 1991-92; 1995-98; 2002; Committee on Women, 1992-95, Nominating Committee, 1999-2000, Chair H.L. Mitchell Book Award Committee, 2000-02

Agricultural History Society, President 2001-02, Vice President 2000-01, Executive Committee, 1997-2006; Committee to Review and Revise Constitution and By-Laws, 2004-05; Nominating Committee, 1991-94, chair 1993-94; Committee to Select first Group of Fellows for Society, 1995; Committee to select new Secretary/Treasurer, 2009-10

Organization of American Historians, Included in the Organization of American Historians Race Relations Expert Guide, 2015-, OAH/ALBC (Abraham Lincoln Bicentennial Commission) Abraham Lincoln Higher Education Awards Committee, 2007-09; ABC-CLIO "America: History and Life" Award Committee, 1997-99; Membership Committee, 1990-94, nominated for executive board 1989.

Social Science History Association, Executive Committee 2000-03; Nominating Committee 1990-91; Program Committee 1989, 1993; Community History Network Convener, 1976-79; Rural History Network Convener, 1988-90, 1993-94

Social Science Computing Association, Executive Council, 1993-2002; Organizing Committee Chairperson for Annual Conference, 1993, Conference on Computing for the Social Sciences (CSS93); program committee 1993-95, 2001

American Historical Association, Nominated for Vice President for Teaching, 2009

Southern Association for Women Historians, Membership Committee, 1996-99

The Society of Civil War Historians, Chair Thomas Watson Brown Book Award for the best book published on the causes, conduct, conduct, and effects, broadly defined, of the Civil War, 2017-18.

South Carolina Historical Association, Executive Board, 2009-12

H-Net, founding member of H-Net, Treasurer and Executive Committee, 1993-99; Chair, committee to evaluate multimedia NEH grant; Editor H-South (book review editor 1997-2000); Editorial Board of H-Rural, H-Slavery, and H-CivWar.

Scholarly Advisory Group, President Lincoln's Cottage at the Soldier's Home, 2012-

Executive Council, The University South Caroliniana Society, 2011-15

University of South Carolina, Search Committee for Director South Caroliniana Library, 2012

Executive Board South Carolina Jubilee Project, 2012-14

Member South Carolina Abraham Lincoln Bicentennial Commission, 2008-2010

Member Champaign County, Illinois, Abraham Lincoln Bicentennial Commission, 2006-10

Council, U.S. Civil War Sesquicentennial Commission, 2009-15

Historical Advisory Committee to the "Fort Sumter/Fort Moultrie Trust," charged with organizing Sesquicentennial Activities in Charleston and South Carolina Lowcountry, 2010-15

The Illinois Humanities Council Scholar, 2004-05

Presented to President's Information Technology Advisory Commission (PITAC), 9-16-2004

Invited to NEH Digital Humanities Initiative Mini-Conference, March 2006 and Digital Humanities Summit, April 2011, December 2007

Digital Library Federation Scholars' Advisory Panel, 2004-7
University of Tennessee Knoxville Horizon Project Steering Committee, 2014-
Peer Reviewer, ACH/ALLC/SDH-SEMI Joint Digital Humanities Conferences, 2007-13
E-Docs, (one of 3 founding members) Editorial Board, 1998-2005
Mentor for Southern Regional Council Minority Scholars Program, 1992-96
UIUC Representative to Lincoln Presidential Library Committee: Educational Activities Committee, 2001; Fellowship Committee, 2002
Faculty Associate, Council for International Exchange of Scholars, 2002-03
Evaluator/Referee (one of two for history) for the Pew Foundation Faculty Research Fellowships, 1997-98, 1998-99; 2001 (for graduate students for summer seminar)
Evaluator and Referee for American Council of Learned Societies Grants, 2005-08
National Endowment Humanities, Review Panels: Scholarly Editions Program, 2007-08, for Digital Humanities Grants, 2010, NEH Division of Public Programs Panel, "America's Historical and Cultural Organizations" (AHCO) grant initiative, 2013; Humanities Connections, 2016
National Science Foundation Review Panel for Knowledge and Distributed Intelligence grants, 1998, 1999
Humanities, Arts, Science, and Technology Advanced Collaboratory (HASTAC), Steering Committee and Planning Committee, 2003-04, Program Committee, 2009, 2010, 2013-14
Advisory Committee, American Studies Program, Bureau of Educational and Cultural Affairs, U.S. Information Agency, 1989-93
Delegate to the Mexican/American Commission on Cultural Cooperation, Mexico City, June 1990; Chairperson of United States delegation (Co-Chairperson with Mexican counterpart), U.S. Studies Working Group
Advisor for "Crossroads of Clay": NEH Alkaline Glazed Stoneware Exhibition and Catalog, McKissick Museum, University of South Carolina, 1987-90
Advisory Committee Film Project for Historic Southern Tenant Farmers Union, 1986-90
Consultant, Commercial film, "Roll the Union On" about H.L. Mitchell and the Southern Tenant Farmers Union
Consultant on the Renewal of the 1965 Voting Rights Act, 1981-82, 2004-07, including consultation for an NBC TV Special.
Consultant for Documentary, "Behind the Veil," 1995-2005
Board of Directors of the Abraham Lincoln Historical Digitization Project, 1997-
Advisory Council for the Lincoln Prize at Gettysburg College, 1997-
Prize Committee for the Technology and History Award, The Gilder Lehrman Institute of American History, 2000-01
International Committee on Historic Black Colleges and Universities, 2001-
Consultant, Belle Meade and The Hermitage and Vanderbilt University. Presentations of slavery.
Consultant, Morven Park, 2010-12
Consultant, for Matt Burrows, documentary "The Assassination of N.G. Gonzales by James H. Tillman," 2010-
Consultant, for Chris Vallilo musical performance, "This Land is Your Land: Woody Guthrie and the Meaning of America," 2010-
Organizing and Founding Committee International Society for the Scholarship of Teaching and Learning (IS-SOTL), 2003-7. Drafted initial mission statement for Society.
Furman University Alumni Council Board, 2010-16
International African American Museum (IAAM) Program Subcommittee (Charleston, SC), 2016-

IAAM, Content team for an exhibit wall located in the Carolina Gold gallery entitled Built on Slavery, 2018-
Dr. Benjamin E. Mays Historical Preservation Site Foundation Board, 2015-

Editorial Boards:
Associate Editor for History, *Social Science Computer Review*, 2012-16
Editorial Board, International Journal of Humanities and Social Science Research, 2015-
Editorial Board, Digital Humanities Series, University of Illinois Press, 2005-
Editorial Board, *Change and Continuity*, 1995-
Editorial Board *Fides et Historia*, 2010-
Editorial Board *Proceedings of the South Carolina Historical Association*, 2009-14
Editorial Board, *History Computer Review*, 1990-2003
Editorial Board, *Locus: An Historical Journal of Regional Perspectives on National Topics*, 1994-96
Editorial Advisory Board, *The South Carolina Encyclopedia*, gen. editor Walter Edgar, 2000-06

Advisory Boards:
Advisory Board for *International Journal of Social Education*, 1986-2000
Advisory Reviewer for *The Journal of Negro History* (since 2002, *The Journal of African American History)*, 1992-
Advisory board for the online *South Carolina Encyclopedia*, Southern Studies Institute, University of South Carolina, 2015-
Advisory Board, Digital Library on American Slavery, University of North Carolina, Greensboro, 2004-10
Advisory Board, Biographies: The Atlantic Slaves Data Network (ASDN), 2010-
Advisory Board, Simms Initiatives of the Library at the University of South Carolina, 2009-14
Advisory Board, American Insight, 2013- (www.AmericanINSIGHT.org)
Strategic Advisory Council for MATRIX: The Center for Humane Arts, Letters and Social Sciences On-line at Michigan State University, 2004-
Advisory board, of the Michigan State University MATRIX online project, "Mapping Civil War Politics"
External Advisory Board (EAB) of proposed Center of Data for the Public Good, University of North Carolina, Chapel Hill
Advisory Board, The Virtual Archives for Land-Grant History Project, Association of Public-Land Grant Universities, 2012-
External Advisory Board, National Historic Preservation Research Commission (NHPRC) "Effective User-Centered Access For Heterogeneous Electronic Archives" project, Illinois Institute of Technology, 2003-05
Advisory Board, *Postwar America: An Encyclopedia of Social, Political, Cultural, and Economic History*
External Advisory Board (EAB) of the proposed NSF Center for Data Science and Engineering, University of North Carolina, Chapel Hill, 2014-
National Advisory Board to Alan Lomax's Global Jukebox: 1993-2015
The Civil Rights Project at University of California, Berkeley, Advisory Board for "The Decade Ahead: Reauthorization of the Voting Rights Act and the Future of Democratic Participation," 2004-07
Advance Research and Technology Collaboratory for the Americas (ARTCA) –Organization of American States, Advisory Board Chair, 2008-
Gullah-Geechee Corridor Board, 2019-

Service - University of Illinois (three campus system – Urbana, Chicago, Springfield)
UI Senate Conferences (elected), all three campuses of the University of Illinois, 2006-09, Presiding officer (chair) 2007-08
Lincoln Bicentennial Commission, 2006-09
Academic Affairs Management Team, 2007-08
Task Force for Global Campus, 2006-07
External Relations Management Team, 2006-09
Strategic Plan Committee, 2005-06

Service (selected) University of Illinois at Urbana-Champaign
Faculty Senate (elected), 1999-2001, 2002-03; 2005-06, 2006-07, Presiding Officer (Chair, Senate Executive Committee), 2005-06, 2006-07 (was Senate Council) elected 2000-01, 2003-04; 2005-06; 2006-07; Chair, Education Policy Committee, 2002-03, Chair 2003-04; Budget and Priorities Committee, 1999-01, Chair 2000-01
As Chair Faculty Senate Executive Committee, 2005-07 represented faculty at Board of Trustee meetings, and CIC meetings. Led in developing ideas of shared governance, helped in the drafting and implementing of a strategic plan for both the University of Illinois and the Urbana-Champaign campus. Oversaw establishment of the Illinois Informatics Institute (I3) and the School of Earth, Society, and Environment. Dealt with issues of multi-year contracts for research faculty and staff policy, rehiring of retirees, Global Campus, and led study of Academic effects of Chief Illini and diversity issues.
Organizer and Chair, Planning Committee for the Lincoln Bicentennial, 2006-09
Task Force for Diversity and Freedom of Speech, 2007-08
Convocation address, August 21, 2000
Search Committee for Chancellor, vice-chair, 2004-5
Association of American Colleges and Universities campus representative and Assoc., 2004-05
Martin Luther King, Jr., Week Planning Committee, co-chair, 2002-03, 03-04, 04-05, 05-06
Strategic Plan Committee, 2005-06
Chancellor's Task Force ("Kitchen Cabinet") for the Humanities, 2002-04
Provost's ad hoc Committee on Evaluating Public Service for Promotion and Tenure, 2003-04
Brown Jubilee Planning Committee, Diversity Initiative, 2002-04
Law-Education *Brown* Jubilee Conference Program Committee, 2002-04
East St. Louis Action Research Projects (ESLARP) Campus Advisory Committee, 2004-9
University Planning Council, 2000-01
Selection Committee for University Scholars, 1999 -- 2000, Chair Subcommittee for Social Sciences, Humanities, FAA, Communications, Education, Law 2000
UI President's Distinguished Speakers Program, 2000-02, 2006-08
University of Illinois Press Board, 1995-2000, Chair 1998-2000
Search Committee for Director University of Illinois Press, 1998-99
Committee on University Publishing, 1997-98
Graduate College Executive Committee, 1998-2000; Committee to Evaluate Dean of Graduate College, Committee to Review and Implement Graduate Program Revisions, Graduate Student Grievance Policy Committee
Graduate College Office of Minority Affairs Strategic Planning Committee, 1999-2000
University Administration Budget and Benefits Study Committee, 2000-02
Budget Strategies Committee, 1993-94, Subcommittee for Library. Subcommittee for Faculty Productivity and Teaching Models
Illinois Program for Research in the Humanities (IPRH) Advisory Committee, 2001-03
Center for Democracy in a Multicultural Society, Advisory Committee, 2002-08
Center for Advanced Study George A. Miller Committee, 2000-03

African American Studies and Research Program (AASRP), later Department of African American Studies, Advisory Council, 1982-86; Curriculum Development & Faculty Recruitment Committee, 2002-2003; Research and Course Competition Committee, 1991-94, Chair 93-94; Electronic Networking Committee, 1996-2000, Chair 1997-98; Library Advisory Committee, 1997-2003
UI-Integrate Faculty Advisory Committee, 2003-04
Graduate College Area Subcommittee for the Humanities and Creative Arts, 1996-98
Campus-wide Advisory Committee for the Center for Writing Studies, 2000-01
Committee on Institutional Cooperation (CIC), Selection Committee for CIC Research Grants in the Humanities, 1993-94
Chancellor's Task Force for Minority Graduate Students, 1989-92
Chair, Subcommittee for Summer Program for Minority Graduate Students, 1990
Computer Resources Development Committee, Program for the Study of Cultural Values and Ethics, 1991-93
High Performance Computing Committee for the Social Sciences, 1989-95
Rural History Workshop Convener, 1989-94 (with Sonya Salamon)
Faculty Fellow, 1990-2003
Graduate College Fellowship Committee, 1988
Selection Committee for Lily Fellows, 1987
Social Studies Committee for the Preparation of Teachers, Council on Teacher Education, 1986
Chair, Search Committee for African-American Scholar, 1986-87
Search Committee, Director for AASRP, 1985-86, Chair 87-88
Graduate College Appeals Committee, 1984
Chancellor's Allerton Conference, 1988; Chancellor's Beckman Conference, 2001-06; Chancellor's Conference on Diversity, 2002, faculty facilitator
Combating Discrimination and Prejudice Workshop, 1988
Krannert Art Museum, Committee on The Black Woman as Artist, 1992
H. W. Wilson Faculty Panel, 1993
Advanced Information and Technology Committee, 1992-97, Advisory Committee, 1993-94
Honors Symposium for UI recruitment of High School Seniors, 1993
Search Committee for Archivist, UIUC Computing and Communications Service Office, 1993
Search Committee for Research Librarian, UIUC Library, 1997; Undergraduate Library Advisory Committee, 2002-9
Member Human Dimensions of Environmental Systems Group, 1997-2017
Faculty Learning Circle for 2003-04
Illini Days Speaker, 1999, 2000, 2002
Public Interest Fund of Illinois Representative, 1996- 08
Facilitator for Interinstitutional Faculty Summer Institute on Learning Technologies, UIUC, 2000, 2002
Board Advisors, Collaborative for Cultural Heritage and Museum Practices (CHAMP), 2005-08
Faculty Mentor for Campus Honors Program, 1980-2008

Service - College of Liberal Arts and Science UI:
Lecturer at Pedagogy 2000: Teaching, Learning and Technology, Annual UIUC Retreat on Active Learning (2000)
Keynote Address at LAS Awards Banquet, 2000 and Keynote at UIUC Campus Awards Banquet, 2000
Dean's Committee to Evaluate Chair of History Department (1 of 3 elected by History Department), 1996
Oversight Committee Computing for the Social Sciences, 1993-95

Committee to select nominees for election to College Executive Committee, 1992
Academic Standards Committee, 1983-85, Chair 1984-85
School of Humanities Scholarship and Honors, 1986-88, Chair 1987-88
Social Sciences and Humanities Respondent to the Joint Task Force on Admission Requirements and Learning Outcomes, 1988
Advisory Committee, Social Sciences Quantitative Laboratory, 1987-88, 1989-93
Alumni Association Annual Speaker, 1990
General Education Committee, 1990-91
Awards Committee, Chair, 1991-92
Race & Ethnicity, Class & Community Area Committee of Sociology Graduate Program, 1993-2009
LAS Alumni Association Speaker, 2000
Cohn Scholars Honors Mentoring Program (choosing the 10 best Humanities first-year students), 1986-88, 1989-90, 1992-93, 1995-96, 1998-99, 2002 -05
Faculty Mentor, Committee of Institutional Cooperation Summer Research Opportunities Program for Minority Students, 1987, 1991-95, 1997-2000, 2002, 2003
Faculty Mentor, McNair Minority Scholars, 1993-94, 1996-97
Summer Orientation and Advance Enrollment Program, Faculty Leader, 1991-93, 2000, 2002, 2004
Gender Inclusivity Seminar, 1992
The African-American Experience: A Framework for Integrating American History: An Institute for High School Teachers of History, instructor 1992, 1994
Faculty Advisor for UIUC Law School Humanities Teaching Program, 1998-99
Senior Faculty Mentor, LAS Teaching Academy, 1999-2008

Service - Department of History UI:
Lincoln Bicentennial Committee, Chair, 2005-06, co-Chair 2006-08
Department Distance Learning and Global Campus committee, 2007-08
Carnegie Initiative on the Doctorate, 2003-05
Ethical Conduct Liaison, 2004-05
Phi Alpha Theta Faculty Advisor, 2005-06
Graduate Placement Officer, 1990, 1991-94, 1997-99
Graduate Admissions Officer, 1990-91
Graduate Committee, 1990-93
Organizer of OAH Breakfast Meeting, 1989-90, 1993-94
Computer Resources, 1976-88, 1989-91, 1995-99, Chair 1976-85, 1997-99
Teaching Awards, 1986-88, 1992-93, 1997-98, 1999-2000, Chair, 1987-88, 1997-98, 1999-2000
T.A. Evaluation, 1975-76, 1978-82, 1984-88, 1990-91, 1995, 1998-99, 2002, 2005-06
Speakers and Colloquia, 1981-82
Grants and Funding, 1981-82
Capricious Grading, 1985-86, 2002-03
Social Science History Committee, 1980
Advisor, History Undergraduate Club, 1976-78
Swain Publication Prize Essay Committee, 1991
Proposal-Writing Workshop, 1991-92, 2002
Teaching Workshop, 1993
Chair Library Committee, 1996-97
Faculty Advisor for Phi Alpha Theta, 2005-06
American History Search Committee, 1991-92
Chair, American History Search Committee, 1993-94

James G. Randall Distinguished Chair Search Committee, 1999-2000

Service Coastal Carolina University:

Search committee for Archaeologist, 2008-09
Selection Committee for Clark Chair of History, 2010
Third Year Assistant Professor Faculty Review Committee, 2010

Service Clemson University:

Chair, Search committee for Dean of the Library, 2017-18
Search Committee for Dean of CAAH, 2019-20
Provost's Research Strategy Committee, 2014-16
Martin Luther King, Jr. program planning committee, 2013-
Pan-African Advisory Committee, 2014-17; Steering Committee, 2017-, Chair Speaker's committee, 2018-19
History Department Graduate Committee, 2017-18
History Department Civil War Sesquicentennial Committee, 2010-15
History Department Digital MA, then Digital Ph.D. committee, 2011-
Clemson Center for Geospatial Technologies Advisory Committee, 2017-
GIS Steering Committee, 2012-
Clemson University Computational Advisory Team (CU-CAT), 2010-
University Academic Technology Council, 2010-
Ex-officio Steering Committee, Clemson CyberInstitute, 2010-
University Committee to commemorate the 50th Anniversary of the Integration of Clemson, 2011-13
Outstanding Staff Employee Award, Academic Affairs Selection Committee, 2011
University Morrill Act Anniversary Celebration, 2011-13
Ben Robertson Society (BRS) Foundation Advisory Board, 2013-
Chair, Clemson University Humanities Grid committee, 2012-14
Chair, CAAH Digital Humanities Computing committee, 2013-15
CAAH, Digital Humanities Ph.D. taskforce, 2014-16
CAAH taskforce on undergraduate "Creativity Certificate"
History Department committee to review university signage of historical significance, 2015-
First Faculty in Residence (Norris Hall), 2011-13
Workshop on Diversity and Inclusion, 2013

A more complete list of Service and Public Engagement is available upon request.

Conferences Organized (selected list):

In 1978, I (with Robert C. McMath, Jr.) organized and chaired a National Endowment for the Humanities Conference on Southern Communities at the Newberry Library. In 1993, I organized, hosted, and chaired the annual meeting of the Conference on Computing for the Social Sciences at the National Center for Supercomputing Applications. In 1999, I organized and hosted the 12th Annual Meeting of the Southern Intellectual History Circle (SIHC) in Edgefield and Ninety Six, S.C, and again hosted SIHC for its 16th Annual meeting in 2004 at the College of Charleston, and the 2013 meeting in Edgefield. In 2001, I organized a workshop and conference on diversity and racism in the classroom with Carnegie Scholars at The Citadel in Charleston, S.C. In 2001, I organized a South Carolina Humanities Council Edgefield Summit

History Conference. In January 2003, I organized a Workshop on Diversity and Racism and a Conference on the Scholarship of Teaching and Learning, both at the University of Illinois. In March 2003 I organized The Citadel Conference on the South: "The Citadel Symposium on the Civil Rights Movement in South Carolina." I organized the Humanities, Arts, Science, and Technology Advanced Collaboratory (HASTAC) meeting in January 2004 in Washington, D.C. I organized and hosted a Humanities Computing Summit in August 2004 at NCSA and UIUC. In 2005, I planned and hosted the British American Nineteenth Century History (BrANCH) Conference in Edgefield, South Carolina and a symposium honoring Jim McPherson's retirement in April 2005 in Princeton. As program chair I helped organize the Southern Historical Annual meeting in Atlanta in November 2005. In 2011, I organized a conference in honor of Charles Joyner, *Writing the South in Fact, Fiction, and Poetry*, at Coastal Carolina University. In 2013, I organized a conference honoring F. Sheldon Hackney at Martha's Vineyard. On Nov. 28-Dec 1, 2018, I organized and hosted an international conference on "Lincoln's Unfinished Work," and on the afternoon of Dec. 2 lead a workshop for teachers on how to teach about the history of race in South Carolina k-12 schools. As Director of I-CHASS, I regularly organized conferences and workshops, at least two major conferences a year such as "Computing in Humanities, Arts, and Social Sciences" (2005), "Spatial Thinking in the Social Sciences and Humanities" (2006), and the "e-Science for Arts and Humanities Research: Early Adopters Forum" (2007). In 2007 we hosted the annual international meeting of The Alliance of Digital Humanities Organizations including The Association for Computers and the Humanities. As Director of the Clemson CyberInstitute, I regularly organized workshops, brownbags, conferences, and meetings. And as Executive Director of the College of Charleston Atlantic World and Lowcountry (CLAW) Program, I regularly work with others to organize conferences and meetings.

Reviews:
I have reviewed books for numerous journals and book manuscripts for numerous presses. In addition, I have refereed article manuscripts for numerous journals. I have also reviewed proposals for various granting agencies. I have also reviewed and written outside letters of recommendation for promotion, tenure, and endowed chair decisions for more than a hundred cases at various colleges and universities. Lists of these reviews, presses, journals, universities, and granting agencies are available upon request.

Invited lectures and conference participation available upon request. Recently, selected invited lectures include those at Harvard University, University of Pennsylvania, Black Congressional Caucus on Lincoln (2009), Printers Row Book Fair, Society of Civil War Historians, Society of Historians of Early America, Abraham Lincoln Bicentennial Commission (ALBC), Atlanta Town Hall meeting on Race at Morehouse College and at Jimmy Carter Presidential Library Center, the Crown Forum Martin Luther King, Jr. lecture at Morehouse College, Western Illinois University, Drake University, University of Illinois Law School, Union League Club of Chicago, Association of Archivists and Librarians, CASC, University of Georgia, Lawrence University, Wisconsin Lincoln Bicentennial, University of Wisconsin at Milwaukee, University of Wisconsin at Madison, University of Wisconsin at Eau Claire, University of Kansas, Samford University, Talladega University, ALBC Morrill Act Conference, Arkansas State University, San Francisco State University, Lewis University, Notre Dame, University of Oklahoma, University of Florida, University of Southern Florida, Florida State University, University of South Carolina, South Carolina State University, North Greenville University, Anderson University, Augusta State University, Auburn University, Mercer University, American Historical Association, Organization of American Historians, Southern Historical Association, Agricultural History Society, Wheaton College, University of Illinois, Florida Atlantic University, Lincoln

College, Claflin University, Francis Marion University, Policy Studies Association, Southern Studies Association Meeting (regional affiliate of American Studies Association), Association for the Study of African American Life and History (ASALH), Penn Center, Coastal Carolina University, Virginia Polytechnic Institute and State University (Virginia Tech), South Carolina Historical Society, South Carolina Department of Archives and History Civil War Symposium, Supercomputing11 (Seattle), History Miami, William Patterson University, USC Upstate, University of Hawaii, University of North Carolina at Charlotte, University of North Carolina at Chapel Hill, The Lincoln Forum, Abraham Lincoln Presidential Library and Museum, Furman University, Berry College, High Noon series at S.C. Upstate Museum, Erskine College, Mississippi State University, University of Manchester, Cambridge University, Edinburg University, University of London, Oxford University.

Samples of recognition given to me or my work:

The Chronicle of Higher Education, Vol. L: 2 (September 5, 2003), cover page, A37-38. On-line at http://chronicle.com/prm/weekly/v50/i02/02a03701.htm

C. Vann Woodward, "District of Devils," *New York Review of Books*, xxxii #15: 30-31

Chicago Tribune, October 13, 2007, cover of the Book Review Section, "Orville Vernon Burton's Heartland Prize-winning The Age of Lincoln." Catherine Clinton, "Lincoln and His Complex Times," pp. 4-5; Cover page 1988 on *In My Father's House*

Washington Post, Hannah Natanson, "Lincoln's forgotten legacy as America's first 'green president'" in *the Washington Post* on Feb. 16, 2020 (https://www.washingtonpost.com/…/lincoln-green-president-e…/)

USA Today, February 25, 2010, Larry Bleiberg, 10 Civil Rights Sites You Should See before Black History Month Comes to a Close," https://www.usatoday.com/story/travel/destinations/10greatplaces/2020/02/25/black-history-month-10-civil-rights-sites-you-should-check-out/4832666002/

Featured as example of "Faculty Excellence" on UIUC Homepage: http://www.uiuc.edu/overview/explore/

Call out in Sonia Sotomayor, *My Beloved World* (NY: Alfred A. Knopf, 2013), p. 132, and her Commencement Address at the University of South Carolina, 2011 (on C-Span) and "Supreme Court Justice Sonia Sotomayor uses vivid examples from two key figures in her life—her mother and South Carolina native and historian Vernon Burton"; Wayne Washington, "You Learn Values from Your Family, Supreme Court Justice Tells Grads," *The Columbia State*, May 9, 2011; http://www.thestate.com/2011/05/07/1808978/sotomayor-parents-are-key.html#storylink=misearch#ixzz1NljBBgHA and http://dailygamecock.com/news/item/1422-sonya-sotomayor-delivers-personal-inspiring-message-at-university-of-south-carolina-graduation; and at Clemson 2017 with Supreme Court Justice Sonia Sotomayor, https://www.youtube.com/watch?v=Sn3GbXen58c);

https://www.youtube.com/watch?v=zq1LAQmHh0I (4 April 1992 on history and high performance computing);

The South Carolina Encyclopedia Guide to South Carolina Writers. Edited by Tom Mack (Columbia: University of South Carolina Press, 2014), pp. 33-35 (SC Humanities)

In last few years, numerous international, national and local television, radio interviewed me (especially about the murders at Mother Emanuel in Charleston and the removal of the Confederate battle flag from the statehouse grounds). A number of interviews about the Voting Rights Act (VRA) or Voter ID, for example, Congressional Briefing on the Voting Rights Act (2015), Voting Rights Act 1965, Dec 4 2015 | Video | C-SPAN.org and Historians Expert Witnesses Civil Rights, Jan 7 2017 | C-SPAN.org, NPR—for example, June 27, 2013, "On Point" discussing the Supreme

Court Ruling on VRA, Sections 4 and 5-- http://onpoint.wbur.org/2013/06/27/scotus-voting-rights; and http://wbur.fm/138DolQ, and NPR and BBC, see for example recently, Jorge Valenca, Feb. 26, 2020, "The Abroad Primary,"(For overseas voters, a primary of their own www.pri.org › *stories* › *overseas-voters-primary-their-o...*) and commercial, and other media interviews and programs, including several C-SPAN Book TV (for example, "President Lincoln and Secession," http://www.c-spanvideo.org/program/293631-3) and a two-hour Clemson University lecture on Southern Identity at "Lectures in History," http://www.c-span.org/History/ – downloaded 492,791 times in first year after it debuted October 25, 2012. Numerous appearances on SC ETV for documentaries. In Feb., the Clemson Area Pledge to End Racism (CAPER) began using a training video featuring Vernon Burton speaking on racism (Video on youtube at (CAPER Burton Video). (more complete list available upon request).

Orville Vernon Burton is the inaugural Judge Matthew J. Perry Distinguished Chair of History and Professor of Pan-African Studies, Sociology and Anthropology, and Computer Science at Clemson University, and the Director of the Clemson CyberInstitute. From 2013-2015 he was Creativity Professor of Humanities; in 2016 Burton received the College of Architecture, Art, and Humanities (CAAH) Dean's Award for "Excellence in Research" and in 2019 the College's award for "Outstanding Achievement in Service." In 2018, he received the initial University Research, Scholarship and Artistic Achievement Award. From 2008-2010, he was the Burroughs Distinguished Professor of Southern History and Culture at Coastal Carolina University. He was the founding Director of the Institute for Computing in Humanities, Arts, and Social Science (I-CHASS) at the University of Illinois, where he is emeritus University Distinguished Teacher/Scholar, University Scholar, and Professor of History, African American Studies, and Sociology. At the University of Illinois, he continues to chair the I-CHASS advisory board and is also a Senior Research Scientist at the National Center for Supercomputing Applications (NCSA) where he served as Associate Director for Humanities and Social Sciences from 2002-2010. He serves as Executive Director of the College of Charleston's Low Country and Atlantic World Program (CLAW). Burton served as vice-chair of the Board of Directors of the Congressional National Abraham Lincoln Bicentennial Foundation, 2009-2017. In 2007 the Illinois State legislature honored him with a special resolution for his contributions as a scholar, teacher, and citizen of Illinois. A recognized expert on race relations and the American South, and a leader in Digital Humanities, Burton is often invited to present lectures, conduct workshops, and consult with colleges, universities, and granting agencies.

Burton is a prolific author and scholar (twenty authored or edited books and more than two hundred articles); and author or director of numerous digital humanities projects. *The Age of Lincoln* (2007) won the *Chicago Tribune* Heartland Literary Award for Nonfiction and was selected for Book of the Month Club, History Book Club, and Military Book Club. One reviewer proclaimed, "If the Civil War era was America's 'Iliad,' then historian Orville Vernon Burton is our latest Homer." The book was featured at sessions of the annual meetings of African American History and Life Association, the Social Science History Association, the Southern Intellectual History Circle, and the latter was the basis for a forum published in *The Journal of the Historical Society*. His *In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina* (1985) was featured at sessions of the Southern Historical Association and the Social Science History Association annual meetings. *The Age of Lincoln* and *In My Fathers' House* were nominated for Pulitzers. His most recent book, is *Penn Center: A History Preserved* (2014)

Recognized for his teaching, Burton was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). In 2004 he received the American Historical Association's Eugene Asher Distinguished Teaching Prize. At the University of Illinois, he won teaching awards at the department, school, college, and campus levels. He was the recipient of the 2001-2002 Graduate College Outstanding Mentor Award and received the 2006 Campus Award for Excellence in Public Engagement. He was appointed an Organization of American Historians Distinguished Lecturer for 2004-20.

Burton's research and teaching interests are American history, with a particular focus on the American South, including race relations and community, and the intersection of humanities and social science. He has served as president of the Southern Historical Association and of the Agricultural History Society. He was elected to honorary life membership in BrANCH (British American Nineteenth-Century Historians).

Among his honors are fellowships and grants from the Rockefeller Foundation, the National Endowment for the Humanities, the Pew Foundation, the National Science Foundation, the American Council of Learned Societies, the Woodrow Wilson International Center for Scholars, the National Humanities Center, the U.S. Department of Education, National Park Service, and the Carnegie Foundation. He was a Pew National Fellow Carnegie Scholar for 2000-2001. He was elected to the Society of American Historians and was one of ten historians selected to contribute to the *Presidential Inaugural Portfolio* (January 21, 2013) by the Joint Congressional Committee on Inaugural Ceremonies. Burton was elected into the S.C. Academy of Authors in 2015 and in 2017 received the Governor's Award for Lifetime Achievement in the Humanities from the South Carolina Humanities Council.

EXHIBIT 4

LAWS

OF THE

STATE OF NORTH CAROLINA,

PASSED BY THE GENERAL ASSEMBLY,

AT THE

SESSION OF 1840-41.

Published agreeably to Act of Assembly.

RALEIGH:
PRINTED BY W. R. GALES, OFFICE OF THE RALEIGH REGISTER.
1841.

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, 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.

Rules for restoring persons to citizenship.

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.

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

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

Petition not to be filed in less than 4 years.

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.]

EXHIBIT 5

CHAPTER 43.

An act to amend chapter sixty-five (65) of the public laws of eighteen hundred and ninety-five.

The General Assembly of North Carolina do enact:

SECTION 1. That chapter sixty-five (65) of the public laws of (1895), one thousand eight hundred and ninety-five be and the same is hereby amended, by striking out the words "Alamance," "Bladen" and "Granville" in section three of said act, so that said act shall not apply to the counties of Alamance, Bladen and Granville. Chapter 65, laws 1895, relating to protection of travellers. Amended.

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

Ratified the 1st day of February, A. D. 1899.

CHAPTER 44.

An act to amend section two thousand nine hundred and forty-one of The Code, and to facilitate the restoration to the rights of citizenship in certain cases.

The General Assembly of North Carolina do enact:

SECTION 1. That section two thousand nine hundred and forty-one of The Code be amended by adding thereto the following: *Provided*, that any person who may have been heretofore, or shall hereafter be convicted of any crime whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. Code, section 2941, relating to restoration to citizenship. Amended. Proviso.

SEC. 2. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also, that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. Petition what to set forth. Verified by oath of applicant.

SEC. 3. That no notice of the petition in such case shall be nec-

Notice and advertisement not necessary. Heard by judge in term time. Decree—clerk shall spread on minute docket.

essary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied [as] to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the last rights of citizenship, and the clerk shall spread the decree upon his minute docket of the proceedings of the term.

SEC. 4. That this act shall be in force from and after its ratification.

Ratified the 3d day of February, A. D. 1899.

CHAPTER 45.

An act relating to the department of agriculture, and taking from the board of commissioners of said department the power to contract for buildings.

The General Assembly of North Carolina do enact:

Commissioners of agriculture, etc., to contract for the erection of buildings or for repair to same.

SECTION 1. That all authority or power heretofore conferred upon the department of agriculture, or upon the commissioners of the board of agriculture, or upon the executive committee of said board, or upon any person acting for and in behalf of said board to contract for the erection of buildings, or for the repair of the same, or for any additions thereto, be and the same is hereby withdrawn and repealed, and all contracts made with them after the passage of this act shall be void.

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

Ratified the 8th day of February, A. D. 1899.

CHAPTER 46.

An act to prohibit hunting on any lands in Gaston and Catawba counties except by consent of owner.

The General Assembly of North Carolina do enact:

Hunting forbidden—Gaston and Catawba counties.

SECTION 1. That it shall be unlawful for any person to hunt upon the lands of another in Gaston and Catawba counties, with or without gun or dogs, except by consent of the owner.

Misdemeanor.

SEC. 2. That any person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than ten dollars for each and every offense.

SEC. 3. That this act shall be in force from and after April the first, eighteen hundred and ninety-nine.

Ratified the 8th day of February, A. D. 1899.

EXHIBIT 6

THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through the Legislative Session of 1969

Prepared under the Supervision of the Department of Justice of the State of North Carolina

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Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of

D. W. Parrish, Jr., S. G. Alrich and W. M. Willson

Volume 1B

1969 Replacement Volume

The Michie Company, Law Publishers
Charlottesville, Va.
1969

Chapter 13.

Citizenship Restored.

§ 13-1. Petition filed.—Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights, and that he has not before been restored to the lost rights of citizenship. (1840, c. 36, s. 4; R. C., c. 58, ss. 1, 3; Code, ss. 2938, 2940; Rev., s. 2675; C. S., s. 385.)

Cross References. — As to infamous crimes generally, see §§ 14-1, 14-2, 14-3. See also N.C. Const., Art. II, § 11; Art. VI, § 8.

Loss of citizenship does not form a part of the judgment of the court, but follows as a consequence of such judgment. State v. Jones, 82 N.C. 685 (1880).

Cited in Young v. Southern Mica Co., 237 N.C. 644, 75 S.E.2d 795 (1953).

§ 13-2. When and where petition filed.—At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county at term, 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, the petition shall be filed in the superior court of that county where the last indictment was found. (1840, c. 36, s. 3; R. C., c. 58, ss. 3, 4; Code, ss. 2940, 2941; 1897, c. 110; Rev., s. 2676; C. S., s. 386; 1933, c. 243.)

§ 13-3. Notice given.—Upon filing the petition the clerk of the court shall advertise the substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard. (1840, c. 36; R. C., c. 58, s. 1; Code, s. 2938; Rev., s. 2677; C. S., s. 387.)

§ 13-4. Hearing and evidence.—The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition or by anyone who may oppose the grant of his prayer. The petitioner shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this State for three years next preceding the filing of the petition. (1840, c. 36; R. C., c. 58, ss. 1, 2; Code, ss. 2938, 2939; 1897, c. 110; 1901, c. 533; Rev., s. 2678; C. S., s. 388.)

§ 13-5. Decree.—At the hearing the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved that the character of

the applicant for truth and honesty is good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto. (1840, c. 36; R. C., c. 58, s. 1; Code, s. 2938; Rev., s. 2679; C. S., s. 389.)

§ 13-6. Procedure in case of pardon or suspension of judgment.—Any person convicted of any crime, whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the Governor, or the court suspended judgment on payment of the costs, and the costs have been paid, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the Governor, and also that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. No notice of the petition in such case shall be necessary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied as to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his minute docket: Provided, that in all cases where the court suspended judgment it shall not be necessary to allege or prove that pardon has been granted by the Governor, and in such cases the petition may be made and the forfeited rights of citizenship restored at any time after conviction. (1899, cc. 44, 249; 1905, c. 547; Rev., s. 2680; C. S., s. 390.)

Application.—This section is not applicable where one has been convicted of an infamous crime, imprisoned, and pardoned by the Governor. In re Petition of Jones, 160 N.C. 15, 75 S.E. 1007 (1912).

§ 13-7. Restoration of rights of citizenship to persons committed to certain training schools.—Any person convicted of any crime whereby any rights of citizenship are forfeited, and the judgment of the court pronounced provides a sentence, and such sentence is suspended upon the condition that such person be admitted to and remain at one of the following schools: Eastern Carolina Industrial Training School for Boys, the Stonewall Jackson Manual Training and Industrial School, the Morrison Training School for Negro Boys, or the Samarkand Manor, until lawfully discharged, and upon payment of costs, such person may be restored to such forfeited rights of citizenship upon application and petition to the judge presiding at any term of the superior court held in the county in which the conviction was had, at any time after one year from the date of the lawful discharge from any such school. (1937, c. 384; s. 1; 1969, c. 837, s. 4.)

Editor's Note. — The 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls."

The Eastern Carolina Industrial Training School for Boys is now known as the Richard T. Fountain School. See § 134-67.

The Stonewall Jackson Manual Training and Industrial School is now known as the Stonewall Jackson School. See 1969 Session Laws, c. 901.

The Morrison Training School for Negro Boys is now known as the Cameron Morrison School. See 1969 Session Laws, c. 901.

§ 13-8. Contents of petition; affidavits of reputable citizens; hearing; decree of restoration.—The petition provided for in § 13-7 shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and shall recite that the costs of suit have been paid, the lawful discharge of the applicant from the school to which he or she was admitted, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten

reputable citizens of the county in which said conviction took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1937, c. 384, s. 2.)

§ 13-9. Restoration of citizenship to persons convicted, etc., of involuntary manslaughter.—Any person who has been convicted of, or confessed guilt to, the crime of involuntary manslaughter and is not actually serving a term in the State prison or on the roads of the State may, at any subsequent term of the superior court of the county in which the conviction was had, or the confession of guilt made, make application and petition the court for a restoration of all forfeited rights of citizenship. (1941, c. 184, s. 1.)

Cross Reference.—As to punishment for involuntary manslaughter, see § 14-18.

§ 13-10. Contents of petition; supporting affidavits; hearing and decree.—The petition provided for in § 13-9 shall set out the nature of the crime committed, the time of conviction or confession of guilt, the judgment of the court, and shall recite that the costs of suit have been paid, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten reputable citizens of the county in which said conviction or confession of guilt took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall have the authority to decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1941, c. 184, s. 2.)

EXHIBIT 7

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

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

Plaintiffs,

vs.

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

Defendants.

_____/

Deposition by RingCentral

of

SENATOR HENRY M. MICHAUX, JR.

(Taken remotely by the Legislative Defendants)

Durham, North Carolina

Wednesday, June 24, 2020

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

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ALSO PRESENT:
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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.

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MR. RABINOVITZ: This is Brian Rabinovitz with the North Carolina Attorney General's Office on behalf of the Legislative Defendants, Speaker Moore and President Pro Tem Berger; and we affirm or agree to the stipulation of the remote oath.

MR. COX: This is Paul Cox from the North Carolina Attorney General's Office representing the State Board of Elections members that are named in this action; and we also agree to the stipulation that Mr. Rabinovitz outlined.

MR. JOYNER: I'm Irving Joyner, and I'm representing Senator Michaux; and agree with the stipulations.

MS. THEODORE: And I am Elisabeth Theodore from Arnold & Porter, representing the plaintiffs; and we also agree to the stipulations.

MR. JACOBSON: This is Daniel Jacobson from Arnold & Porter, also for the plaintiffs.

MS. CARPENTER: This is Whitley Carpenter from Forward Justice, also representing the plaintiffs.

MR. ATKINSON: Daryl Atkinson, Forward Justice, representing the plaintiffs; agree with the aforementioned stipulations.

MS. VYSOTSKAYA: This is Olga Vysotskaya on behalf of the State Board of Elections.

THE REPORTER: Senator, I'll ask you to please raise your right hand.

Do you solemnly swear the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE REPORTER: Thank you very much.

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SENATOR HENRY M. MICHAUX, JR.,
having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. RABINOVITZ:

Q. Okay. Representative Michaux, we met briefly remotely prior to going on the record here in the deposition today. My name, again, is Brian Rabinovitz, and I'm representing the legislative defendants in this case, and that is Speaker Moore and President Pro Tem Berger, both in their official capacities.

I think one thing that Huseby asked us to do, just for everyone, to make sure there's no feedback or anything, is that if most people can mute their microphone, unless -- unless you're talking, I think that will just, hopefully, cut down on any distractions that we might have. And there's also a Huseby tech on the line, I understand. So, you know, if we get disconnected or run into a technical problem, I think that we can ask for their assistance. So Representative Michaux, you know, just a couple preliminary matters.

You understand, even though we're doing this deposition in a somewhat unusual way with everybody appearing remotely, that you are testifying under oath today?

A. Yes. Yes.

Q. And is there anything that would interfere with your ability today to understand and answer my questions?

A. No.

Q. Okay. And if I do ask a question that you don't understand, because I may at times say things in an inarticulate way, please just let me know, and I'll be happy to go ahead and repeat it or rephrase it as necessary. If you don't ask me to do that, though, I'm going to -- I'm going to assume that you've understood my question.

Does that seem fair?

A. That seems fair. Yes.

Q. Okay. Great. And we talked about this a little bit before we went -- before we went on the record, but, certainly, if you need a break at any time, you know, you just let me know, and we can go off the record and take a break.

MR. RABINOVITZ: And I would, you know, extend that to everyone else who is participating as well. I know many people like me are participating from home today. So if other counsel needs a break for some reason, you know, we can certainly accommodate that and go off the record.

BY MR. RABINOVITZ:

Q. As I said before, I'm hoping this will

only take a couple hours of your time today, that it -- that it won't take too long.

In terms of how you prepared for today's deposition, other than speaking with your attorney -- and I certainly don't want to ask anything that you spoke with Professor Joyner about -- but aside from conversations with him, what else did you do to prepare for today's deposition?

A. I checked copies of bills and tried to sit down and recollect what happened 46, 47 years ago, for what the deposition was about. And I got -- basically, I talked with folks yesterday, just in general, but...

Q. Okay.

A. I'm just trying to rely on an old memory.

Q. Okay. And other than your attorney, you mentioned speaking with some folks yesterday. Who was it that you spoke with?

MR. JOYNER: Brian, this is Irv Joyner. I apologize for interrupting, but let me just say for the record that Senator Michaux enjoys immunity, legislative immunity, and is waiving that only with

respect to matters emerging from this litigation in this case. So I want to make that clear for the record, that the waiver of immunity is a limited one, and it's limited just to the deposition -- this affidavit -- in a deposition about this affidavit.

MR. RABINOVITZ: All right.

MR. JOYNER: I apologize.

MR. RABINOVITZ: Understood. Thank you. Thank you, Professor Joyner. I appreciate that clarification.

BY MR. RABINOVITZ:

Q. Just so my question is clear, I'm not asking -- I'm not asking about conversations with Professor Joyner. I'm also not asking about anything, you know, outside of your affidavit or, you know, your participation in this deposition and your deposition here today.

So what I'm asking -- you mentioned that you talked to some folks yesterday. My understanding was that you were saying that you talked to them in relationship to giving this deposition here today. And so that's -- that's the only question that I'm asking you is: What

conversations --

A. Yes. Yes.

Q. -- did you have with them about this deposition?

A. Yes. Yes.

Q. So who was it who you spoke to other than Professor Joyner?

A. Caitlin Swain, and the lady from Arnold & Porter, who was the NAACP.

Q. Okay. And from the NAACP, did you -- you spoke with -- do you mean counsel for the NAACP in this case or officials at the NAACP?

A. No. No. He is there with them now.

Q. Okay.

A. Yeah.

Q. Counsel for the NAACP?

A. Yeah.

Q. Okay. Okay. And was there anyone else, or was it just -- it was Caitlin Swain and counsel for the NAACP?

A. And my counsel.

Q. And your counsel. Sure.

A. Arnold & Porter.

Q. Okay. And the folks at Arnold & Porter.

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Okay. And can you -- can you -- what was the topic that you spoke with them about? Obviously, in relation to this here today, but can you explain in some more detail what those conversations involved?

A. It was just basically about what -- what brought about the legislation and what I remembered about the legislation. You have to remember, this was 46, 47 years ago, and there were three of us involved. There was some legislation that had been passed the year before I got there, and this was -- I got -- in '71. I got there in '73 and was asked to take that on as part of that. And that's basically what we talked about.

Q. Okay.

A. Yeah.

Q. And were they providing you with information or data to help refresh your recollection, or were they just asking you what your recollection was?

A. It was a -- I guess you could call it a general conversation. I got supplied with copies of the legislation and had an opportunity to look it over. We didn't go into

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any great detail.

Q. Okay.

A. To any extent that I can recall.

Q. Okay. Did they --

A. Other than the fact that compromises had to be made in order to get the legislation like we thought -- like I thought it should be and like we thought it should be.

Q. Okay. And what questions did they ask you about those compromises?

A. That was yesterday, too.

Q. I understand.

A. It wasn't -- there weren't questions as it was just a general conversation. My recalling, for instance, why certain verbiage was put in there.

Q. Okay. And what -- do you recall what specific verbiage it was that you were discussing?

A. Why we -- why we used probation and parole, put that in there. It's my understanding that -- my purpose -- our purpose was, at the time, to try to clear up the legislation that was passed in '71, which had you still going before a court to get your

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rights restored.

Our position at the time, in '73, was the people who were getting their rights restored couldn't afford to go to court. And so we just put it in a blanket form in order to try to get it to a state where they didn't have to go to court.

They came back and agreed that because of certain instances that come about, that we had to put in probation and parole. Because what I was looking for was almost like a legislative pardon.

Q. Uh-huh.

A. An unconditional pardon, is what I was looking for.

Q. Okay. And I am going to get into the details asking you about each of those pieces of -- each of those pieces of legislation. Right now I'm just trying to understand, you know, as best I can, the nature of the conversations that you had prior to your deposition testimony.

Did you -- did plaintiffs discuss with you the litigation and the parties' positions in this current litigation?

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A. No.

Q. Did they explain that to you?

A. No.

Q. Okay.

A. I -- they -- I guess they just assumed that I knew. And I know a little bit about it. I've, you know, I've read parts of the lawsuit.

Q. Okay. What parts of the lawsuit have you read?

A. I don't -- I looked at it. I don't know. It's been a while since I've, you know, took a look at it, but...

Q. Okay.

A. I was -- I was just, basically, generally familiar with it.

Q. Okay. So that would probably be the complaint, I would assume --

A. The complaint, yeah.

Q. -- would be what you would have looked at, probably?

A. Yeah.

Q. Okay. Prior to your conversation with the folks who you mentioned yesterday, were there other conversations that you had earlier on with other people about this lawsuit or

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about your affidavit, again, other than Professor Joyner?
A. No.
Q. No. Okay.
A. And the people I talked to yesterday.
Q. Okay. You also mentioned that you reviewed some documents. And those were -- I believe you said those were some documents related to this -- to the legislation that we're talking about here?
A. To the legislation. Right.
Q. Okay. So would those have been, like, the session laws or some of the bills that were introduced?
A. They were bills that were introduced and passed.
Q. Okay. And when -- when were those materials provided to you?
A. I think I printed them off yesterday or the day before.
Q. Okay. So they weren't provided by anyone? You went and you found them and printed them?
A. My lawyer got them for me.
Q. Your lawyer. Okay. Okay.

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

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

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of North Carolina.
Q. So that was -- what years did you -- did you break for service?
A. '77 to '81.
Q. I'm sorry. I --
A. June of '77 to '81, 1981. I served as United States Attorney for the Middle District of North Carolina.
Q. Okay. And then -- and then you -- after many years of service, you eventually retired from the House. What year was that?
A. I retired from the House at the end of the 2019 session.
Q. Okay.
A. I'm sorry. 2018 session.
Q. 2018 session. Okay. And then -- and then you had another -- another short political career after that as well. Can you explain that?
A. I had an extremely short political career in the Senate in 2020, three months.
Q. Okay. Now, you talked about some of your civil rights work that you did prior to when you got elected to join the House of Representatives.

Did any of your professional work or organizational work or civil rights work relate to the issue in this case, which is the voting rights of former felons?

A. Specifically, no; but on an overall basis, yes.

Q. Okay. Can you explain that a little?

A. Because -- because there were several factors involved. And you have to understand the subtlety in the Black community during that time. If you -- if you were -- if you got convicted of a felony, you lost all your rights for the rest of your life. And that was -- that was a tangential part of the whole Civil Rights Movement was giving constitutional rights back to people who had either lost them or had never been able to exercise them. So it was not a -- not a pure specific point, but it was a tangential point. Yes.

Q. Okay. And when you talk about someone losing all of their rights -- you know, this case is obviously about voting rights, but what other issues, you know, fall under that, in your mind?

A. In my mind, every constitutional right

that Americans enjoy fell under that right, including why you don't have the constitutional right to vote, including the right of enfranchisement. And anything that we were denied as African Americans, we considered a right. And so all we were looking for was just what every other American enjoyed. The same rights that they enjoyed, we wanted those rights. Yeah. So that's why I say, tangentially, anything that white Americans enjoy, Black Americans should enjoy too. And once -- once you -- once you were deprived of those rights, then there should be some way of restoring those rights. So as an overall feature, that was it.

(Defendants' 1 premarked.)

BY MR. RABINOVITZ:

Q. Okay. I want to -- I'm going to try and go ahead here and share an exhibit with you. And you'll let me know if this works. This is going to be the affidavit that you -- that you executed in this case.

Are you able to -- are you able to see that on your screen?

A. Yes, I am.

Q. Okay. Great. Does this -- I can scroll through it, it's several pages long, but from what you can see, does this appear to be a true copy of the affidavit that you executed here? And if you'd like to, I can even let you have the control to scroll through it, if you'd like to look at the different pages at your own pace. Whatever -- whatever works best for you. You let me know.

A. It appears to be. I have a copy of it.

Q. Okay. Okay. So --

A. So it appears to be.

Q. Okay.

A. Yeah.

Q. Okay. So just for purposes of making a clear record, though, it's fine for you to look at your copy, but I want to make sure that what you see on the screen, you can, you know, affirm that that -- that that is your affidavit.

A. Yes.

Q. So there at the bottom, that appears to be your signature on --

A. That is my signature.

Q. -- May 7th? Okay.

A. Right.

Q. So this is the affidavit that you executed for the plaintiffs in this case on May 7th; is that right?

A. That's correct.

Q. Okay. Now, at the time that you executed this affidavit, were you already being represented by Professor Joyner?

A. No.

Q. Okay. So when was it that you -- that Professor Joyner first started representing you in this case, approximately?

A. About a month ago, I think; somewhere in that time.

Q. Okay. And were you represented -- just to make sure I've covered all the bases, were you represented by another attorney at any point when you executed this affidavit?

A. No.

Q. No. Okay. So how did it -- how did it come about that -- that you executed this affidavit for -- for the plaintiffs in this case?

A. For the plaintiffs, the NAACP asked me about it, and we talked about it -- though,

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

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

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

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

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

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

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

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

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

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

Q. Okay.

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

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

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

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

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

Q. Yeah.

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

Q. Okay.

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

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

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

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

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

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

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

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

Q. Yes.

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

they wanted to know what I recalled about the law itself, and why he, you know -- and, I mean, that was it. The normal course of trying to get information in regard to their lawsuit.

Q. Okay. In terms of -- in terms of your affidavit here, what was the -- what was the drafting and editing process? Was this -- was the affidavit drafted by the plaintiff's counsel here, the initial draft, or was it drafted by you, initially?

A. It was drafted in conjunction with me.

Q. Okay.

A. By plaintiff's counsel.

Q. Okay. So did they produce a draft after speaking with you that they then presented to you to review?

A. Yes.

Q. Okay. And do you recall if there were changes that you had to make to the draft that they presented to you?

A. There were some changes that were made, yes.

Q. Okay. And can you recall what any of those changes were?

A. I really can't. There were some

editorial changes.

Q. Okay.

A. And, no, I don't recall all the changes, but...

Q. Okay. Do you recall if there were any substantive changes that had to be made?

A. Not that I can recall.

Q. Okay. So you mentioned printing off some legislation, the bills, when you were getting ready for your deposition testimony here today.

What about when you were working with them on the affidavit? Were you consulting with any of those legislative history documents, bills, or session laws?

A. No.

Q. Okay. Any other types of documents at the time, or just your memory?

A. Just my memory.

Q. Okay. Was there anyone else you talked to, other than the counsel for the NAACP, before you executed your affidavit here?

A. No.

(Defendants' 2 premarked.)

BY MR. RABINOVITZ:

Q. Okay. I want to go ahead and look at another exhibit here, which should show up on your screen.

Are you able to see that I've changed to Defendants' Exhibit 2?

A. Yes.

Q. Okay. And just for the record -- I'll go back a second to your affidavit. I've pre -- I premarked your affidavit as Defendants' Exhibit 1.

Do you see that sticker at the --

A. I see it. Yeah.

Q. -- at the top right-hand corner?

A. Uh-huh.

Q. And this next exhibit I've marked as Exhibit Number 2. And this represents itself to be some of the North Carolina statutes from or through the legislative session in 1969.

Is that what it appears to be from this --

A. That's what it appears to be.

Q. -- face sheet here?

Okay. I'm going to go on to the second sheet. So this is obviously not the entire copy of the General Statutes then, but this is

Chapter 13 of the General Statutes. So this is as the law appeared in 1969, I believe.

Does that -- that look accurate to you?

A. That's what it appears to be.

Q. Okay. And if you want to go ahead and review, you know, 13-1 and 13-2. I want to talk to you a little bit about what the law was at that time, the prior law.

A. Okay.

MS. THEODORE: Brian, sorry to -- sorry to interrupt, but would it be possible for you to email counsel for plaintiffs, and for Mr. Joyner, certainly, if he wants them, a copy of the affidavit -- of the -- of the exhibits that you're showing on the screen here.

MR. RABINOVITZ: Yeah, I would be happy to do that. Do you want to go off the record for a minute for me to be able to do that?

MS. THEODORE: Sure.

MR. RABINOVITZ: Okay. Actually, I think Olga just said she can go ahead and do that while I continue to move along. So if it's all right with everyone, we can

just stay on the record, then.

MS. THEODORE: Sounds good.

MR. RABINOVITZ: Okay.

MR. JOYNER: That's fine.

THE WITNESS: Okay.

BY MR. RABINOVITZ:

Q. So what -- what is your -- what was your understanding of what was required under -- under the statute? And this would have been prior to even to the 1971 legislation. What's your understanding of what was required for the restoration of voting rights?

A. The requirement for restoration of rights was that you had to hire a lawyer, and go to court and have a hearing, and get a determination made that way. People that we were involved with didn't have the wherewithal to hire a lawyer to get any type of rights restored. And we just wanted a way -- a way for them to get them restored without having to go through any expense. Particularly, after they had served their time.

Q. Okay. So you mentioned that there was a -- that, you know, one of the requirements,

because you had to go to court, there was a -- there was a monetary issue there. People had to hire attorneys to assist them with that process.

What other problems, if any, were you aware of in the law as it was prior to the 1971 and 1973 legislation?

A. There wasn't really any other than the fact that we were trying to get people their rights back that they had previously enjoyed, and what everybody else was enjoying, and served their time, had been rehabilitated, and why should they not have their rights restored without having to go through the expense and problems and trouble of a court hearing which could take -- you know, turn out not in their favor anyway. Particularly, if you had a prejudiced court or something like that; it was denied.

Q. So I think there's another piece -- and let me know if I characterize this correctly or not -- but it seems like another problem with it, from your view, is that it -- it wasn't automatic. It was a discretionary issue where folks had to go in front of a judge and

convince the judge.

A. That's exactly right.

Q. Okay. Did you have concerns at the time about whether judges would fairly treat African Americans who were former felons who might come before them trying to get their rights restored?

A. I hadn't had any -- I hadn't had any -- any -- any experience with it, no, but I knew that there were prejudiced judges that would -- that would deny you anything you asked for if you were Black.

Q. Okay.

A. I mean, that was the -- that was the psyche in the -- in the whole community. You don't care what rights white folks had, Black folks weren't -- weren't -- unless we gave them to you, specifically, that was the only way you were going to get them.

Q. Okay. It also seems like, in addition to hiring an attorney and going through the court process -- I'm just going to go ahead and read 13-1, there, so we can discuss it in more detail.

So it says -- it's titled "Petition

filed." And it says: "Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited right, and that he has not before been restored to the lost right of citizenship."

Anything else in there that's of concern to you?

A. No apparent areas of concern to me. Because if you were Black, and you had been convicted of an infamous act, and you had served and done your time, you didn't have to have your rights restored after that, based on that, because you had to -- look at what you had to do. If you couldn't get a job because you were a convicted felon, or any of the other things required than just that one paragraph, it was an anathema to Black folks. I mean, what you're getting into is you're getting into

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the whole psyche of the movement in putting into law, language that takes those rights away from you once you have rehabilitated yourself.

Q. Okay. And then I want to look at the next section there as well, 13-2, which is titled "When and where petition filed."

So it says: "At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide, or in the superior court of the county, at term, 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, the petition shall be filed in the superior court of that county where the last indictment was found."

So it appears from this and is it your understanding that there was also a waiting period or a time period that was required before somebody could petition the court?

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A. You've got -- you've got a built-in two-year time period, which really could be up to five years before you would even think about getting your citizenship back.

Q. Okay. And why could it be up to five years?

A. Because it says down here -- where does it say it? "The applicant is at the time of filing and has been for five years next preceding a bona fide resident."

Anybody who moved -- you've got to live in a place five years before you can -- can apply for it.

Q. Okay. Does that -- in your mind, does that create any obstacles that were particular to the African-American population?

A. Yes. You get a Black man who has been convicted of a felony who can't get a job in one county. He moves around to several counties to get a job. It takes him a year, two years, three years to do that. He's still not up to the five years he's got to live in that county. Even though you've got a two-years application part in there. You've got to live in the county -- you've got to live

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in one place for five years before you can exercise the two years.

Q. Now, it also uses the language there when it's talking about waiting the two years. It says "from the date of discharge of the petitioner." And I want to ask you your understanding of what that means --

A. I don't know what it --

Q. -- "date of discharge."

A. I don't know what it means. Because the way courts were acting then, and even today, what -- discharge from what?

For instance, if you -- if you get put on probation, you violate your probation, and your probation is extended, which period of time are you looking at, the original or the extended period?

Q. Okay. So it's unclear to you from this statute what was meant by that?

A. Yeah. And I think it was made vague on purpose.

Q. Okay. And what was the purpose for that, do you believe?

A. The purpose was to keep Black folks from being declared full citizens with the

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right to vote.

Q. Okay. Looking at the next section, 13-3, titled "Notice given." It says: "Upon filing the petition the clerk of the court shall advertise substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard."

Can you tell me your thoughts on that section and whether, in your mind, that presented particular problems for the African-American population?

A. Most definitely. If they didn't want you to register to vote, why would -- I mean, who is going to say that they're going to put up a notice on the courthouse door that I want my citizenship rights restored? Why? Why have I got to let the whole world know that this is what I want to do. Particularly, if I'm Black. And so the clerk had the option of putting it up there or not, even though the law said that they had to do it.

Q. Okay.

A. They didn't have to do it.

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Q. Okay.
A. They didn't want to.
Let me tell you -- I mean, what you're talking about -- well, no. Go ahead. I'm sorry. I won't...
Q. It's fine if you have more to say about it. I don't want to --
A. No. No. No. No.
Q. -- cut you off or rush you along.
A. No. No. No. Go ahead.
Q. Okay. So the next Section 13-4. It's titled "Hearing and evidence."
So this section says: "The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition or by anyone who may oppose the grant of his prayer."
I'll pause there. Any issues that you identify there that are problematic?
A. Yeah. If I didn't want you to have your citizenship rights restored, I'd come in and pray that you not restore.
Q. Right.

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A. And then whoever you are and whoever the judge is, it won't get restored.
Q. And then it goes on to say: "The petition shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this State for three years next preceding the filing of the petition."
So there's a requirement here that the -- that the petitioner seeking the restoration of rights have five witnesses there to testify to his character for truth and honesty.
A. And not by deposition, but by being there. Unless -- I mean, go ahead. I'm sorry.
Q. No. I mean, my question to you is just going to be, you know: What are your concerns with, if any, with that particular provision, again, in terms of the African-American community?

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A. You've got to have five witnesses come in and testify to their truth and honesty, and they can't do it by deposition. So if you've got five Black folks in a hearing before a prejudiced Black judge, what do you think is going to happen?
Q. And I do need to ask you -- that's a rhetorical question, but I need to ask you what would happen. What is your understanding --
A. It would be denied.
Q. -- of what would happen?
A. It would be denied.
Q. It would be denied?
A. Right.
Q. Okay. Okay. So, again, just to be sure we're on the same page, this is the law -- this was the law as it stood prior to the amendment in 1971, which was before you, yourself, had joined the House, but prior to the amendment in 1973, which was when you had joined the House, right?
A. Right. That's correct.
Q. Okay. So can you just -- well, we'll leave it at that, and we'll move on and come back if we need to.

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It sounds like we've now gone -- we've gone through several problems that you perceived with this statute. I think the first one that you mentioned was the issue of costs that would be associated with getting an attorney to go through this process.
Is that one of the problems that identified with this?
A. That's one of the problems, yes.
Q. Okay. It seems like there's another set of problems related to the procedure here, and I just want to draw those out a little bit, because it seems like you're alluding to a particularly harmful effect or impact that this statute would have on the African-American population because of the way the procedures were designed.
So one of the issues is this possibility for folks to come in and give opposing testimony at a hearing when someone is trying to get their rights restored.
Can you just explain a little bit more what the concerns are with allowing people to come in and testify in opposition to this petition?

A. I'm a Black man who has been convicted of a felony, and I want my rights restored. Number one, I have to hire a lawyer to do it. Then I have to appear in court with witnesses to do it. And they have to be live witnesses; it can't be depositions. And if you are before a prejudiced court, you're not going to get your rights restored, period. I mean, everything in that whole -- in that whole statute is an impediment to having a Black person's rights restored depending on the psyche of the judge who is going to render that decision.

Q. Okay.

A. That's basically what it is.

Q. Okay. Was this -- so we talked a little bit about whether any of your civil rights work or other organizational work was specifically related to this issue, this voting for former felons. And I think you said it was generally related, because it was related to constitutional rights for everyone, and in particular, for African Americans, but that you hadn't -- prior to joining the legislature, you hadn't worked on this very specific issue. Is

that correct? Is that a fair statement?

A. That's correct.

Q. Okay. Prior to joining the legislature, was this an issue, though, that you were aware of and that you had a -- and that you had a view on at the time?

A. No.

Q. Okay.

A. It was not a -- it was not an issue that I was aware of, so I couldn't have had a view on it.

Q. Okay.

A. Until it was brought to my -- that specific item was brought to my attention.

Q. Okay. So during your service as an assistant district attorney in Durham, this wasn't -- this wasn't something that was -- that you were aware of during that time?

A. That's correct. Right.

Q. Okay. Okay. You know, we've teased out some of the specific provisions here and talked about them, but when you did look at this law, when you joined the legislature and became familiar with it, did you have concerns about the procedure being confusing or

convoluted for folks to follow through with?

A. Yes. It didn't take long to figure that out.

Q. Okay.

MS. THEODORE: Just for the record, this was not -- the 1969 law was not the law that was in place when Senator Michaux joined the legislature.

A. No, it wasn't, actually. No, it wasn't, but it was before I got there.

Q. Right. And to clarify my question, to see if this helps, what I was -- what I was saying is, if you joined the legislature, at some point you seem to be familiar with this law, how it was back in 1969, which I believe it was that way all the way up through 1971. So I was just asking about when you became familiar with the law, what were your concerns about it? Does that make sense?

A. That makes sense. But I was familiar with the law as it was passed in '71, because it was brought to my attention.

Q. Right. Okay.

A. And at that point, it was probably when I went back and started looking at it and

seeing what needed to be cleared up in the '71 law that was passed.

Q. Okay.

A. And what we were looking for was an unconditional pardon for those who had served their full-time and had their rights automatically restored.

Q. Okay.

A. Rather than going through the convoluted issue that was even in the '71 legislation.

Q. Okay. Let me ask you this, then. You know, I have this statute up as an exhibit. We're talking about it today, and we're going through it, but at some point prior to us talking about this today, you know, because of your work and interest in this issue, did you become familiar with this law, the requirements that were there prior to 1971?

A. No.

Q. No. Okay. So --

A. I became familiar with it when it was brought to my attention by Joy in 1973.

Q. Okay. And, again, I'm probably just not asking this as clearly as I should be, but

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when he brought that to your attention, obviously, the law that was in place at that time was the 1971 law.

As part of your research and understanding the issue, had you looked back at what the law was prior to 1971?

A. Yes. Yes.

Q. Okay. And so at that time, when you looked back at what the law was prior to 1971, you became familiar with what it was?

A. Yes.

Q. Okay. Thank you. I'm sorry if I asked a series of questions that were not as clear as they should have been.

(Defendants' 3 premarked.)

BY MR. RABINOVITZ:

Q. I want to go ahead now and look at another exhibit. So this will be -- I've premarked this one as Defendants' Exhibit Number 3.

Are you able to see that up on the screen?

A. Yes, I am.

Q. Okay. And are you able, from looking at that, to identify what that is?

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A. It looks like it's a House bill.

Q. Okay.

A. Involving Chapter 13.

Q. Okay.

MS. THEODORE: Excuse me for a minute, Brian. I just wanted to check on whether Senator Michaux or Professor Joyner wanted to take a break, if now is a good time.

MR. RABINOVITZ: Sure. We've been going for an hour. So if anyone needs a break, please let me know.

THE WITNESS: I'm fine.

MR. JOYNER: I'm fine as well. Yeah.

MS. THEODORE: Okay.

MR. RABINOVITZ: Okay. Great. Well, just let me know at any time.

BY MR. RABINOVITZ:

Q. So we were identifying this -- this particular law here.

Do you see at the top that it says that it's from the 1971 Session of the General Assembly?

A. Yes.

Q. Okay. And this is titled "An Act to Amend Chapter 13 of the General Statutes to Require the Automatic Restoration of Citizenship to Any Person Who Has Forfeited Such Citizenship Due to Committing a Crime and Has Either Been Pardoned or Completed His Sentence."

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A. Yes.

Q. Okay. And so is it your understanding that this is the law that was enacted in 1971?

A. If you go to the end of it.

Q. Yes. Certainly.

A. I don't see any signatures on there. I'm not so sure that that's -- you don't have the ratified bill, do you?

Q. Okay. Let me see. Well, I believe it says it was ratified, here. Let me see what I can find here.

A. It was a Committee Substitute.

Q. Right. So I believe that this is the -- the session law that was enacted. But I will see if -- let's see.

So down here at the end it says: "In the General Assembly read three times" --

A. And ratified.

Q. -- "and ratified, this the 16th day of July, 1971."

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A. Right. Okay. I see that. Okay.

Q. Okay. So --

A. That -- that -- that's fine.

Q. Okay. So this does appear, then, to be the ratified bill; is that right?

A. Right. Yes. It appears to be.

Q. Okay. So this was the law that was ratified in 1971. This was also the law as it stood when you joined the legislature in 1973. Is that right?

A. That's correct.

Q. Okay. And, again, I think you've already answered this, but just to be clear, you weren't in the legislature at the time that this was ratified. You also didn't have any informal involvement in this legislation. Is that right?

A. In the '71 legislation?

Q. Yes, sir.

A. No, I didn't have any.

Q. Okay. And I want to go ahead and go through this one as well.

So the first section is -- again, it's 13-1. But I think this is just a complete replacement of what had been there before.

Because it says in section 1 up there: "Chapter 13 of the General Statutes of North Carolina is hereby repealed in its entirety and a new Chapter 13 is hereby enacted and read as follows."

So my understanding of that is that the law that we were looking at a minute ago from 1969, there, was completely repealed, and it was replaced with what we're looking at here now. Is that correct?

A. That's correct. That's correct.

Q. And so this first section here, 13-1, is entitled "Restoration of Citizenship." And it says: "Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon compliance with one of the following conditions." And there are three conditions there.

The first one: "(a) the Department of Correction at the time of release recommends restoration of citizenship;

"(b) two years have elapsed since release by the Department of Correction including probation or parole, during which

time the individual has not been convicted of a criminal offense of any state or of the Federal Government; and

"(c) or upon receiving an unconditional pardon."

So before I ask about that, specifically, are you familiar with who sponsored this bill?

A. Joy Johnson. Yes.

Q. Okay. Representative Joy Johnson?

A. Right.

Q. And he was -- I know, in your affidavit and possibly here today, you mentioned that back at this time, obviously, you weren't in the -- you weren't in the legislature yet, but who were the other African-American members who would have been in the legislature back in 1971? Do you recall that?

A. Henry Frye was the other member.

Q. Okay. So it was just the two of them, and Representative Johnson is the one who sponsored this bill; is that right?

A. That's correct.

Q. Okay. And it sounds like when you joined the legislature in '73, you had some

conversations with Representative Johnson about this -- this law as it stood at the time. Is that right?

A. That's correct.

Q. And, obviously, you guys decided to offer, you know, an additional amendment to the law. But just going back and talking about this 1973 law, did Representative Johnson convey to you what his -- you know, what his intention or purpose was in enacting this 1971 legislation to replace what had previously been there?

A. It wasn't with the voting, I know that was one of them, but he was trying to get convicted felons -- getting them to be able to vote. When you say "rights restored," you don't -- you don't delegate the rights. You say that all have such rights restored, rights of citizenship restored. And that was what he was trying to get at. And he -- he didn't write what eventually came out of that, but he didn't have the wherewithal to fight it at that time.

Q. Okay.

A. And when I got there in '73, that was

one of the first things he said. "I'm just not satisfied with what we got in '71. Take a look at it and see what you think about it."

And that's when I got into it in '73 and told him he really didn't do that much with that bill, that what -- you know, that what we were looking for was a whole lot more than what was -- what that bill was purporting to do.

Q. So in what ways did this --

A. Let me -- let me -- let me say that Joy was a preacher, and Henry was a civil lawyer. So Henry didn't know anything about criminal law. But we talked about it. When Joy brought it to me, the three of us sat down and talked about it. And I was the only one with any criminal law experience involved. And I said, "You haven't really done anything with this other than the fact that you've cut out some of the process, but you really haven't made it, you know, really worth much, because you've still got too much -- too many hoops to go through," in the '71 law.

Q. Okay. And when you say there were too many hoops to go through, do you mean again --

A. For instance, two years -- two years

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

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

A. Yes.

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

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

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

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

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

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

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

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

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in '73 was a Committee Substitute.

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

A. Right.

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

A. Right.

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

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

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

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

Q. What about --

A. Because it exacerbates the situation.

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

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

Q. And what is the problem there?

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

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

A. Say that again.

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

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recommendation --
A. That's correct. Right.
Q. -- is there a concern there in your mind for African Americans based on that, the discretion that the Department of Correction had?
A. Yes.
Q. Okay. And can you explain that?
A. It depends on who is in charge of making the recommendation.
Q. Okay.
A. If nobody is in charge of making the recommendation, it doesn't get made. If there is somebody in charge of making the recommendation, then if they don't like you, they don't make the recommendation.
Q. Okay.
A. If you're Black, and I'm white and don't like you because you're Black, you don't get the recommendation.
Q. Right. Okay. What about -- just talking more generally, you know, you've talked a lot about the requirement to -- well, scratch that. I'll move on and come back to that later.

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Is there -- is there anything else that you can think of that we didn't discuss about the 1971 statute that made it continuing to be a problem for you?
A. Other than the whole bill? No.
Q. Okay. Was it, in your mind, at least, an improvement over the 1969 statute?
A. No.
Q. Okay. So in your mind, it wasn't any better than the 1969 statute?
A. It was better that, really, one or two items had been taken out, but it was still an impediment to Black folks, to Black former convicted felons getting the right to vote.
Q. Okay. But there were some -- some obstacles that were taken out, right?
A. Right.
Q. So, for example, this law did not -- does not appear to me to require the five witnesses, for example --
A. Yeah.
Q. -- who testify to your truthfulness and honesty. Is that right?
A. That's correct. Yes.
Q. Okay. So there were some impediments

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that were removed?
A. Right.
Q. And some of the impediments that were removed were among those that were detrimental, under the former law, to the African-American population?
A. That's correct.
Q. Okay. And the procedure here is also simplified to some extent over what the procedure had been under the 1969 statute?
A. Right. But just still leaving it up to one person.
Q. Okay. All right. I want to go ahead and look at a couple newspaper articles from around this time when this law was being considered and when it was passed.
(Defendants' 4 premarked.)
BY MR. RABINOVITZ:
Q. So this next exhibit I'm showing is Defendants' -- I've premarked it as Defendants' Exhibit Number 4. This is from July 22, 1971. If I go back to the previous exhibit, that was -- it was ratified on July 16, 1971. So this is -- this is a couple of days, it appears to me, after ratification here, in the

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Robesonian, which was a local newspaper that was in circulation at the time, is my understanding. Were you familiar with that newspaper?
A. No.
Q. Okay. So this says a couple of things here. So it's titled "Restoring Citizens." And it's just two short paragraphs, so I'll go ahead and read it.
The first paragraph says: "Procedure for restoration of citizenship to persons convicted of felonies is simplified under a bill introduced by Representative Joy J. Johnson of Robeson and enacted into law. It looks like a humanitarian gesture."
So we were just talking about this, but one of the things that this paragraph says is that the law was simplified in comparison to what was there before. And I think you just said you agree with that, that there was some simplification that was done. Is that correct?
A. That's correct. Right.
Q. Okay. And the second paragraph here says: "A full pardon or a recommendation by the Department of Correction, plus an oath

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before a judge or clerk of Superior Court, seems adequate to restore citizenship to a person who has paid his debt to society. If the previous procedure was more complicated, simplification should make former felons feel more welcome as restored citizens and encourage them to make their conduct acceptable."

Do you agree with the characterization or take any issue with the characterization in this article?

A. Yeah, I take issue with it.

Q. Okay. Can you explain that?

A. Yeah. The last -- the last -- that last paragraph, the last paragraph, the last sentence: "If the previous procedure was more complicated, simplification should make former felons feel more welcome as restored citizens and encourage them to make their conduct acceptable."

Acceptable to who? You've still got to go before a judge or a clerk. And if it's not acceptable to them, then -- you know, that was -- that was typical at that time, a typical reaction. They took out some of the things that you had to do, but it still left it up to

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one person. That's -- that's -- that's a nice little article.

Q. Okay.

A. For something saying, really, nothing.

Q. Okay.

A. And plus the fact it says that -- it's off-base. "A full pardon or a recommendation."

Q. Uh-huh.

A. I'm not sure how they get the full pardon in there, because the full pardon comes from the governor.

Q. Okay. All right. I want to go ahead and look at another article here. Why don't we look at another article. No, I want to actually jump to some of the legislative history documents here.

(Defendants' 5 premarked.)

BY MR. RABINOVITZ:

Q. So this I've marked as Defendants' Exhibit Number 5. Can you identify what this is or, at least, this first page here?

A. It looks like a bill from the 1971 session.

Q. Okay.

A. A bill entitled "An Act to Amend

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Chapter 13 of the General Statutes to Require the Automatic Restoration of Citizenship."

Q. Is this -- you had mentioned that you reviewed some -- reviewed and printed off some legislative materials when you were looking at this.

A. Yes.

Q. This is for the 1971 law; not the 1973 law.

A. Right.

Q. But was this included in the materials that you looked at?

A. Yes, sir.

Q. Okay.

A. That my lawyer sent me the other day. Right.

Q. Okay. And so you would have some -- you've looked at this, you know, more recently than --

A. Right.

Q. -- than back in 1973, at least, you've had a look at it?

A. Right.

Q. Okay. So this, I believe, is -- is the bill as it was introduced.

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A. That's correct.

Q. That's correct? Okay.

So this adds a section -- if you look at section 1 of this bill, it's adding a new section to the statute, or proposing to add a new section to the statute, 13-11.

And then if you look at section 2, it's repealing the previous sections from the law. So repealing 13-1 through 13-10. So it's attempting to replace all of that with this new section 13-11.

Does that appear correct to you?

A. That appears correct. Right.

Q. Okay. And 13-11 is entitled restoration of citizenship. It says: "Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon the full completion of his sentence or upon receiving an unconditional pardon."

What's your understanding of what that section was -- was trying to do, what the aim of that section was?

A. The aim of that section was to restore their rights automatically without having to do

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

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

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

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

And I took a look at it, at his suggestion, and suggested that he didn't quite accomplish what he really wanted to accomplish with that bill. And then we started work on the '73 legislation.

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

A. The hearing. The hearing called for in the '71 legislation. And that what we were -- what I thought that he was looking for was the fact that he didn't have -- that some of the hoops were taken out, but that they still had hoops to jump through as a result of the '71 legislation. And what he wanted was a -- I guess what you might want to 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 he was looking for, in my estimation, particularly in the bill that he introduced, was a flat-out pardon, where once all the sentence had been completed, that the citizenship rights were

automatically restored without any -- without them having to do anything.

Q. Okay. And so what I'm looking at this -- this first bill here, this 1973 bill, it lists here as the sponsors -- it's a little hard for me to read. It says Representative, and then someone has written in "J.," Johnson. And it used to say "of Robeson," but now there's a handwritten word under there. Do you know what that says?

A. Yeah, that's "others" who signed onto the bill.

Q. Okay.

A. The only way you would be able to find that out is you would have to go to the jacket of the bill and find out who signed in onto the bill.

Q. Okay.

A. The other legislators -- the other legislators included -- probably included Henry and me.

Q. Okay. So it just says "others." It doesn't say specifically who at that time?

A. Well, it says "others" on this version, but the jacket would have who the others were.

Q. Okay. Now, you said that he first approached you with a version of what he wanted to do. So was his version what we have here, what was initially introduced, or was this version after you-all had discussed it? Do you recall that?

A. This -- I don't recall specifically what it was, but this had more than what he really wanted. For instance, there's no hearing or anything other than certifications.

Q. Okay.

A. Yeah, that's all it was, just certification.

Q. Okay.

A. Not any hearings or swearing before anybody or recommendation from anybody. Once they had completed their service, that was it. And that was what he was looking for. And I told him -- and that's when I told him that what he was looking for, that he didn't have it in -- in the '71 legislation. This is what he was looking for --

Q. Okay.

A. -- in '73.

Q. Okay. So you said when he first came

to you to look at the proposal for the '73 legislation, you had some suggestions for him about what he needed to include. Do you recall what things it was that you had --

A. Not --

Q. -- focused on?

A. Not really, other than the fact I said, "This is" -- you know, that, "This is what you wanted," instead of what came out in '71.

Q. Okay. Okay. And so is what we have here -- and we can go ahead and read through it, but does this appear to be -- you know, this is more of what you were -- what you were looking for? What you thought it needed to be replaced with?

A. Yes.

Q. Okay. And just to, I guess, summarize it, it sounds like the main point was to simplify and specifically make it automatic that once a felon's complete sentence was finished, their rights of citizenship would be restored. Is that correct?

A. That's correct. Without going through any other -- without going through any other process. Right.

Q. Okay. And what was the -- what was the purpose of that? Why was that the goal?
A. Because it would -- it would let them know that they were, you know, that their rights were restored and that they could go vote.
Q. Okay.
A. All the rights that they had had prior to their incarceration or whatever.
Q. Was a purpose also to remove the discretionary decision-making that was involved in the previous law which could possibly inject some bias or prejudice into the process?
A. Yes. You said it better than I could. Yes.
Q. Okay. Can you say anything more on that?
A. No.
Q. Okay. Fair enough. So I want to go through and read through this section 13-1, here, "Restoration of citizenship."
"Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon the occurrence of one of the following

conditions:
"Number (1) Upon the 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."
So that part is -- I think that's what we just -- we had just been talking about.
A. Right.
Q. That it was after the completion of all aspects of their sentence, this would just be an automatic process?
A. Right.
Q. Okay. And then number (2) just says, you know: "Or upon receiving an unconditional pardon." So that was just another -- another way, if somebody was -- got a full pardon, then they would also have this automatic restoration?
A. Correct.
Q. Okay. And just scrolling through this, you can see there's a section 13-2, and then that's pretty much the end of it. Section (2) is just about the effectiveness when it -- when

the statute becomes effective.
So what has been removed here, or at least one of the things that's been removed, was that additional section under the '71 law that had the procedure for going into court and swearing under --
A. Swearing an oath.
Q. Okay.
A. It cut out the two years, still.
Q. Okay. So this completely removes the court process and the fees that you mentioned would be associated with having to get an attorney and go to court; is that right?
A. That's correct. Right.
Q. Okay. And the -- any discretionary issue with -- with the judge making a determination, and, you know, possible prejudice there?
A. Correct.
Q. Okay. So what do you recall -- after you started working on this, though, what do you recall from the -- you know, the legislative process or the amendment process that took place?
A. That was -- nobody really wanted to do

it that way. We had to go in and start making, you know, compromises and whatnot, in order to try to get something passed in the way that the original bill in '73 called for. What the original bill in '73 called for was once you completed everything, your rights were automatically restored, period, in the report. That was it.
Q. Right.
A. Nobody -- nobody -- everybody was a little bit afraid that you were opening up the floodgates, that you were really opening up the floodgates, and they didn't really want to do that. So it went into a period of negotiations from that point on.
Q. Okay. But this -- but this particular bill here, this bill that we've been looking at, this is a fair representation of what it was you were trying to achieve?
A. That's exactly right.
Q. Okay. All right. I want to look at a little bit more of the legislative history documents here. So I'm going to scroll down. This is all still part of this what I've marked as Defendants' Exhibit Number 6. We were just

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looking at this original bill here. This is a Committee Substitute.
A. Right.
Q. So is this one of the documents that you reviewed also when you were looking at the legislative history yesterday?
A. Yes, it is.
Q. Okay. And this Committee -- this Committee Substitute, it adds a -- under 13-1, it adds an additional subsection, number (3), that says: "The satisfaction by the offender of all conditions of a conditional pardon."
A. Yes.
Q. Okay. But the first part there, if you look at sections (1) and (2), I believe are very similar to what came before.
So 13-1 says: "Restoration of citizenship. Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon the occurrence of any one of the following conditions."
So these (1), (2), and (3), these are each one in and of itself. It says "any one of the following conditions." So any of those are

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sufficient on their own. Is that your understanding?
A. Yes.
Q. Okay. And number (1) says: "The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Board of Juvenile Correction, of a probationer by the State Probation Commission, or of a parolee by the Board of Paroles; or of a defendant under a suspended sentence by the court."
A. Yeah. That -- that was added.
Q. That was added. Okay.
So what -- what is the -- what was added here that sticks out to you?
A. What was added was everything involving -- involving the satisfaction of all conditions of a conditional pardon. And that the involvement of the parole -- in other words, let's assume that the convicted felon served the sentence that was given to him. Say that sentence was a bifurcated sentence. He spent some time in jail, and then he spent some time on probation. He violated -- he got on -- he did his time in prison. He was now on

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probation. He violated his probation by not showing up for something, and they extended his probation under the original sentence. And that's what got put in there.
Q. Okay.
A. We didn't -- we didn't particularly care for that in there, but it was the only way we were going to get it to make sure that the bottom line was that there was -- that you still didn't have to go for a hearing or anything like that.
Q. Okay. So it still had that -- that main feature that you talked about, that it would, rather than involving the hearing, it would be -- it would be automatic?
A. Right.
Q. And it wouldn't be subject to the discretion of a judge or the requirement to hire an attorney here?
A. That's correct.
Q. Okay. I want to move on a little bit further down here. There is an amendment here. Is this -- is this also contained in the materials that you --
A. Yeah.

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Q. Okay. And what is your understanding of what this amendment was trying to insert into this bill?
A. I just wanted put back in what was taken out. This just follows the '71 legislation. It failed.
Q. Okay. So, in particular, this was trying to put back in the requirement that somebody go into court --
A. Right.
Q. -- in front of a judge, take an oath --
A. That's correct.
Q. -- which was in the 1971 legislation and which you guys had tried to remove --
A. Right.
Q. -- in this '73?
A. Right.
Q. Okay. And as you noted, this particular amendment failed?
A. Right.
Q. Okay.
A. But we had worked a deal. We had worked a deal by throwing in probation and parole.
Q. Okay. And even after, you know, that

compromise was reached, you continued to -- you continued to sponsor and be in support and failed?

A. Yes.

Q. Okay. I'm going to go on and look at -- there's another amendment here. I'm going to try to make this just a little smaller so we can see this whole thing at once.

A. Yeah.

Q. Again, was this included in the materials that you looked at?

A. Yes. Yes, it was.

Q. Okay. Now, what was -- what was this amendment trying to accomplish here?

A. I have no idea.

Q. Okay. So I'll just go ahead and read it. It says "a new section to be added" that was going to say the following:

"Provided that this act shall not apply to a second conviction of any felony, or to any additional felony conviction after a first such conviction."

A. Kind of where you didn't get but one bite of the apple. If you got a second felony conviction, you couldn't have your citizenship

rights automatically restored.

Q. Okay. So this would have been -- from your perspective, this would not have been an amendment you would have been in favor of?

A. Oh, no. No way.

Q. Okay. And this amendment failed?

A. Yes.

Q. Okay.

A. We had made the compromise, and this was -- this was done on the floor.

Q. Uh-huh. Okay.

Just to go back for a second before we move on. Scroll back up to the top. This is the bill as it was introduced. If you look at section 13-1, subsection (1) here, this includes -- the original proposal did include not only the active sentence -- the original proposal, first of all, talked about unconditional discharge. What does "unconditional discharge," there, mean?

A. Unconditional discharge. There are no conditions other than discharge.

Q. Okay.

A. Everything had been completed. Everything has been done.

Q. Okay.

A. Nothing hanging over his head.

Q. So for an individual on probation, you know, probation oftentimes or, generally, comes with conditions involved.

A. Yes. Right.

Q. So this would -- this would mean -- in your mind, would it be fair to say that all conditions of probation would have been satisfied?

A. Yes.

Q. Okay. And I guess the same goes for parole, as well, that any conditions attached to parole would also have been satisfied?

A. That's correct.

(Defendants' 7 premarked.)

BY MR. RABINOVITZ:

Q. Okay. All right. I want to now go and look at -- this is the -- well, I've marked this as Defendants' Exhibit Number 7.

Are you able to identify what this is?

A. It looks like the ratified bill.

Q. Okay. And I'll just go ahead and do what we did with the 1971 bill. And scroll down to the bottom here so we can look at the

last sentence here that says: "In the General Assembly read three times and ratified, this the 20th day of April, 1973."

A. Yeah.

Q. So that means that that is what we're looking at here, right?

A. Yes.

Q. We're looking at the ratified bill?

A. Yes.

Q. Okay. And if you look at -- well, what's your understanding of what was -- what was accomplished by this bill, by this 1973 bill?

A. What was accomplished, we got -- we got a confederate restoration of citizenship rights, but we had to add in there the fact that the Paroles -- Probation and Paroles Commission, they had to certify that there was nothing hanging over them. Like I say, in addition to probation or parole that may come back as a violation of probation and parole.

But other than that, once the individual has completed everything that he was sentenced to, on certification by everybody involved, his citizenship rights will restore.

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Q. Okay.
A. And he get a copy of it, by the way.
Q. Okay. And what was the -- what was the intent of that automatic restoration? What was the benefit of that?
A. That he would be -- he went back to being a citizen, a full-fledged citizen and could exercise all his constitutional rights and all rights provided to other folks who had never been convicted.
Q. Okay. You mentioned a minute ago in passing that the former felon would get a copy of that as well, you said, "by the way."
A. Yes.
Q. What's -- what's the significance of that to you?
A. Anybody who raised a question, he would have a certificate, an official certificate he could show. They did it in the form of a little card. I used to have one somewhere. I don't know where it is. But they were issued that certificate that could be shown to anybody who raised a question about that felony conviction, that their rights were restored.
Q. And what's the -- what's the importance

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of having that?
A. So if he went to register to vote, and somebody said, "He's a convicted felon," he could say, "No, my rights have been restored."
(Defendants' 8 premarked.)
Q. Okay. Okay. I want to go ahead and bring up another exhibit here.
So this had been premarked as Defendants' Exhibit Number 8. And I'll represent that this is a page from -- from The News and Observer back from March 24, 1973. And you can see there's an "Under the Dome" section there, which The News and Observer still has.
And I'm going to go and zoom in on this for you, because there's only one small part that we need to look at here.
So in this "Under the Dome" section it says here where I'm highlighting, "Felons Regain Right Under Bill in House."
A. Yeah.
Q. I'm going to continue to zoom in on that section so that we can hopefully look just at that.
Are you -- are you able to see that

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pretty well now?
A. I see it. Yeah.
Q. Okay. So this says: "A bill that would provide for full restoration of citizen rights to felons who have fulfilled their sentences received tentative approval by the House Friday."
So this was, obviously, before the final, final version. It says: "The bill will be up for final approval Monday night. It was introduced by the House's three Black members, Representative Michaux" -- so you from Durham, Henry Frye from Guilford, and Joy Johnson from Robeson.
A. They got my first initial wrong, but go ahead.
Q. Right. Right. And then it -- it reports what you said at the time: "Representative Michaux said the bill would eliminate the current legal requirement that felons appear before a judge, take an oath and request restoration of their citizenship."
Does that sound accurate, like something you would have said at the time?
A. Probably. Yeah. Yeah.

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Q. I don't imagine you remember specifically being interviewed for this all the way back in 1973?
A. You're right about that.
Q. Okay. But it does sound generally correct of what -- what you might have said back then?
A. Yes.
Q. You have no reason to doubt how it's been reported here?
A. No reason to doubt it.
Q. Okay. And I think these are all things we've talked about, that a major goal of the 1973 legislation was to remove these various things that you and your colleagues saw as impediments. So appearing before a judge, taking -- and taking an oath, which was an impediment for several reasons. Right?
A. Correct.
Q. And I think at least two of those reasons, again, you've mentioned the cost involved with getting an attorney to assist you in doing that. Is that one of the reasons?
A. That's one of the reasons, yes.
Q. And then you also mentioned the

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

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

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

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

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upon the recommendation of the Office of Corrections upon the person's release, after two years have elapsed since release, or in the condition of an unconditional pardon."

So that's -- that's what this law -- again, these are other things that the -- that the 1973 law was trying to do away with because of the procedural complications?

A. That's correct.

Q. Okay. All right. So I want to go ahead and go back to Exhibit Number 1 here, which is your affidavit, and I just want to ask you about a few things in your affidavit here.

So I'm going to go down to paragraph 12 here. And so this is after an affidavit. You've talked about being elected to the House. And you say in paragraph 12: "At the time, Kelly Alexander, Sr., was president of the NAACP, and the state conference was very active. Their informal lobbyist at the general assembly was Peter Stanford. I recall that NC NAACP identified as one of its priorities for equal voting rights the need to inform our laws to enact a system of automatic restoration of rights to those formerly convicted of a

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felony, and we agreed."

So what do you recall about the conversations at the time or at least about that being a priority for the State NAACP?

A. It was identified as one of the priorities.

Q. Yes.

A. So there were, I guess, many priorities that we talked about. Kelly, Sr., and Peter Stanford, we talked about many of the impediments that were put before folks in order to get them to be able to vote. So, I mean, you know, we identified it as one of the things that -- Black folks, particularly convicted felons, didn't have any knowledge that they could have their citizenship rights restored in that, you know, form or fashion. I mean, it just came up in general conversation, as other things came up involving equal voting rights.

Q. Okay. And so you say "one of its priorities." And so the priority we're talking about here is the automatic restoration of rights?

A. Of citizenship rights for convicted felons, yes.

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Q. Okay. And that is something you were able to do in that 1973 amendment to the law?

A. Right.

Q. Okay. I want to look at the next paragraph. This is paragraph 13. It says: "In that session, I was assigned the bill to further extend the franchise to people formerly convicted of felonies, along with a major bill addressing Sickle Cell disease as a health crisis. I also worked closely with Representatives Frye and Johnson on advocating for Landlord-Tenant rights bill - a bill that was ultimately defeated based, I believe, on bias in the legislative body. All of these legislative actions were aimed at addressing the effects of racial and class discrimination in North Carolina."

I want to ask you first: What does it -- you use the language here, you say you were "assigned" the bill. What does it -- what do you mean by that?

A. Well, Henry, Joy, and I were the Legislative Black Caucus. And we assigned -- we looked at all the bills, and we assigned the bills that we had an interest in among the

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three of us to handle. That's what I meant by that.

Q. Okay. And you say --

A. Henry, for instance, took on the Landlord-Tenant Bill. He was assigned that and that bill in particular.

Q. Okay. So you just mean how you guys decided to divvy it up?

A. We divided the bills up of what we -- what we looked on as priorities; and to act on them, yes.

Q. Okay. And so you mentioned several bills here, including this bill that we've been talking about, the Automatic Restoration Bill, and you say all of the legislative actions were aimed at addressing the effects of racial and class discrimination in North Carolina. And I think we've talked about that at length related to this Automatic Restoration Bill.

Is there anything else on that related to the Automatic Restoration Bill that we haven't talked about, other ways that it addressed racial and class discrimination in North Carolina?

A. No.

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

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

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

sentence that you originally receive. Had we left it as it was, once the sentence is received, in spite of any extension, that would not have counted. What we had -- what we had to -- what we had to concede on was the fact that any -- that if probation or parole was extended for any violation at all, that had to be included in there also.
Q. Okay.
A. We did not want that -- we did not want that in there, because we knew that if you missed one session with the probation officer, you could be violated for that, and they would extend your probation, normally, in a situation, beyond what you were actually sentenced for.
Q. Okay.
A. And we wanted -- we didn't want -- we didn't want that extension after, keeping him from getting his restoration.
Q. Okay. And you ultimately, though, were able to reach a compromise; is that right?
A. That included everything. Yes.
Q. Okay. And what was the -- obviously, you -- there was something that you felt you

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achieved out of that compromise; not to put words in your mouth. But what was important in what you were able to get? What was -- what was most important to you then that you were able to get out of that compromise?

A. That you didn't have to jump through any hoops to get your rights restored. You didn't have to have a hearing. You didn't have to do anything. That the onus was on the State to provide you with the fact that your rights were automatically restored; that you didn't have to go begging for them. Just like Joy said, if you automatically took them away, you could automatically restore them. And that's what we got out of it.

Q. And those benefits to you were substantial enough that the compromise was worth it?

A. Yes, sir.

Q. Is there -- you were a legislator for a long time. Are compromises a part of the process when trying to get legislation through?

A. Yes. Yes. Everything that -- everything that comes out of that legislature is a compromise.

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Q. Right. That's what I was going to say. I would imagine that pretty much everything -- everything involves some kind of compromise.

A. I have seen very few pure bills.

Q. Right. Is that a -- is that a feature or a bug of the legislative process?

A. I think it's -- I think -- I think, to me, it's a -- it's an attribute. It's a significant attribute. That you could sit and compromise. That you're able to do that.

Q. And what are the benefits?

A. Why is that? Is that what you're asking?

Q. Well, I was just going to say: What are the benefits of that, the benefits of a compromise?

A. You're able -- you're able to sit down and look at all sides of the situation. I was Senior Chair of Appropriations for four years. I made so many compromises on what the budget should look like, that what I had originally in the budget wasn't anywhere near. But the budgets came out good because of the time that we were in. We were right in the middle of a depression, when I had to put that budget

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forward. And there were so many compromises made in the bill that it kept the state running. It kept the state moving. And that's why I say, the art of compromise is the art of politics, or vice versa.

Q. Sure.

A. Don't get me on this soapbox now because...

Q. I'm just seeing what else -- I'm just looking through my notes and making sure I don't miss anything else here.

One of the things that you mentioned, looking at the -- looking at the next paragraph, you're talking about some of the problems with it, the way that this was set up, the way that the system was set up, and you talk about perverse incentives and criminalization especially in the charging of African Americans.

What -- can you explain that a little bit more? What were the issues under the previous law that created this incentive in the charging of African Americans, I guess, to charge them more severely than would otherwise happen?

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A. I thought we went over that.

MS. THEODORE: Brian? Excuse me for a minute. Are you referring to a particular part of the affidavit; and if so, could you just let us know what that is?

MR. RABINOVITZ: Yeah. I'm sorry if I forgot to mention it.

BY MR. RABINOVITZ:

Q. I was talking about paragraph 17, in the -- in the -- I guess it's the third sentence there in paragraph 17. You say that you saw your efforts "as a step forward, understanding that it did not solve the original problem."

And so I was asking about that original problem, which you describe as follows: "The law was designed to suppress African-American voting power and it had created a perverse incentive to criminalize and charge African Americans differently to achieve that aim."

So I was just asking if you could explain that to me a little bit more.

A. Well, what I was saying was that in taking into account the attitudes that existed during that period of time, anything that you

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could do to stop African Americans from voting were on one side; what you could do to get the African Americans to vote on the other side. If you wanted to suppress the vote, you criminalize certain things that would make -- make their vote not count or not be able to cast that vote. And the attitude was that African Americans should not have the right to vote. And this was one of the laws that was designed, particularly, as I stated initially, because we didn't have the wherewithal to understand that we could have our rights restored. That it -- it suppressed that power that we had in that one person being able to vote.

Q. Okay. And so the 1973 legislation that added the automatic restoration, I guess would also, in some part, alleviate this problem? Is that accurate?

A. When you -- when you give -- pardon me -- when you give that person that certificate that says, "Your rights are restored," that you have the right to vote, then, yes, it solved that problem to an extent. Now, you don't want me to tell you that the way

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it's being applied now -- it's now -- really, it's yet again.

Q. Can you explain what you mean by that?

A. I mean by that, that we have found out in recent years that if you're a convicted felon, your Second Amendment rights were not restored, according to the North Carolina law. For instance, to own a weapon. A convicted felon could be put back in jail for owning -- for possession of a weapon by a convicted felon.

Q. Okay.

A. That same amendment gives you the right to own a weapon. So that right, really, has not been restored.

Q. Okay. So now you're talking about the Second Amendment and a potential conflict because restoration of citizenship, I gather, also affects somebody's Second Amendment rights. Is that -- is that what you're --

A. What we're saying is it's an automatic restoration of rights. That's the way the legislation -- it's citizenship restoration, an automatic restoration of citizenship.

Q. Right.

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A. And, anyway, when I said we -- if you look at 18 -- I said that was a "bitter pill to swallow," because I had -- and not that I'm any kind of fortune teller or anything like that -- we knew there were other problems that were going to come up with that.

Q. Right.

A. Any way -- any way you could -- any way you could dissuade or suppress that vote, any little change, and it's happening with that. Why is a convicted felon, who has been given his automatic restoration citizenship, why can't he own a weapon?

Q. Okay.

A. I mean, this is not in this suit, but --

Q. Sure.

A. -- but it's a part of it.

Q. Right. So it's a separate issue about --

A. And it still -- it still exists.

Q. Understood. Understood.

I guess that goes back, to some extent, to the compromise. You still felt like you achieved something significant through the

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legislation?

A. Yeah, until folks found out, you know, there were other ways to get around it.

Q. Okay.

A. We have to come back and fight for everything that's taken for granted by other folks.

Q. Okay. I want to look at paragraph 19.

A. Okay.

Q. You say here -- well, let me step back for a second, because you were talking a little bit about the Second Amendment. I just want to make sure that I've explored this.

You talked about other ways to get around it, to get around the legislation that you enacted.

Other than the Second Amendment issue that you mentioned, what other ways are you talking about that people have used to get around what you tried to do through that 1973 legislation?

A. Well, prior -- prior to -- prior to that -- you mean recently?

Q. I guess anytime since you -- since you enacted the --

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

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

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

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which was 2019 -- 2018, 2019.
Q. Okay. And when you say it was a -- it was a case, what was your role --
A. I had a client -- I had a client who was charged with, as a convicted felon -- possession of a weapon by a convicted felon.
Q. Uh-huh.
A. So I had represented him on his felony conviction, which occurred some eight, nine, ten years before.
Q. Okay.
A. And I had -- he had served all of his time under that and had gotten his certificate of citizenship restoration, which included on that certificate the fact that he could not possess a weapon.
Q. Okay. And so this, again, goes back to the -- the Second Amendment issue that you were mentioning before --
A. Yes, sir.
Q. -- as something that went against what you were trying to do with the 1973 law?
A. Yes, sir.
Q. Between 1973, though, and when you retired, were there any other bills that you

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introduced in -- in the House, or when you were over in the Senate for a short time, to try to correct the issues that you thought still remained with the 1973 legislation?

A. No.

Q. Okay. Are we okay to continue, or do you need a break?

A. No. We can continue.

Q. Okay.

MR. JOYNER: Brian, let me just ask you: How much longer do you intend to go? So that we can kind of navigate through some other break needs and lunch needs for people that are on the phone.

MR. RABINOVITZ: Sure. I think I'll probably just have 10 or 20 minutes left when I get back. I don't know what other folks need, but I'll probably just be another 10 or 20 minutes.

MR. JACOBSON: Paul and Olga, are you guys planning on asking additional questions, or no?

MR. COX: At this time, I don't think so. If we do, it's going to be very brief. But, more likely than not, no.

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MR. JOYNER: Okay. So can we, then, do another -- you say you can finish in about ten minutes -- and then take a brief break at that point?

MR. RABINOVITZ: Sure. Yeah. It will take me 10 to 20 minutes, but if you want to go ahead and just break on the hour, then, you know, we can come back and I'll finish up quickly.

I guess the same question for the plaintiffs' attorneys, if we're trying to gauge time: Do you folks anticipate having extensive questioning, or how extensive, after I'm through?

MS. THEODORE: We will -- we will certainly have some questioning, and I think it will take -- I think it will take longer than ten minutes. I think probably what will make sense is that we could do maybe a lunch break after you're finished and before we -- before we start the redirect, potentially.

MR. RABINOVITZ: Okay.

MR. JOYNER: So can we kind of look at maybe, once you finish, regrouping about a half an hour, 45 minutes after that? How does that schedule work?

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Senator Michaux has, you know -- you know, he's been very gracious thus far, but I know that he needs to get a break in here.

MR. RABINOVITZ: Sure. Well, here is what I would propose. Like I said, I think I have 10 to 20 minutes left. Why don't I try and get through that, you know. If it seems like it's going overly long, you know, we can -- we can break. But, otherwise, I'll try and get through that, and then we can, you know, talk off the record about how we want to structure the rest of the time and make sure everyone gets any break they need and gets lunch if they need it, and then we can move on from there.

Does that sound acceptable?

MR. JOYNER: Senator Michaux, how is that for you?

THE WITNESS: Sounds fine with me. I'm retired.

BY MR. RABINOVITZ:

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Q. Okay. So at the time that you were passing the 1973 law -- let's go back to -- let's go back to paragraph 10 here in your affidavit.

So you mentioned there were only the three of you African-American legislators, and that, otherwise, the general assembly was all white. And then you go on to say in the last sentence there: "The majority of legislators, regardless of party, were conservative rather than progressive when it came to race, race relations, and the civil rights of African Americans, and many openly held racist views."

And then going back to the second sentence. Sorry to skip around. But you say: "By necessity, to be effective in that legislature you had to form coalitions around issues and make constant strategic determinations about legislative negotiations, compromises, and trade-offs."

And we talked about how, in this particular legislation, you had to make a compromise. Is that the type of compromise that you were talking about in this paragraph here?

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A. Yes.
Q. Okay. And it was because of the way you describe it here, I think, the makeup of the legislature at that time and racist views that were held by many of the white legislators who were in power at that time. Is that correct?
A. That's correct.
Q. Okay. I just asked you a few minutes ago about any other attempts to amend this legislation over the next, you know, almost -- almost 50 years, more than 40 years, and you said that there weren't other attempts.
But, certainly, during that time, would you agree that the makeup of the legislature and the views held by many of the folks in the legislature changed considerably on race issues? Is that right?
A. I would say they have changed, yes.
Q. And is it also correct that between 1992 and -- and up to -- well, not the entire time, but I guess from 1992 to 2017, there were 14 years during that time period when Democrats held the governor's office and majorities in both the Senate and the House?

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A. I would assume you're right on that.
Q. Okay. In fact, I think there was a stretch from 1991 -- or sorry, 1999 -- all the way up until 2010, when the Democrats held those three -- those three leadership positions?
A. No. What do you say? No.
Q. I said from 1999 to 2010, there was -- during that time period there was a Democratic governor and Democratic leadership in the Senate and the House.
A. No.
Q. Okay.
A. Because I'm trying to -- I'm trying to -- I'm trying to remember the year that Brubaker was Speaker of the House and when the speakership was -- was shared by the House.
Q. Right. Okay.
A. In the '90s. That was in the '90s.
Q. That was in the '90s. Okay.
A. It was in the '90s.
Q. So I'll leave out 1999, then. Why don't we say in the early 2000s through about 2010, at least, there was Democratic leadership in the governor's office, the House, and the

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Senate?
A. You're making me have to think about it.
Q. Okay.
A. I'm not sure I can answer that because I -- I'm sitting here trying to remember. You said between 2000 and 2010?
Q. Yes.
A. You may be -- you may be right on that. Yeah.
Q. Okay. You can't be sure as you sit here today, then?
A. I'm not sure.
Q. Okay. But there was, at least, some time period in there -- I'll narrow it -- some time period during the administrations of Governor Easley and Governor Perdue when there was also Democratic leadership in the House and the Senate?
A. That's correct. Yeah.
Q. Okay. And there also was not an attempt by you or your colleagues during those years to further amend this 1973 statute?
A. That's correct.
Q. Okay.

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A. As far as I know. As far as I can remember.
Q. Okay. And I think I'm just about wrapping up here, but I do want to make sure I cover my bases. I had initially sent out a subpoena for your experience that included some document requests, and your attorney represented to me that you didn't have any documents that were responsive to that request.
A. That is true.
Q. I just -- I just want to -- I just want to make sure that I've covered everything and that there's -- that there's nothing that I've left out that, you know, you might still have in your possession.
Do you have any letters or other papers -- other than what you printed out yesterday. I'm not talking about the statutes that you printed out yesterday.
MS. THEODORE: Brian, I'm going to object to all of these questions about document discovery, because, as you know, the document discovery requests that you sent in this case were -- were untimely.
MR. RABINOVITZ: Okay. Your --

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MS. THEODORE: Our position is that the document discovery requests that you sent us in this case were untimely, and those requests were withdrawn.

MR. RABINOVITZ: Yup, they were withdrawn, and your objection is noted. And I'll just note that I'm simply asking now during the deposition, orally, about whether he has any of those documents. So the request has been withdrawn. So I'll proceed.

BY MR. RABINOVITZ:

Q. Any documents in your possession that reflect any effort to address the voting rights of people convicted of felonies that would include letters of support or opposition to any policies or bills? Do you have anything like that in your possession?

A. I do not have them in my possession. No, sir. All the documents and everything that I have gathered over the years have been turned over to North Carolina Central University.

Q. Okay. Over to Central University, you said?

A. Yes, sir.

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Q. So all of your papers are in a collection at North Carolina Central University?

A. Yes, sir.

Q. Okay. So there's really, then, no need for me to go through and ask you about particular documents, because everything that you would have had, you've turned over. Is that right?

A. That's correct.

Q. Okay. And do you know if that collection is publicly accessible or not?

A. I have no idea.

Q. Okay.

A. I gave it to them unrestricted.

Q. Okay. And that's fine. Then I think that -- I think that will wrap up that line of questioning.

MR. RABINOVITZ: It's right at noon right now. So what I would propose is that we take another break off of the record to have a discussion about how we're going to proceed. I will check my notes and make sure I haven't left anything out; and if I have, maybe take five or ten minutes when we come back. But I anticipate that I, you know, will be able to very quickly turn it over to the other attorneys, and then I would only have follow-up questions if something comes up on their questioning that I needed to go back to.

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But in terms of taking a break now, does that work to take a break now to figure out how we're going to proceed?

MR. JOYNER: Well, why don't we go off the record now, and then we can figure out how to proceed. I mean, if we're going to take a break, then it ought to be one break, rather than breaking and trying to come back and figure out a strategy. So if we could just go off the record. And then I don't know what the schedules of others are, but, you know, I would propose moving that way.

MR. RABINOVITZ: Okay. That works for me.

Okay. So Madam Court Reporter, if we could just -- if we could go off the record at this time, I think -- I think that will work. We'll do it that way.

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THE REPORTER: We are now off the record.

(Recess from 12:03 to 12:55 p.m.)

MR. JOYNER: What is that 858 number? I'm sorry. I missed that.

MR. FARAJI: Yeah. This is Farbod Faraji for Protect Democracy. I joined earlier but I didn't want to interrupt the proceedings.

THE REPORTER: We can go back on the record at any time.

MS. VYSOTSKAYA: I think we could go back on the record unless there is an objection from plaintiffs.

MS. THEODORE: We're ready to go back on the record.

MS. VYSOTSKAYA. If we are back, the Board of Elections does not have any questions right now for Representative Michaux. We reserve the right to ask the questions after plaintiffs finish their examination.

EXAMINATION

BY MS. THEODORE:

Q. Okay. Good afternoon, Senator Michaux.

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I'm Elisabeth Theodore, one of the lawyers for the --
A. Yes, ma'am.
Q. -- North Carolina NAACP and the other plaintiffs.
So, Senator Michaux, you were asked some questions in your direct examination about the original bill proposed by Representative Johnson in 1971. Do you remember that?
A. Yes.
Q. And you testified that it was amended by a Committee Substitute, correct?
A. Correct.
Q. Okay. Now, I'm going to call up Defendants' Exhibit 5. I can try to do that right now.
Okay. Do you see here I have on the screen what's marked as Defendants' Exhibit 5? Do you see that, Senator?
A. Not yet.
MS. THEODORE: Am I not sharing?
MR. RABINOVITZ: It says -- it says you started screen-sharing, but there's nothing there. It's just a message that you're screen-sharing.

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MR. JACOBSON. Are you sure you clicked on the thing you want to share?
MS. THEODORE: I think so. Hang on. Let me try again.
MR. RABINOVITZ: There's also a second step. Once you click on it, you also have to click on "Share" too. So it's kind of a two-step thing.
MS. THEODORE: Is it working now?
THE WITNESS: No.
MR. RABINOVITZ: In the bottom right-hand corner, is there a little green "Share" button?
MS. THEODORE: I clicked on that. Yeah. Do you need to give me control or something like that?
MR. RABINOVITZ: No. No. But there is a Huseby tech person if we want to go off the record again for a second. We can ask them for help. They're live on the call.
MS. THEODORE: Yeah. Maybe we should go off the record for a second.
MR. RABINOVITZ: Okay.
(Brief discussion off the record.)
MS. THEODORE: Let's go back on the record.

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BY MS. THEODORE:
Q. All right. So Senator Michaux, you see this -- is this first page that you're seeing on this screen the first page of Defendants' Exhibit 5?
A. Yes.
Q. A copy of the original bill proposed by Representative Johnson?
A. Yes.
MS. THEODORE: Okay. And, Dan, can you scroll down to proposed section 13-11.
A. Okay.
Q. And, Senator Michaux, do you see there that proposed section 13-11 does not use the words "probation" or "parole"? Is that correct?
A. That's correct.
Q. Okay. And then --
MS. THEODORE: Dan, can you scroll to the second page of Defendant's Exhibit 5?
BY MS. THEODORE:
Q. All right. And if you would go to the top of that second page there, you see that it reads --

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MS. THEODORE: Go up a little more to the top, please, Dan.
BY MS. THEODORE:
Q. Do you see -- do you see, Senator Michaux, that it reads there "Committee Substitute for House Bill 285"?
A. Yes.
Q. Okay. So you recognize this as a copy of the Committee Substitute?
A. Yes.
Q. Okay. And let's go down to proposed section 13-1, "Restoration of citizenship." Do you see that, Senator Michaux?
A. Yes.
Q. Okay. And you see that -- you see that this Committee Substitute now includes the phrase "including any period of probation or parole" --
A. Yes.
Q. -- in section 13-1?
A. Yes.
Q. Okay. And that language from the Committee Substitute is what was eventually passed, correct?
A. That's correct.

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Q. Okay. And I'm going to move to a different exhibit, which we'll mark as Plaintiffs' Exhibit 1.

MS. THEODORE: Dan, can you call up that News and Observer article?

MR. JACOBSON: Yes. One second.

MS. VYSOTSKAYA: To the extent that we are introducing new exhibits, could you possibly share those with us as well, with all the defendants?

MS. THEODORE: Yes.

MS. VYSOTSKAYA: That would be great.

MS. THEODORE: I will -- I will send that to you right now as Dan is calling it up. It's -- this is a document that you've produced in discovery.

MR. JACOBSON: Can everyone see this?

THE WITNESS: Yes.

MS. THEODORE: All right, Senator Michaux.

And, Dan, do you want to scroll down to the article?

(Plaintiffs' 1 marked.)

BY MS. THEODORE:

Q. All right. Senator Michaux, I know this is hard to see, but I will represent to you that this is an article produced by the defendants in this case from The News and Observer dated July 8, 1971.

A. Yes.

Q. Okay. And so this is an article that would be concerning the 1971 bill; is that right?

A. That's what it appears to be, yes.

Q. Right. And you see it's entitled "Felon Citizenship Bill Gets House Approval"?

A. Yes.

Q. Okay. And I'm going to -- I'm going to direct your attention to the third paragraph of this article which I will read to you. It says: "Representative Henry Frye, D Guilford, told the House he favored the bill's provisions which called for automatic restoration of citizenship when a felon had served his prison sentence, but he would go along with the amendment if necessary to get the bill passed."

So do you understand Representative Frye to have understood the original proposed 1971 bill to restore voting rights upon release from a prison sentence, meaning release from incarceration?

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A. I don't know. I don't know what Representative Odom's amendment was.

Q. All right. But when Representative Frye says in --

A. Okay. Okay. Okay.

Q. Sorry. When Representative Frye says in this newspaper article that he -- that he favored the bill's original provisions, which called for automatic restoration when a felon had served his prison sentence, would you understand that to refer to release from incarceration?

A. I don't know. The second part of the amendment still involved the two years, from what I'm reading. And I don't know what Representative Frye was thinking at the time.

Oh, oh. Oh. Oh. Oh.

Q. Representative Frye, here, is talking about the original proposed bill in 1971?

A. Yeah. I know he's talking about the original bill, but I'm not so sure, because the amendment that Representative Odom wanted in there was -- I don't know. Because the third part of that is that if he had received a full pardon. And I don't understand -- I don't know what -- I don't know. I can't answer that.

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Q. All right. Let's -- okay, let's take this -- this exhibit down.

Okay. So, Senator Michaux, you testified on direct examination that the 1973 bill got you what you were trying to achieve. And I just want to clarify. You might have gotten what you were trying to achieve in terms of not having to go to court to get a judge to sign off on the restoration of rights to vote. Is that -- is that correct?

A. That's correct. Taking out all of the -- it took out what Joy really wanted, was the fact that since they were automatically taken away, they are now automatically restored. And you didn't have to go to the court, you know, to do that. Right.

Q. All right. And let's -- I'm going to turn you back to the affidavit you prepared in this case, which is Defendants' Exhibit 1.

Okay. And let's turn to paragraph 15 of that affidavit.

Okay. And in this paragraph 15, you're discussing your goals and Representative

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Johnson's and Frye's goals in 1973 with respect to the restoration of citizenship rights including voting rights; is that -- is that correct?

A. Yes. Uh-huh.

Q. Okay. And you say in the affidavit: "I remember we wanted automatic restoration applicable across the board." And you say "across the board" included, "at the least, the restoration of your citizenship rights after you completed imprisonment." And you say: "This was a priority for the North Carolina NAACP and it was a priority for us.

And that's correct, right?

A. That's correct.

Q. Okay. And so your original aim, and that of the NAACP, was to restore voting rights automatically as soon as someone had released -- was released from prison, regardless of whether they had probation or parole. Is that correct?

A. That's correct.

Q. Okay. And you testified on direct that one of the problems with conditioning restoration of voting rights on completion of

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probation or parole is that judges could extend the probation or parole, including for reasons like inability to pay fees. Is that correct?

A. That's correct.

Q. And so is that one of the reasons why you would have preferred a bill that restored citizenship rights after the completion of imprisonment?

A. Yes.

Q. Okay. Let's turn to page 16 of your affidavit. And you say there that you were able to convince your colleagues -- and we're talking about 1973 here -- that you were able to convince your colleagues "to only go so far" and that you will have to "compromise to reinstate citizenship voting rights only after completion of a sentence of parole or probation." Is that right?

A. That's correct.

Q. And, similarly, on direct, you testified that you reached a deal by throwing in probation and parole, I think, is what you said?

A. That's correct. Yes.

Q. And that deal was part of what you

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originally proposed in 1973, correct?

A. We didn't propose -- we didn't propose that in the original bill, in the '73 original bill. I don't think we did. No.

Q. Okay.

A. Joy -- you have to understand, Joy -- no, that wasn't in the original bill. Probation and parole was not in the original bill. It was in the Committee Substitute.

Q. Okay.

A. It was in the Committee Substitute.

Q. All right. I'll --

A. Yeah.

Q. I'll move on. So let's move on to paragraph 17.

So you say in paragraph 17 of your affidavit that the felony disenfranchisement law was "designed to suppress African-American voting power."

And you say in paragraph 18 of your affidavit that what you were able -- what you were able to achieve in 1973 was "to make the system practiced in North Carolina somewhat less discriminatory." Is that right?

A. That's correct.

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Q. So you think you were able to fix some of the worst parts of the law, but you weren't able to fix them all. Is that -- is that correct?

A. That's correct.

Q. Okay. So let's see.

Moving on. You testified on direct that the automatic restoration of rights that you were able to achieve in 1973 removed any issues about having to pay a fee to go to court, hire a lawyer, that sort of thing, correct?

A. That's correct.

Q. Okay. But the 1973 bill, it didn't remove issues with being able to pay fees relating to completing probation or parole or having your parole or probation extended because you couldn't pay court supervision fees, for example, right?

A. Right. That's correct.

Q. Okay. And, Senator Michaux, you were asked some questions related to impediments to disenfranchisement of African Americans in the years since 1973, in practice?

A. Yes.

Q. You didn't attempt to comprehensively describe all of the impediments that exist today or that have existed since 1973, correct?
A. That's correct.
Q. And you would have no reason to dispute that conditioning restoration of voting rights on the payment of fees relating to completing probation and parole disproportionately affects African Americans even today. Is that right?
A. Yes, I would say that's correct. Yes.
Q. Okay. I just want to clear up one thing about your testimony on direct. I think there might have been some confusion about when lawyers for the North Carolina NAACP first spoke with you in connection with this particular lawsuit, specifically.
So this lawsuit was originally filed in November of 2019, which was eight months ago. And, in fact, the lawyers for the -- for the North Carolina NAACP spoke to you for the first time in connection with this particular case just a couple months ago, in May of 2020; is that right?
A. Yes. Yes.
Q. We spoke to you -- the lawyers for the

North Carolina NAACP spoke to you shortly before filing the summary judgment motion, not the original lawsuit, not the original complaint. Is that -- is that right?
A. I'm not sure about that. I know that I talked -- that I've had several conversations over a period of time about this and other matters. And some were -- all of the -- a lot of the other matters were all brought in about the same time.
Q. Okay.
A. And I can't specifically say that was -- that was a part of the thinking, yes, but I can't say we specifically -- we recognized it, that that was one of the things, but I don't remember the full conversation, no.
Q. Okay. Senator Michaux, I just have one final question, which is: Can you just talk a little bit about the importance of the right to vote, in general, for African Americans, specifically, or just the importance of the right to vote, and why you felt so strongly about these issues? I know it's a big question.
A. That is a big question. Everybody

cherishes the right to vote. Everybody understands that people with the power of the vote and with the right to vote have -- have the right to make changes in their lives. Everything is based on your being able to help foment whatever changes in the law you wanted to help you, not only yourself, but the rest of your constituency, for the rest of your community, for the rest of the country.
Voting -- voting is one of those cherished things in which you feel as though you have a -- you are a -- you are a participant in directing the way that you live your life in this country, or anywhere. I mean, it's -- it's a foregone conclusion in everybody's mind -- in my mind, in particular -- that if you don't express that right to vote, if you don't vote, you don't have anything to complain about. And this is one way of expressing your dissatisfaction or your satisfaction with the way you live your life. They say money -- they say "Money is the mother's milk of politics." That's not true. Voting is.
MS. THEODORE: Thank you very much,

Senator. That's all that -- that's all that the plaintiffs have.
MR. RABINOVITZ: This is Brian Rabinovitz, again, for the Legislative Defendants. I would -- I don't have any other questions.
And Representative and Senator Michaux, I would just like to thank you very much for your time today. You've been very generous in giving us many hours out of your morning, and I very much appreciate that, and appreciate Professor Joyner's work in setting this all up and helping this go smoothly. So thank you very much.
THE WITNESS: No problem.
Ms VYSOTSKAYA: And for the Board of Elections, we don't have any follow-up questions. We very much appreciate Representative Michaux' testimony today, that somebody of that stature and importance in North Carolina would dedicate so much time to us this morning is great. I appreciate it.
THE WITNESS: Thank you.
THE REPORTER: Okay. Conclude the

record?

MS. VYSOTSKAYA: Yes, please. Thank you.

Thank you, Madam Court Reporter. We appreciate you hanging with us with the technological issues.

MS. THEODORE: Plaintiffs would like a copy.

MR. RABINOVITZ: And I would like a copy for the Legislative Defendants.

MR. COX: The State Board Defendants as well.

(Deposition concluded at 1:22 p.m.)

(Signature reserved.)

REPORTER'S CERTIFICATE

NORTH CAROLINA)
WAKE COUNTY)

I, Denise Y. Meek, a Court Reporter and Notary Public in and for the State of North Carolina, do hereby certify that prior to the commencement of the examination, SENATOR HENRY M. MICHAUX, JR., was duly remotely sworn by me to testify to the truth, the whole truth, and nothing but the truth.

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 date hereinbefore set forth, to the best of my ability.

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 a relative nor employee of such attorney or counsel hereto, and that I am not financially interested in the action.

IN WITNESS WHEREOF, I have hereto set my hand this 8th day of June 2020.

Denise Y. Meek

DENISE Y. MEEK
Court Reporter/Notary Public
State of North Carolina

COMMISSION: 201519500202
EXPIRATION: July 8, 2020

ERRATA SHEET

CAPTION: Community Success Initiative, et al. vs. Timothy K. Moore, et al.

JOB NO.: 298767

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:

PAGE	LINE	CORRECTION AND REASON THEREFOR

Senator Henry M. Michaux, Jr. Date

EXHIBIT 8

GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

H

HOUSE DRH3041

9 N 285

I

See S 301

Short Title: Citizenship Restored. (Public)

Sponsors: Representative Johnson of Robeson.

GS 13

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 13 OF THE GENERAL STATUTES TO REQUIRE THE AUTOMATIC RESTORATION OF CITIZENSHIP TO ANY PERSON WHO HAS FORFEITED SUCH CITIZENSHIP DUE TO COMMITTING A CRIME AND HAS EITHER BEEN PARDONED OR COMPLETED HIS SENTENCE.

The General Assembly of North Carolina do enact:

Section 1. Chapter 13 of the General Statutes is hereby amended by inserting immediately after G.S. 13-10 a new section to be numbered G.S. 13-11 and to read as follows:

"§ 13-11. Restoration of citizenship.--Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon the full completion of his sentence or upon receiving an unconditional pardon."

Sec. 2. G.S. 13-1 through G.S. 13-10 are hereby repealed, and all other laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall become effective upon ratification.

EXHIBIT 9

GENERAL ASSEMBLY OF NORTH CAROLINA
1971 SESSION

H

2

HOUSE BILL 285

Committee Substitute Adopted 7/2/71

Short Title: Citizenship Restored. (Public)

Sponsors: Representative Johnson of Robeson.

Referred to: Judiciary II Committee.

February 23

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 13 OF THE GENERAL STATUTES TO REQUIRE THE AUTOMATIC RESTORATION OF CITIZENSHIP TO ANY PERSON WHO HAS FORFEITED SUCH CITIZENSHIP DUE TO COMMITTING A CRIME AND HAS EITHER BEEN PARDONED OR COMPLETED HIS SENTENCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 13 of the General Statutes of North Carolina is hereby repealed in its entirety and a new Chapter 13 is hereby enacted to read as follows:

"Chapter 13

"Citizenship Restored

"§ 13-1. Restoration of Citizenship.--Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored to him upon the full completion of his sentence including any period of probation or parole or upon receiving an unconditional pardon.

"§ 13-2. Procedure for Restoration.--The restoration procedure shall consist of the taking of an oath by such person before the Clerk of the Superior Court or any judge of the General Court of Justice in Wake County or in the county where he resides or in which he was last convicted, to the effect that said person has

fully completed any and all sentences, including any period of probation or parole, for any crime for which his citizenship was forfeited or that he has received an unconditional pardon; that he is not now under sentence of any court for any criminal offense; that he desires to have his citizenship restored; and, that he will support and abide by the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith.

"§ 13-3. Assistance by Appropriate State Personnel.--The Department of Correction, the Department of Juvenile Correction, the Probation Commission, the Board of Paroles and other appropriate State and county officials shall cooperate with and assist such person in securing any information required by any such clerk or judge prior to administering the oath required by this section."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall become effective upon ratification.

EXHIBIT 10

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

Docket No. 19-cv-15941

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

Petitioners,

v.

TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate;* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chairman of the North Carolina State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the North Carolina State Board of Elections*; KENNETH RAYMOND, *in his official capacity as member of the North Carolina State Board of Elections*; JEFF CARMON, *in his official Capacity as member of the North Carolina State Board of Elections*; and DAVID C. BLACK, *in his official capacity as member of the North Carolina State Board of Elections,*

Respondents.

AFFIDAVIT OF HENRY M. MICHAUX, JR.

Affidavit of Henry M. Michaux Jr.

I, Henry M. Michaux Jr., hereby declare as follows:

1. I am an African American citizen of the United States, and a lifelong resident of Durham County where I was born in 1930. I previously served for more than 40 years as the elected representative for what is now North Carolina House District 31, which encompasses portions of Durham County and includes portions of the city of Durham, NC.
2. When I recently retired from the North Carolina House of Representatives in 2019, I was the longest-serving member of that body. In 2020, I was honored to be appointed to temporarily return to service in the N.C. Senate, following the resignation of Sen. Floyd McKissick, Jr.

Background

3. After graduating from North Carolina Central University in 1952, I served in the United States Army Medical Corps from 1952 to 1954 and in the Army Reserves from 1954 until 1960. Thereafter, I received a law degree from North Carolina Central University in 1964. After graduating from law school, I served as an Assistant District Attorney in North Carolina for 8 years. I was the first African American to serve as Assistant District Attorney in North Carolina, and I was also the first African American in the South to serve as a United States Attorney.
4. My path to becoming a representative of my hometown of Durham had its origins in the civil rights movement. At the time, I was deeply influenced by my friendship with Rev. Dr. Martin Luther King, Jr. At the height of the civil rights movement, in Durham and nationally, Dr. King personally encouraged me to engage in politics as a form of civil rights activism, ultimately setting the course for my life's purpose and work.

5. My election to office was only possible after the passage of the Voting Rights Act of 1965. And even then, it was hard-fought. In 1964, 1966, and 1968, I ran for the House of Representatives and lost.

6. In 1968, Dr. King's assassination profoundly impacted my life, the course of history, and political and social life in North Carolina. The grief, anger, and pain experienced by the African American community and those who supported human dignity, equal rights, and equal protection under the law was incalculable. At this same time, in the 1960's in North Carolina, the Ku Klux Klan was an open and active force, and across the state race-relations were at a boiling point.

7. In 1968, Attorney Henry Frye was elected to the General Assembly, becoming the first African American to be elected and serve in the body since Reconstruction. He led the effort to introduce a constitutional amendment to abolish North Carolina's literacy test for voting—a test he had himself endured when registering to vote in 1956. His amendment, placed before the people of North Carolina in a constitutional referendum vote, was defeated in the 1970 election.

8. In 1972, North Carolinians elected arch-conservative Jesse Helms to the U.S. Senate, and Republican James Holshouser was elected to the Governor's office, while Richard Nixon, at the height of his popularity, was elected president in a landslide. In the same election, I succeeded in my run for the state legislature, becoming the third African American elected to the General Assembly in the twentieth century. In the House of Representatives, I joined Henry Frye and Rev. Joy Johnson of Robeson County.

9. At that time, I would refer to Johnson, Frye, and myself as a "triumvirate." Despite entrenched racism, we found ways to work in unity to advance our agenda. Joy Johnson of Robeson County, a Baptist-preacher, was known as the "hell-raiser preacher", I was seen as the rebel coming from the civil rights movement, and Representative Henry Frye was perceived as the mediator.

1973 Session of the General Assembly

10. In 1973, we were three African American legislators out of an otherwise all-white 170-person General Assembly. By necessity, to be effective in that legislature you had to form coalitions around issues and make constant strategic determinations about legislative negotiations, compromises, and trade-offs. The majority of legislators, regardless of party, were conservative rather than progressive when it came to race, race relations, and the civil rights of African Americans, and many openly held racist views.
11. Even those who begrudgingly came to respect us for our effectiveness and acumen used derogatory racial terms to refer to Representatives Johnson, Frye, and myself. While the democratic party which we belonged to held the legislative majority at the time, factions within the democratic party existed that prevented unity around our civil rights priorities.
12. At the time, Kelly Alexander, Sr. was President of the NC NAACP, and the state conference was very active. Their informal lobbyist at the general assembly was Peter Stanford. I recall that NC NAACP identified as one of its priorities for equal voting rights the need to reform our laws to enact a system of automatic restoration of rights to those formerly convicted of a felony, and we agreed.
13. In that session, I was assigned the bill to further extend the franchise to people formerly convicted of felonies, along with a major bill addressing Sickle Cell disease as a health

crisis. I also worked closely with Reps. Frye and Johnson on advocating for a Landlord-Tenant rights bill – a bill that was ultimately defeated based, I believe, on bias in the legislative body. All of these legislative actions were aimed at addressing the effects of racial and class discrimination in North Carolina.

14. At the time, it was plainly known that the historical and original motivation for adopting felony disenfranchisement in the post-reconstruction era had been to attack and curb the political rights of African Americans. It was also clear that the way the law was operating in fact in the state was mostly aimed at and having an effect on African Americans' political participation and was discriminatory and unequal. This was one of the things NC NAACP and Kelly Alexander Sr. emphasized, and that we knew to be true: the law was having a major impact on African American's registration opportunities and had to be addressed.

15. Rep. Johnson, Rep. Frye, and I sponsored the introduction of the bill (H.B.33) "An Act to Provide for the Automatic Restoration of Citizenship" in 1973. I remember we wanted automatic restoration applicable across the board—at the least, the restoration of your citizenship rights after you completed imprisonment. This was a priority for the NC NAACP and it was a priority for us.

16. Ultimately, it wasn't perfected. We were able to convince our colleagues to only go so far. Our aim was a total reinstatement of rights, but we had to compromise to reinstate citizenship voting rights only after completion of a sentence of parole or probation. To achieve even that victory, we vehemently argued and appealed to our colleagues that if you had served your time, you were entitled to your rights. Ultimately, what we achieved was a compromise.

17. Before the reforms we achieved, you had to go to court to have your rights reinstated, and who had the money to go to court had a major impact on who had access to reinstatement based on race. Even then, who was granted reinstatement was discretionary and discriminatory. We saw our efforts as a step forward, understanding that it did not solve the original problem: the law was designed to suppress African American voting power and it had created a perverse incentive to criminalize and charge African Americans differently to achieve that aim.

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

19. We were proud of what we accomplished, but we knew that far more was needed for the law to be just, to live up to our constitutional values, and to end the influence of the original white supremacist aims on North Carolina's law and practice.

20. This declaration is a fair and true accounting and is not intended to capture all of my knowledge or experiences that may be related to this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 7, 2020

Henry M. Michaux, Jr.

EXHIBIT 11

NORTH CAROLINA 2020 SEP -4 PM 4:29 IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE WAKE CO., C.S.C. FILE NO. 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON INJUNCTIVE RELIEF

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

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

Procedural History

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

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

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

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

Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted

to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. Const. art. VI, § 2(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads as follows:

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

N.C.G.S. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

History of Restoration of Rights of Citizenship in North Carolina

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

including the right to vote—are restored to persons convicted of "infamous crimes." Infamous crimes included offenses which warranted "infamous punishments." Thereafter in 1840, a general law was passed regulating the restoration of rights, including granting the courts unfettered discretion in restoring rights of citizenship.

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

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

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

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

Injunctive Relief

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

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

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

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

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

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

prohibition, including those guaranteed in the Declaration of Rights contained in Article I of our Constitution. Section 11 of Article I declares that "[a]s political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office," N.C. Const. art. I, § 11, and Section 19 of Article I declares, in relevant part, that "[n]o person shall be denied the equal protection of the laws," N.C. Const. art. I, § 19. Importantly, the "fundamental purpose" for which the Declaration of Rights was enacted is "to provide citizens with protection from the State's encroachment upon these [enumerated] rights." *Corum v. Univ. of N.C.*, 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992).

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

c. References in this Order to "Defendants" encompasses all individuals and entities referenced in this paragraph.

II. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 10, 12, 14, and 19 for those persons convicted of a felony but not subject to incarceration is DENIED.

III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.

IV. Plaintiffs' bond in the amount of $1000 is sufficient and proper for the issuance of this Order.

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

Lisa C. Bell, Superior Court Judge

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON INJUNCTIVE RELIEF (DISSENT)

John Dunlow, dissenting.

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

This the 4th day of September, 2020.

John M. Dunlow

CERTIFICATE OF SERVICE

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

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This the 4th day of September 2020.

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

EXHIBIT 12

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON AMENDED PRELIMINARY INJUNCTION

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

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

Procedural History

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

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

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

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

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

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

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

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

Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. Const. art. VI, § 2(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads as follows:

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

N.C.G.S. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

History of Restoration of Rights of Citizenship in North Carolina

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

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

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

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

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

Injunctive Relief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

The Honorable John M. Dunlow dissents from this Order.

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

I. The September 4, 2020, Preliminary Injunction is modified to enjoin Defendants from denying voter registration to any convicted felon who is on community supervision, whether probation, post release supervision, or parole.

II. This ruling applies to persons convicted in both North Carolina state and federal courts and is effective immediately.

III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.

IV. Plaintiffs' previously submitted bond in the amount of $1000 is sufficient and proper for the issuance of this Order.

SO ORDERED, this the 27th day of August, 2021.

Lisa C. Bell, Superior Court Judge

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORDER ON AMENDED PRELIMINARY INJUNCTION (DISSENT)

John Dunlow, dissenting.

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

John M. Dunlow

John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

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

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Counsel for State Board Defendants

This the 27th day of August 2021.

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

EXHIBIT 13

FILED
2021 AUG 27 PM 4:06
WAKE CO., C.S.C.
BY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,
Plaintiffs,

v.

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

ORDER

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

This the 27th day of August, 2021.

Lisa C. Bell, Superior Court Judge

/s/ Keith O. Gregory
Keith O. Gregory, Superior Court Judge

/s/ John M. Dunlow
John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

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

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Counsel for State Board Defendants

This the 27th day of August 2021.

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

EXHIBIT 14

North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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No. P21-340

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

PLAINTIFFS,

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

DEFENDANTS.

From Wake
(19CVS15941)

ORDER

The following order was entered:

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

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

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

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

Eugene H. Soar
Clerk, North Carolina Court of Appeals

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

EXHIBIT 15

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * *

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; AND SHAKITA NORMAN	)	
	)	WAKE COUNTY
v.	)	
TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAVID C. BLACK, IN HIS OFFICIAL	)	

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

* * * * * * * * * * * * * * * * * * *

ORDER

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

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

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

For the Court

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

AMY L. FUNDERBURK
Clerk of the Supreme Court

Copy to:
North Carolina Court of Appeals
Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Nathan A. Huff, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Whitley J. Carpenter, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Terence Steed, Assistant Attorney General, For State Board of Elections - (By Email)
Mr. Stephen D. Feldman, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Matthew W. Sawchak, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative, et al.
Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections - (By Email)
Mr. Jared M. Butner, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

EXHIBIT 16

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Who Can Register

Qualifications to Register to Vote

To register to vote in North Carolina, you must:

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

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

- The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) allows certain voters who are active duty military or their families as well as U.S. citizens abroad special rights that provide an expedited means to register and vote by mail-in ballot. Find more information on Military and Overseas Voting. (https://www.ncsbe.gov/voting/vote-mail/military-and-overseas-voting)

- Be at least 18 years old, or will be by the date of the general election.
  - 16- and 17-year-olds may preregister to vote. (/node/33)
  - 17-year-olds may vote in a primary election if they will be 18 at the time of the general election.
- Not be serving a sentence for a felony conviction, including probation, parole, or post-release supervision.
  - Note: By order of the court, you may now register and vote if you are serving an extended term of probation, post-release supervision, or parole, you have outstanding fines, fees, or restitution, and you do not know of another reason that your probation, post-release supervision, or parole was extended.
  - Once you have completed a felony sentence, including any probation, parole, or post-release supervision, or received a pardon, you are eligible to register and vote. No additional documentation is needed.
  - If you have been discharged from probation, you are eligible to register and vote, even if you still owe money or have a civil lien.

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

Registering as a College Student

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

Registering as a Person in the NC Criminal Justice System

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

Preregistering to Vote When You are 16 or 17 Years Old

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

Learn how to register (/registering/how-register) →

Related Content

Determine if You Are a U.S. Citizen | USCIS (https://www.uscis.gov/forms/explore-my-options/proof-of-citizenship-for-us-citizens)
Military and Overseas Voting (/voting/vote-mail/military-and-overseas-voting)
N.C.G.S. Chapter 163, Article 6: Qualifications of Voters. (https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter_163/Article_6.html)
N.C.G.S. Chapter 163, Article 7A: Registration of Voters. (https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter_163/Article_7A.html)
Registering as a College Student (/registering/who-can-register/registering-college-student)
Registering as a Person in the NC Criminal Justice System (/registering/who-can-register/registering-person-criminal-justice-system)
Preregistering to Vote When You are 16 or 17 Years Old (/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old)
Registering (/registering)

Registering

FAQ: Voter Registration (/registering/faq-voter-registration)

Who Can Register (/registering/who-can-register)

- Registering as a College Student (/registering/who-can-register/registering-college-student)
- Registering as a Person in the Criminal Justice System (/registering/who-can-register/registering-person-criminal-justice-system)
- Preregistering to Vote When You are 16 or 17 Years Old (/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old)

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Updating Registration (/registering/updating-registration)

Choosing Your Party Affiliation (/registering/choosing-your-party-affiliation)

Hosting Voter Registration Drives (/registering/hosting-voter-registration-drives)

National Voter Registration Act (NVRA) (/registering/national-voter-registration-act-nvra)

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

EXHIBIT 17

FILED

2022 MAR 28 PM 4:20

WAKE CO., C.S.C.

BY SCJ

NORTH CAROLINA

COUNTY OF WAKE

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

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

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

Defendants.

FINAL JUDGMENT AND ORDER

TABLE OF CONTENTS

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

BACKGROUND

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

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

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

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

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

a. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving all persons with felony convictions subject to probation, parole, or post-release supervision, who are not incarcerated, of the right to vote;

b. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving the African American community of substantially equal voting power; and

c. that N.C.G.S. § 13-1 violates the Free Elections Clause of the North Carolina Constitution.

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

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

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

LEGAL STANDARD

A. Facial Constitutional Challenges

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

B. Equal Protection

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

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

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

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

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

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

13. Further, North Carolina's Equal Protection Clause expansively protects "the fundamental right of each North Carolinian to substantially equal voting power." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002). "It is well settled in this State that the right to vote on equal terms is a fundamental right." *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted).

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

C. Free Elections Clause

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

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

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

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

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

FINDINGS OF FACT

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

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

1. The 1800s

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. 1897 to 1970

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

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

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

3. The Early 1970s

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Racial Disparities in Felon Disenfranchisement

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

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

62. In total, 1.24% of the entire African American voting-age population in North Carolina are denied the franchise due to felony probation, parole, or post-release supervision, whereas only 0.45% of the White voting-age population are denied the franchise. 8/18/21 Trial Tr. 28:15-29:12; PX-4; PX-6; Fact Stip. ¶ 48. The African American population is therefore denied the franchise at a rate 2.76 times as high as the rate of the White population. 8/18/21 Trial Tr. 29:13-22; PX-4. If there were no racial disparity in the impact of section 13-1, that ratio would be 1.0. The African American-White disenfranchisement ratio of 2.76 shows a very high degree of racial disparity in disenfranchisement among African American and White North Carolinians. 8/18/21 Trial Tr. 29:20-30:2.

63. Although more White people are denied the franchise due to felony post-release supervision than African American people in aggregate, this does not affect the finding that African American people are disproportionately affected by section 13-1. *Id.* at 30:3-17. There are nearly 6 million voting-age White people in North Carolina, compared to fewer than 1.8 million voting-age African American people. PX-4. Thus, to determine whether racial disparities exist, it is necessary to compare African American and White rates of disenfranchisement, rather than aggregate numbers of disenfranchised African American and White people. 8/18/21 Trial Tr. 30:3-17.

64. The statewide data reveal an extremely high degree of racial disparity, with African American people denied the franchise due to felony probation, parole, or post-release supervision at a much higher rate than White people. *Id.* at 34:24-35:9.

65. Extreme racial disparities in denial of the franchise to persons on community supervision also exist at the county level. PX-1 at 9-20. In 77 counties, the rate of African Americans denied the franchise due to felony probation, parole, or post-release supervision is high (more than 0.83% of the African American voting-age population), whereas there are only 2 counties where the rate of African American disenfranchisement is low (less than 0.48% of the African American voting-age population). 8/18/21 Trial Tr. 37:8-17; PX-8. In comparison, the rate of White disenfranchisement is high in only 10 counties, while the rate of White disenfranchisement is low in 53 counties. 8/18/21 Trial Tr. 36:21-37:7; PX-8. These numbers show the extreme racial disparities in denial of the franchise to persons on community supervision. 8/18/21 Trial Tr. 37:18-38:7.

66. In 19 counties, more than 2% of the entire African American voting-age population are denied the franchise due to felony probation, parole, or post-release supervision. 8/18/21 Trial Tr. 44:10-15; PX-9; Fact Stip. ¶ 49. In 4 counties, more than 3% of the African American voting-age population are denied the franchise. 8/18/21 Trial Tr. 44:21-24. In 1 county, more than 5% of the African American voting-age population are denied the franchise, meaning that 1 in every 20 African American adult residents of that county cannot vote due to felony probation, parole,

or post-release supervision. *Id.* at 44:24-45:21. In comparison, the highest rate of White disenfranchisement in any county in North Carolina is 1.25%. *Id.* at 40:18-41:11, 45:22-25; Fact Stip. ¶ 49. These numbers, too, show the extreme racial disparities in denial of the franchise to persons on community supervision. 8/18/21 Trial Tr. 46:3-17.

67. In 44 counties, the percentage of the African American voting-age population that is denied the franchise due to probation, parole, or post-release supervision from a felony conviction in North Carolina state court is more than three times greater than the comparable percentage of the White population. Fact Stip. ¶ 51.

68. Among the 84 counties where there is sufficient data for comparison, African Americans are denied the franchise due to felony probation, parole, or post-release supervision at a higher rate than White people in every single county. *Id.* at 53:4-9; PX-1 at 15; PX-11. There is not a single county where the White disenfranchisement rate is greater than the African American rate, and there are only 2 counties where the rates are close. 8/18/21 Trial Tr. 53:10-16. In 24 counties, the African American disenfranchisement rate is at least four times greater than the White rate. *Id.* at 54:2-14. In 8 counties, the African American disenfranchisement rate is at least five times greater than the White rate. *Id.* at 56:3-19.

69. In sum, North Carolina's denial of the franchise to persons on felony probation, parole, or post-release supervision has an extreme disparate impact on

African American people. At both the statewide level and the county, African American people are disproportionately denied the franchise by wide margins. 8/18/21 Trial Tr. 78:2-22. As Dr. Baumgartner aptly put it, "We find in every case that it works to the detriment of the African American population." *Id.* at 78:21-22.

70. Legislative Defendants' expert Dr. Keegan Callanan opined that there is no racial disparity in denial of the franchise to persons on community supervision because "100% of felons of every race in North Carolina" are disenfranchised. LDX-13 at 3; PX-177 (Callanan Dep.). In its September 2020 summary judgment order, the Court found that Dr. Callanan's report was entitled to "no weight" because it was "unpersuasive in rebutting the testimony of Plaintiffs' experts, was flawed in some of its analysis and, while Dr. Callanan is an expert in the broad field of political science, his experience and expertise in the particular issues before this panel are lacking." MSJ Order at 8. Dr. Callanan's opinions still are entitled to no weight.

C. N.C.G.S. § 13-1 Denies the Franchise to Persons on Community Supervision Who Would Otherwise Register and Vote and Likely Affects the Outcome of Elections.

71. Of the 56,000-plus people denied the franchise due to felony supervision, a substantial percentage of them—thousands of people—would register and vote if they were not denied the franchise. Given how close elections often are in North Carolina, excluding such large numbers of would-be voters from the electorate has the potential to affect election outcomes.

1. Expected Voter Turnout Among People on Felony Supervision

72. Plaintiffs' expert Dr. Traci Burch is an Associate Professor of Political Science at Northwestern University and a Research Professor at the American Bar Foundation. PX-30 (Burch CV); PX-29 at 1 (Burch Report); 8/17/21 Trial Tr. 7:5-8. The Court accepted Dr. Burch as an expert in political science, public policy, statistics, and racial disparities in political participation. 8/17/21 Trial Tr. 13:20-14:10. Dr. Burch analyzed, among other issues, voter turnout and registration for persons who have been denied the franchise in North Carolina due to felony probation, parole, or post-release supervision. *Id.* at 14:12-15:2; PX-29 at 3. The Court credits Dr. Burch's testimony and accepts her conclusions.

73. Section 13-1 prevents thousands of people living in North Carolina communities from voting who would vote if not for the disenfranchisement. PX-29 at 4; 8/17/21 Trial Tr. 15:16-22. It would be reasonable to expect that at least 38.5% of this population under felony supervision would register to vote, and that at least 20% of them would vote in the next presidential election if they were not denied the franchise due to section 13-1. Many subgroups, including older voters, African American voters, and women voters, may vote at rates higher than 30%. PX-29 at 20-21; 8/17/21 Trial Tr. 37:6-38:3.

74. To examine the recent voter registration and turnout statistics of people in North Carolina with felony convictions, Dr. Burch matched data on felony offenders from the North Carolina Department of Public Safety ("DPS") to voter registration and history data containing information on all registered voters from the North Carolina State Board of Elections. PX-29 at 8; 8/17/21 Trial Tr.17:10-22.

75. 38.5% of North Carolinians currently on felony supervision had registered to vote in the past, and about 20.1% of otherwise eligible voters now on felony supervision, who were over the age of 18 and were not serving a sentence for a felony conviction in 2016, voted in the 2016 presidential election. PX-31; 8/17/21 Trial Tr. 20:11-17.

76. 39.8% of African Americans currently on felony supervision, and 38.5% of Whites, had ever registered to vote. Voter turnout was also similar between the two groups: 20.3% of African Americans currently on felony supervision, and 21.3% of Whites, voted in the 2016 general election. PX-32; 8/17/21 Trial Tr. 21:7-24.

77. Despite these similar registration and turnout rates, about 1.5 million African Americans were registered to vote in North Carolina in 2016, compared with 4.8 million Whites. The number of African American individuals on community supervision that are denied the franchise under section 13-1 relative to the overall number of African American registered voters is almost three times as high as number of White individuals on community supervision that are denied the franchise under section 13-1. PX-29 at 12; 8/17/21 Trial Tr. 22:2-11.

78. Despite roughly similar turnout in the past among African Americans and Whites on felony supervision, the denial of the franchise to persons under community supervision has a greater impact on African American voter turnout than White voter turnout because African Americans are a smaller percentage of the total voting-age population. PX-29 at 12; 8/17/21 Trial Tr. 22:2-11.

79. Dr. Burch also analyzed gender differences in the voting behavior of the community supervised population. Her methodology likely produced underestimates for turnout among women primarily because the matching approach will underestimate voter registration and turnout among women who change their names because of entering or leaving a marriage. PX-29 at 13; 8/17/21 Trial Tr. 24:4-8.

80. Women registered in the past at higher rates than men: 43.1% of women currently on felony supervision had registered to vote in the past, compared with only 37.3% of men. Turnout rates in the presidential election were also higher: 21.8% of women currently on felony supervision voted in the 2016 general election, compared with 19.6% of men. PX-32; 8/17/21 Trial Tr. 24:9-21.

81. The pattern of voting participation by age largely mirrors that of the broader population: older individuals vote at higher rates than younger individuals and voting among younger cohorts in the community supervised population lags significantly behind voting among older people on felony supervision. PX-29 at 14; 8/17/21 Trial Tr. 27:17-25.

82. Among people currently on felony supervision who were ages 18 to 29 at the time of the 2016 general election (about 39% of the community supervised population), 36.1% had ever registered to vote and 15.1% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 25:19-23. Among those ages 30 to 44 at the time of the election, 40% had ever registered to vote and 21% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 26:6-9. Among those ages 45 to 60 at the time of

the election, 48.2% had ever registered to vote and 30% turned out to vote in 2016. Those over the age of 61 at the time of the election reported the highest participation: 50% of these older persons had ever registered and 36% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 26:10-25, 27:1-16.

83. The type of punishment a person received also impacted the voting behavior of people under felony supervision. Among the overall community supervised population, there is some small participation differences between people who have served time in prison for a felony conviction and those who have not. PX-29 at 15; 8/17/21 Trial Tr. 26:10-25, 27:1-16. Among those currently on felony supervision who have never served time in prison for a felony conviction, 40.5% have registered to vote in the past and 20.6% voted in the 2016 general election. PX-29 at 15; 8/17/21 Trial Tr. 28:19-25. In comparison, among those who have served time in prison for a felony conviction in the past, 37.0% have registered to vote in the past and 19.7% voted in the 2016 general election. PX-29 at 15-16; 8/17/21 Trial Tr. 29:4-10.

84. Of the 372,422 eligible North Carolina voters who have completed their felony probation, parole, or post-release supervision at the time of the 2016 general election, 103,130 or 27.69% voted in the 2016 general election. PX-35; 8/17/21 Trial Tr. 32:7-19.

85. Turnout among the group of people who had completed their felony supervision at the time of the 2016 general election varied by demographic characteristics. African Americans in this cohort voted at a slightly higher rate than

Whites (29.8% to 26.3%). Turnout among those under age 30 was lower (13.1%) than that of the oldest group of voters (35.46%). PX-35; 8/17/21 Trial Tr. 33:10-35. People who had served only felony supervision without time in prison voted at a slightly higher rate than those who had served some time in prison (28.5 to 27.3%). PX-29 at 17; 8/17/21 Trial Tr. 34:5-13.

86. A substantial number of the 34,644 people who were eligible voters at the time of the 2016 general election and experienced their first felony conviction and disenfranchisement after the election—20.4%—voted in the 2016 general election. PX-29 at 18; PX-36; 8/17/21 Trial Tr. 34:14-20, 35:16-20. Turnout rates among this group were lower than the population who had finished serving their felony sentences at the time of the 2016 general election because this group was disproportionately younger, with half of them under age 30 at the time of the 2016 general election. PX-36; 8/17/21 Trial Tr. 35:21-36:1-4. Among this group, those who experienced their first felony conviction after age 61 voted at nearly three times the rate of those under age 30 at the time of the 2016 general election. PX-36; 8/17/21 Trial Tr. 36:14-21.

87. There is also a large disparity in turnout rates across punishment type. Only 17.7% of people who would eventually serve time in prison voted in the 2016 general election, compared with 22.7% of those would serve only a felony supervision sentence with no time in prison. PX-29 at 20; 8/17/21 Trial Tr. 36:22-37:1-5.

88. The Court accepts Dr. Burch's conclusion that, based on her analyses, at least 20% of persons on felony supervision in North Carolina would vote in upcoming elections if they were not denied the franchise. The Court further accepts Dr. Burch's conclusion that important subgroups of this class of voters—including women, African Americans, and older people—would vote at even higher rates. PX-39 at 2; 8/17/21 Trial Tr. 39:1-14, 40:10-16.

89. The Court agrees that Dr. Burch's 20% estimate is conservative for several reasons: (1) the process of matching DPS files with election records underestimates the registration and turnout of women because they may change their names due to marriage, divorce, or other life events; (2) the process relies on exact matching so typographical and other errors will cause false negatives; and (3) some individuals may have moved out of state and thus are no longer eligible voters in North Carolina, or may have lived and voted in different states prior to their North Carolina conviction. PX-39 at 2; 8/17/21 Trial Tr. 39:15-40:1-9.

90. Both voter turnout and voter registration are indications of future voting behavior, and political scientists sort voters into two categories: "core voters"—people who vote consistently in every election—and "peripheral voters"—people who vote episodically in elections of high interest. PX-39 at 3; 8/17/21 Trial Tr. 41:12-42:1-3.

91. Looking at only 2016 turnout data might accurately capture the voting behavior of "core voters," but ignoring registration rates and other data would underestimate the extent to which "peripheral voters" might participate in a given

election if they were not denied franchise due to being on community supervision. PX-39 at 3; 8/17/21 Trial Tr. 42:12-43:1.

92. Additionally, 22.6% of people currently on felony supervision who were eligible during the 2012 general election voted. PX-39 at 4; 8/17/21 Trial Tr. 43:16-21.

93. When Dr. Burch combined the data from the 2012 and 2016 elections, she observed that the North Carolina felony supervision population is split into core and peripheral voters. PX-39 at 4; 8/17/21 Trial Tr. 43:22-45:2. 18% of the eligible population voted in only one of the 2012 and 2016 general elections, but not both. These are peripheral voters. PX -40; 8/17/21 Trial Tr. 44:16-19. Additionally, 13.7% of the people on felony supervision voted in both 2012 and 2016 elections. These are core voters. PX-40; 8/17/21 Trial Tr. 44:20-23.

94. 31.7% of people currently under felony supervision voted in one *or* both of the 2012 and 2016 presidential elections. At least 20% of those currently on felony supervision would vote in upcoming elections if they were not disenfranchised. PX-40; 8/17/21 Trial Tr. 45:3-17, 45:18-46:1-4.

95. People convicted of felonies who later completed a felony supervision sentence in North Carolina have turnout rates at or above 20% over the last three presidential elections. PX-39 at 6; 8/17/21 Trial Tr. 46:20-48:19. At least 20% of those currently on felony supervision would vote in upcoming elections if they were not disenfranchised.

2. The Potential Impact on Elections

96. To evaluate whether the denial of the franchise to persons on community supervision may affect election outcomes in North Carolina, Plaintiffs' expert Dr. Baumgartner analyzed recent statewide and county elections in which the vote margin in the election was less than the number of disenfranchised persons in the relevant geographic area. 8/18/21 Trial Tr. 89:4-17; PX-1 at 26. The Court credits Dr. Baumgartner's testimony and accepts his conclusions.

97. In 2018 alone, there were 16 different county elections where the margin of victory in the election was less than the number of people denied the franchise due to felony supervision in that county. 8/18/21 Trial Tr. 91:19-92:3; PX-21; Fact Stip. ¶ 57. For instance, the Allegheny County Board of Commissions race was decided by only 6 votes, whereas 68 people in Allegheny County are denied the franchise due to felony supervision—more than eleven times the vote margin. 8/18/21 Trial Tr. 92:5-93:5. The Ashe County Board of Education race was decided by only 16 votes, whereas 125 people in Ashe County are denied the franchise due to felony supervision—nearly eight times the vote margin. *Id.* at 93:21-94:2. The Beaufort County Board of Commissioners race was decided by only 63 votes, whereas 457 people in Beaufort County are denied the franchise due to felony supervision—more than seven times the vote margin. *Id.* at 94:3-11.

98. The number of African Americans denied the franchise due to being on felony supervision exceeds the vote margin in some elections. For instance, the number of African Americans denied the franchise in Beaufort County (235) exceeds the vote margin in the Beaufort County Board of Commissioners race (63). *Id.* at

94:12-95:10. The number of African Americans denied the franchise in Columbus County (143) exceeds the vote margin in the Columbus County Sheriff's race (43). *Id.* at 95:11-96:2. The number of African Americans denied the franchise in Lee County (152) exceeds the vote margin in the Lee County Board of Education race (78). *Id.* at 96:15-97:1.

99. People living in the community on felony supervision have an interest in the outcome of county elections, as does everyone. *Id.* at 93:6-20. That is especially true of a county sheriff's race. As Dr. Baumgartner explained:

> [W]e all have an interest in every race. Democracy matters, but people in this case and the people in this category have a particular interest in the criminal justice actors, district attorney, sheriffs, judges, but they have an interest in everything, but certainly a County Sheriff, you know, runs the jail. That's an important function in criminal justice, so people certainly have an interest in those races in particular, the people of this cat- -- the people that we're talking about who are disenfranchised under these policies.

Id. at 96:3-14. This Court agrees.

100. Legislative Defendants' expert Dr. Callanan attempted to offer some criticisms of Dr. Baumgartner's analysis regarding the potential impact on election outcomes. Dr. Baumgartner explained why those criticisms are incorrect, *id.* at 97:4-100:17; PX-25, and the Court once again concludes that Dr. Callanan's report is entitled to no weight.

101. In addition to county-level elections, there are statewide races where the vote margin in the election was less than the number of people denied the franchise due to being on community supervision statewide. *Id.* at 100:18-22. For

instance, the 2016 Governor's race was decided by just over 10,000 votes, far less than the 56,000-plus people denied the franchise statewide. *Id.* at 100:23-101:13. In 2020, two prominent statewide races were decided by vote margins that are only a fraction of the number of persons denied the franchise statewide. *Id.* at 101:14-22.

102. There are also many 2018 state House and state Senate races that had a vote margin of less than 100 votes. *Id.* at 101:23-102:6; PX-22. Dr. Baumgartner did not receive data that would have allowed him to calculate the number of disenfranchised persons in each of these House or Senate districts. 8/18/21 Trial Tr. 102:17-103:1. Nevertheless, the closer the margin of any election, the greater the chance that North Carolina's denial of the franchise to over 56,000 persons on felony supervision could affect the outcome of the election. *Id.* at 103:2-20.

D. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest and Causes Substantial Harm.

1. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest

103. As the Court noted in September 2020, in its interrogatory responses, Defendants initially put forward "numerous" possible state interests that section 13-1 might be thought to serve. 9/4/20 Order of Inj. Relief ("PI Order") at 9; *see* LDX-144; SDX-146. The Court at that time accordingly denied summary judgment and a preliminary injunction on Plaintiffs' broader claims concerning the denial of the franchise to all persons on felony supervision, noting that Defendants should have the opportunity to offer "facts or empirical evidence" supporting those purported state interests. PI Order at 9.

104. Nevertheless, at trial in August 2021, Defendants failed to introduce any evidence supporting a view that section 13-1's denial of the franchise to people on felony supervision serves any valid state interest today.

105. The State Board's Executive Director testified that the State Board is *not* asserting those interests to justify enforcing the challenged law today. PX-176 (excerpts from Bell 30(b)(6) Dep.). The State Board Defendants' interrogatory response identified interests including "regulating, streamlining, and promoting voter registration and electoral participation among North Carolinians convicted of felonies who have been reformed"; "simplifying the administration of the process to restore the rights of citizenship to North Carolinians convicted of felonies who have served their sentences"; "avoiding confusion among North Carolinians convicted of felonies as to when their rights are restored"; "eliminating burdens on North Carolinians convicted of felonies to take extra steps to have their rights restored after having completed their sentences"; "encouraging compliance with court orders." *Id.* at 176:20-206:15. The Executive Director testified that the State Board is not asserting that the denial of the franchise to people on felony supervision serves any of these interests as a factual matter in the present day, and she admitted that the State Board is unaware of any evidence that denying the franchise to such people advances any of these interests. *Id.*

106. Indeed, the State Board's Executive Director conceded that *striking down* section 13-1's denial of the franchise to people on felony supervision would "promote their voter registration and electoral participation." *Id.* at 182:17-22.

107. The State Board Defendants did not introduce facts or empirical evidence at trial supporting any assertion that section 13-1's denial of the franchise to persons on felony supervision serves *any* legitimate governmental interest.

108. The Legislative Defendants did not introduce facts or empirical evidence at trial supporting any assertion that section 13-1's denial of the franchise to people on felony supervision serves *any* legitimate governmental interest.

109. In closing argument, Legislative Defendants asserted that section 13-1 serves an interest in "creat[ing] . . . the finish line for when . . . the loss of rights is finished, when it terminates." 8/19/21 Trial Tr. 166:2-10. The Court does not find this alleged interest persuasive or legitimate.

110. Legislative Defendants also asserted in closing argument that section 13-1 serves an interest in "t[ying] the restoration to the completion of the sentence," including the completion of any period of supervision. *Id.* at 166:11-22. But Defendants did not support this circular logic with any evidence to justify why it is a legitimate interest.

111. To the extent Defendants still contend that the challenged scheme serves interests "requiring felons to complete all conditions of probation, parole, and post-trial supervision," as they did in interrogatory responses, those interests are tautological. Nor have Defendants introduced any evidence that withholding the franchise encourages completion of post-release and probationary conditions, and there is no empirical evidence to support such a claim in any of the scholarly literature. PX-29 at 22-34 (Burch Report).

112. To the extent Defendants still contend that the challenged scheme serves an interest in withholding restoration of voting rights from people with felony convictions who do not abide by court orders, they have introduced no evidence that the prospect of disenfranchisement results in higher rates of compliance with court orders, and there is no support in the scholarly literature for such a claim. *Id.* at 32. In any event, section 13-1 denies the franchise to people on felony supervision *regardless* of whether they are complying with court orders and the conditions of their supervision.

113. Defendants have argued that the changes to section 13-1 in the early 1970s served a valid state interest in eliminating onerous procedural requirements for rights restoration, such as a requirement to petition a court with supporting witnesses or swear an oath before a judge. *See, e.g.*, 8/19/21 Trial Tr. 166:23-167:18, 169:17-22. But those procedural requirements are not at issue in this case. Plaintiffs instead challenge section 13-1's denial of the franchise to people on felony supervision.

114. In any event, while the final decision to restore a person's voting rights is no longer left to the discretion of a judge, there remains a number of discretionary decisions, especially in sentencing, but also in whether to charge an individual, what offenses to charge, whether to reduce charges, and whether a plea offer is extended, that have a direct effect upon when a person's right to vote is restored. Am. PI Order at 5. Section 13-1's denial of the franchise to people on probation, parole, or post-release supervision exacerbates the inequitable effects of that

judicial discretion, because judges retain discretion in deciding the length of probation and whether to terminate a person's probation. Pursuant to N.C.G.S. § 15A-1342(a), a court may place a convicted person on probation for the appropriate period as specified in N.C.G.S. § 15A-1343.2(d), not to exceed a maximum of five years. And pursuant to N.C.G.S. § 15A-1342(b), a court has discretion to terminate an individual's probation "at any time … if warranted by the conduct of the defendant and the ends of justice." *See also* Fact Stip. ¶ 44. The median duration of probation for persons sentenced to felony probation in North Carolina state court is thirty months. *Id.* ¶ 43.

2. N.C.G.S. § 13-1 Does Substantial Harm

115. In contrast to the absence of evidence that section 13-1's denial of the franchise to people on felony supervision serves any valid state interest today, the evidence establishes that such denial of the franchise causes serious harm to individuals and communities, and in fact undermines important state interests including several of the interests put forward by Defendants.

a. Testimony of Plaintiffs' Expert Dr. Burch

116. Section 13-1's denial of the franchise to persons on felony supervision does not advance those interests put forward by the State and instead causes only harm.[1]

[1] Much of Dr. Burch's analysis of potential state interests in her report concerned the effect of conditioning rights restoration on the satisfaction of financial conditions of supervision, which was no longer relevant at trial given the Court's September 2020 summary judgment order.

117. The scholarly literature does not support the claim that section 13-1 "eliminat[es] burdens" in ways that "promote the voter registration and electoral participation of people who completed their sentences." In fact, section 13-1 may even decrease turnout. PX-29 at 36-37; 8/17/21 Trial Tr. 58:4-13.

118. Turnout among people aged 18-29 who had been convicted but completed supervision by 2016 (13.01%) was several percentage points lower than turnout of people in 2016 who were later convicted of their first felony (15.7%). PX-29 at 39; 8/17/21 Trial Tr. 60:2-18. In other words, the experience of being denied the franchise decreases turnout among an otherwise similarly situated population. 8/17/21 Trial Tr. 64:8-65:2.

119. People who served probation sentences for misdemeanors are 15% less likely to vote following their sentence, whereas people who served probation sentences for felony convictions (and thus were denied the franchise) are 40% less likely to vote following their sentence. This 25% differential in turnout rates can be attributed to the experience of felony disenfranchisement. PX-39 at 9-10; 8/17/21 Trial Tr. 63:9-64:5.

120. The scholarly literature shows that the existence of felony disenfranchisement laws themselves lead to widespread confusion and misunderstandings among people with felony convictions about whether they can vote, even in states with automatic restoration. Audit studies have shown that, despite official policies, local bureaucrats themselves can contribute to confusion

about voting rights by failing to respond to questions or by answering questions incorrectly. PX-29 at 37; 8/17/21 Trial Tr. 58:14-59:1-5.

121. A 2014 peer-reviewed study of North Carolina's re-enfranchisement notification procedures concluded that those procedures have no effect on registration and turnout among people who have finished serving their sentences, including probation and parole. 8/17/21 Trial Tr. 59:6-60:1. The researchers concluded that North Carolina's forms and guidance "lacked clarity" and that the information tended to be lost or crowded out. *Id.* Although Defendants asserted that the documents provided to people ending probation have changed since 2014, they did not introduce any evidence that the documents used today are any clearer than those used at the time of the 2014 study.

122. Continued denial of the franchise to persons on community supervision has a stigmatizing effect, and the scholarly literature concludes that felony disenfranchisement hinders the reintegration of people convicted of felonies into society. *Id.* at 65:13-66:18. Felony disenfranchisement is among a long list of stigmatizing and wide-ranging collateral consequences for people convicted of felonies, including civil restrictions on voting, officeholding, and jury service; employment and occupational licensing, and even economic exclusions from welfare, housing, and other public benefits. There are more than 35,000 such penalties in state and federal law across the United States. *Id.* at 65:13-66:1; PX-29 at 40.

123. Denial of the franchise to people on felony supervision reduces political opportunity and the quality of representation across entire communities in North

Carolina. The population of people on felony supervision who are denied the franchise in North Carolina is highly concentrated into particular neighborhoods. 8/17/21 Trial Tr. 67:3-23. Felony disenfranchisement rates of young adults living in certain neighborhoods in North Carolina is as high as 18 to 20 percent. *Id.* Such a high level of communal denial of the franchise can discourage other young people from voting, because voting is a social phenomenon. Indeed, turnout among eligible voters is lower in communities with higher rates of denial of the franchise among people living in those communities. *Id.* at 67:24-68:15. These communities are less likely to be the subject of voter mobilization efforts by political parties, have less turnout, and have less political power and political equality as a consequence of the denial of the franchise to people on felony supervision. *Id.* at 66:22-67:23, 68:16-69:17; PX-29 at 43.

124. Denial of the franchise to persons on felony supervision harms individuals, families, and communities for years even after such supervision ends. PX-29 at 45; 8/17/21 Trial Tr. 69:18-70:6.

b. Testimony from the Department of Public Safety

125. DPS documents given to impacted individuals about their voting rights are unclear and can easily lead to confusion. It is critically important for DPS documents to inform people about their voting rights in simple, clear, plain English terms, and it is critically important to confirm that affected individuals have received, read, and clearly understood any written materials provided to them about their voting rights. 8/19/21 Trial Tr. 70:1-20. But the DPS forms are not simple or

clear, and they do not speak in plain English about the basic question of whether the person is permitted to vote.

126. One DPS form contains multiple lists of things that people on probation are and are not permitted to do, but not one of those lists mentions voting. *Id.* at 75:20-78:10 (discussing SDX-28). The form further states that "upon completion of your sentence," your voting rights are restored," but the "sentence" referred to there is different than the "active sentence" referred to earlier on the same page; one refers to probation and the other refers to incarceration. *Id.* at 79:21-80:16. DPS does not have any policy directing probation offers to explain to people on probation receiving this form that the reference to a "sentence" at the end of the form is different than the "active sentence" referred to earlier on the same page. *Id.* at 80:25-81:8. While this form may be clear to someone who has spent decades working as a probation officer and top DPS official focused on community supervision, it could easily confuse a person on probation.

127. Another DPS form designed to inform people about the restoration of their voting rights does not even use any iteration of the word "vote." *Id.* at 90:15-91:14 (discussing SDX-15).

128. DPS does not provide any information about voting rights to people being transferred from supervised to unsupervised probation. *Id.* at 93:20-94:4. Nor does DPS provide people with any information about voting rights (or anything else) upon completion of their unsupervised probation. *Id.* at 94:9-22. Despite her many years of experience at DPS working on community supervision, Maggie Brewer.

DPS's Deputy Director of Community Supervision, testified that she does not even know whether people on unsupervised probation are permitted to vote. *Id.* at 87:18-24, 94:5-8.

129. Section 13-1's denial of the franchise to people on felony supervision does not avoid confusion, but instead engenders it. If section 13-1 applied only to people who were incarcerated, all people with felony convictions could simply be told upon their release from prison that they are eligible to vote.

c. Testimony from the State Board of Elections

130. In addition to confirming that the State Board is not advancing state interests in support of the denial of the franchise to persons on felony supervision today, the State Board's Executive Director also made it clear that such denial of the franchise is very difficult to administer and leads to material errors and problems.

131. For instance, according to a 2016 audit titled "Post-Election Audit Report," in a data-matching process used by the State Board, 100 out of 541 individuals who were initially identified as having voted illegally due to a felony conviction were in fact eligible voters, based on further investigation. PX-50 at 408; 8/18/21 Trial Tr. 194:2-22. That is a false positive rate of nearly 20%. *Id.*

132. The State Board uses a related data-matching process to identify people convicted of felonies in North Carolina state courts who are registered voters, and these individuals' registrations are then canceled. But when a voter is identified by this data-matching process as being ineligible to vote based on a felony conviction, the State Board does not conduct any further investigation to determine

the accuracy of the persons identified in the data match as ineligible based on a felony conviction. 8/18/21 Trial Tr. 195:5-23.

133. Voter registration application materials used by the State Board of Elections as recently as February of 2020 explained to voters that: "if [you were] previously convicted of a felony, you must have completed your sentence, including probation and/or parole" but did not include the words "post-release supervision" anywhere on the form. 8/18/2021 Trial Tr. 197:7-25; 198:1-11 (discussing PX-43 at 352). Multiple State Board guides providing instructions to poll workers from as recently as the 2020 elections likewise mention "probation or parole" but not "post-release supervision." *Id.* at 201:1-25; 202:1-24; 203:1-3 (discussing PX-51 at 557, 559); 8/18/21 Trial Tr. 204: 24-25; 205:1-20 (discussing PX-46 at 256). The State Board's Executive Director acknowledged that if a person on post-release supervision asked a poll worker, "I finished serving my jail sentence or prison sentence but I'm on post-release supervision. Can I vote?" the poll worker might consult the State Board's instructions and conclude, incorrectly, that the answer was "yes." 8/18/21 Trial Tr. 203:20-25; 204:1-3.

134. A person on post-release supervision could truthfully answer the question poll workers are trained to ask, "Are you currently on probation or parole for a felony conviction?" with the answer: "no." Based on their "no" answer, that person would be permitted to cast a ballot. Notwithstanding the voter's honest answer, the person could then be prosecuted for the crime of voting illegally. 8/18/21 Trial Tr. 205:17-25; 206:1-7.

d. Testimony of the Organizational Plaintiffs

135. The Organizational Plaintiffs' testimony further demonstrates the harms caused by section 13-1's denial of the franchise to people living in the community on felony supervision.

136. There is rampant confusion among persons on felony supervision about their voting rights. For example:

a. Dennis Gaddy, the Executive Director of Community Success Initiative, testified that CSI's clients are often confused about whether they are allowed to vote. 8/16/2021 Trial Tr. 53:8-9, 56:21-57:1-21. He further testified that when clients are disenfranchised due to felony supervision, they cannot effectively advocate for themselves, their families, or their communities. *Id.* at 58:16-59:16. Mr. Gaddy testified that during his seventeen years of educating people convicted of felonies about their voting rights, he has witnessed how not being able to vote causes many people to lose hope, and not being able to vote means that you do not have a civic voice. Mr. Gaddy lamented that clients often feel frustrated on being required to pay taxes but not being allowed to vote. *Id.* at 59:10-60:4.

b. Diana Powell, the Executive Director of Justice Served NC, testified that section 13-1 is confusing, that many impacted community members are afraid to vote, and that due to frequent address changes, many people are never informed that their rights are

restored. She testified that most people are unsure as to whether they have a felony or misdemeanor conviction and are afraid of being rearrested for voting. 8/17/21 Trial Tr. 163:21-165:7.

c. Corey Purdie, the Executive Director of Wash Away Unemployment, testified that it is difficult to discuss voting with impacted community members because it is difficult to convince them that they are legally able to participate in the process. 8/19/21 Trial Tr. 45:3-7. In his interactions with impacted community members, Mr. Purdie finds that people are in fear of voting after incarceration due to the confusing nature of the law, and many fear being charged with another felony and facing even more prison time for mistakenly voting under this law. *Id.* at 45:10- 46:2. Mr. Purdie testified that in his community outreach, he finds that people are confused and scared to vote "all the time." *Id.* at 46:3

d. Rev. T. Anthony Spearman, President of the North Carolina NAACP, testified that he explains the current felony disenfranchisement law to NC NAACP members "all the time"; and that the individuals he speaks to are often confused about whether they are eligible to vote under N.C.G.S. 13-1. *Id.* at 20:15-23. He testified that "the NAACP is very much concerned about helping these persons be the best somebodies they can be, and they cannot do that...without being mentored to know what their rights are."

Id. at 20:08-12. Rev. Spearman further testified that "the vote is one of the most powerful nonviolent change agents in the world, and to rob a man or woman of their right to vote ... it's just hard to conceive of, that we would do that." *Id.* at 23:09-16.

e. Individual Plaintiff Timmy Locklear also testified that confusion about his eligibility to vote has kept him from voting in past elections. *Id.* at 30:18-30:23.

137. Section 13-1's denial of the franchise to people on felony supervision also harms the Organizational Plaintiffs themselves, forcing them to divert scarce resources and interfering with the missions of their organizations. Fact Stip. ¶¶ 3-15; 8/16/21 Trial Tr. 58:4-59:16 (Mr. Gaddy); 8/17/21 Trial Tr. 165:23-166:7, 167:4-13 (Ms. Powell); 8/19/21 Trial Tr. 46:23-48:4 (Mr. Purdie); 8/19/21 Trial Tr. 17:23-20:19, 22:8-23:8 (Rev. Spearman).

138. Mr. Gaddy also testified movingly about the devastating impact that disenfranchisement had on him personally after he was released from incarceration and living in the community on felony supervision. After release from incarceration, Mr. Gaddy could not vote for another seven years because he was on probation. He lamented that he missed a lot of elections over those seven years and was particularly devastated to miss the election of the first African American President in 2008. 8/16/2021 Trial Tr. 60:5-61:1-24.

139. Mr. Purdie had a similar experience. He testified that the fear and confusion created by this law, combined with the carceral experience, creates a

feeling of hopelessness. 8/19/21 Trial Tr. 36:23-37:16 (Purdie). This law has a silencing affect, making impacted people feel as if their voice does not matter. *Id.* at 49:22-50:10. Mr. Purdie testified that to restore a sense of hope, we must unmute our impacted community members—we must restore their voice. *Id.* at 51:16-21.

e. Testimony of the Individual Plaintiffs

140. The testimony of two Individual Plaintiffs fully demonstrated the profound damage that section 13-1 does to people living in communities across North Carolina.

141. Timmy Locklear, a 58-old member native of Lumberton, North Carolina, now lives in Wilmington. 8/19/21 Trial Tr. 25:14-22. Since his release from prison in October 2019, he has worked directing traffic at the New Hanover County Landfill, and he never had any violations of the conditions of his post-release supervision. *Id.* at 28:11-19. Before his 2018 felony conviction, he participated in North Carolina elections, and he testified that he would have voted in the March 2020 primary elections if he were not disenfranchised due to post-release supervision. *Id.* at 30:6-31:1. When Mr. Locklear completed his post-release supervision in July 2020, his probation officer did not talk to him about his voting rights or give him a voter-registration form, and they never sent him any forms in the mail about voting. *Id.* at 29:1-30:5. Mr. Locklear nevertheless re-registered to vote and voted in the November 2020 elections. *Id.* at 31:2-8. When asked why it was important for him to vote, he testified: "It felt good. I hadn't voted in a long time." *Id.* at 31:9-11.

142. Shakita Norman lives in Wake County, where she works as an Assistant General Manager at Jiffy Lube, takes care of her five children, and pays her taxes. 8/17/21 Trial Tr. 148:16-149:14, 154:20-23. She wants to vote, particularly for members of the school board because all of her children attend Wake County Public Schools. *Id.* at 148:25-149:5, 153:16-22. But she cannot vote because, due to a felony conviction in 2018, she has been stuck on "special probation" for 2.5 years running. *Id.* at 152:9-25. To complete her special probation, she must serve a total of 200 more days of "weekend jail." *Id.* at 151:02-13. But she has not been able to serve any weekend jail since March 2020 because the jails are closed due to the pandemic. *Id.* at 151:18-152:5. Ms. Norman has now been on probation and thus prohibited from voting for nearly three years, even though she has had no probation violations. *Id.* at 152:9-25. Ms. Norman does not know when she will be able to complete her required weekend jail days, or when she will be off probation and able to vote again. *Id.* at 152:6-8, 154:14-16. She voted in North Carolina elections before her conviction, and she testified that she would have voted in the March and November 2020 elections if she were not disenfranchised. *Id.* at 153:3-154:5. When asked why she believes that people on felony supervision should have the right to vote, she testified:

> Well, most people that's like me, even though I'm on probation, I still pay taxes, I go to work every day, I take care of my family. I should -- I should be able to have that, to have that moment. I should be able to say something, and I want people that's in the future that's in the situation that I'm in to be able to have that voice and be able to say something and it gets heard.

Id. at 154:17-155:2.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I. N.C.G.S. § 13-1's Denial of the Franchise to Persons on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Equal Protection Clause

1. The Equal Protection Clause of the North Carolina Constitution guarantees that "[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const., art. I, § 19.

2. It is well-established that North Carolina's Equal Protection Clause provides greater protection for voting rights than federal equal protection provisions. *Stephenson v. Bartlett*, 355 N.C. 354, 377-81 & n.6, 562 S.E.2d 377, 393-96 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 522-28, 681 S.E.2d 759, 763-66 (2009)). North Carolina courts have repeatedly applied this broader protection for voting rights to strike down election laws under Article I, § 19. *Stephenson*, 355 N.C. at 377-81 & n.6, 562 S.E.2d at 393-95 & n.6; *Blankenship*, 363 N.C. at 522-24, 681 S.E.2d at 762-64.

3. Section 13-1's denial of the franchise to people on felony supervision violates North Carolina's Equal Protection Clause both because it discriminates against African Americans and because it denies all people on felony supervision the fundamental right to vote.

A. N.C.G.S. § 13-1 Impermissibly Discriminates Against African American People in Intent and Effect and Denies Substantially Equal Voting Power to African American People

4. Section 13-1's denial of the franchise to people on felony supervision has the intent and effect of discriminating against African Americans, and unconstitutionally denies substantially equal voting power on the basis of race.

5. To prevail on a race discrimination claim under Article I, § 19, a plaintiff "need not show that discriminatory purpose was the sole or even a primary motive for the legislation, just that it was a motivating factor." *Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254-55 (2020) (internal quotation marks omitted). "Discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Id.* (internal quotation marks omitted).

6. The legislature cannot purge through the mere passage of time an impermissibly racially discriminatory intent. *See Hunter v. Underwood*, 471 U.S. 222 (1985) (striking down a felony disenfranchisement law originally passed with the intent to target African Americans); *see also Ramos v. Louisiana*, 140 S. Ct. 1390, 1410 (2020) (Sotomayor, J., concurring) ("[W]here a legislature actually confronts a law's tawdry past in reenacting it[,] the new law may well be free of discriminatory taint," but "[t]hat cannot be said of the laws at issue here.").

7. The legislature's decision in the 1970s to preserve section 13-1's denial of the franchise to people living in the community was itself independently motivated by racism.

8. There is no evidence to demonstrate that N.C.G.S. § 13-1 would have been enacted without a motivation impermissibly based on race discrimination, and the Court concludes that it would not have been.

9. Section 13-1's denial of the franchise to people living in the community on felony supervision was enacted with the intent of discriminating against African American people and has a demonstrably disproportionate and discriminatory impact.

B. N.C.G.S. § 13-1 Impermissibly Deprives All Individuals on Felony Probation, Parole, or Post-Release Supervision of the Fundamental Right to Vote.

10. N.C.G.S. § 13-1 interferes with the fundamental right to vote on equal terms as it prohibits people with felony convictions from regaining the right to vote even while they are living in communities in North Carolina, so long as they have not completed probation, parole, or post-release supervision. *See Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393.

11. People on felony supervision share the same interest as, and are "similarly situated" to, North Carolina residents who have not been convicted of a felony or who have completed their supervision. "The right to vote is the right to participate in the decision-making process of government" among all those "sharing an identity with the broader humane, economic, ideological, and political concerns of the human body politic." *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980). North Carolinians on felony supervision share in the State's "public [burdens]" and "feel an interest in its welfare." *Roberts v. Cannon,* 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260-61 (1839).

12. As the Court held in its preliminary injunction order in September 2020, under Article I, § 19, when legislation is enacted that restores the right to vote, thereby establishing terms upon which certain persons are able to exercise their right to vote, such legislation must not do so in a way that imposes unequal terms. As allowed by Article VI, § 2(3), of our Constitution, the legislature has chosen to restore citizen rights—specifically here, the right to vote—to those with felony convictions. But in N.C.G.S. § 13-1, it has done so on unequal terms in violation of Article I, § 19.

C. N.C.G.S. § 13-1's Violation of Article 1, § 19 Triggers Strict Scrutiny

13. Under Article I, § 19, strict scrutiny applies where either: (1) a "classification impermissibly interferes with the exercise of a fundamental right," or (2) a statute "operates to the peculiar disadvantage of a suspect class." *Stephenson*, 355 N.C. at 377, 562 S.E.2d at 393 (internal quotation marks omitted); *accord Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746, 392 S.E.2d 352, 355 (1990). Thus, if a statute interferes with the exercise of a fundamental right, strict scrutiny applies even if the affected group is not a suspect class. *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394; *Northampton County*, 326 N.C. at 747, 392 S.E.2d at 356.

14. N.C.G.S. § 13-1 both interferes with the exercise of the fundamental right of voting and operates to disadvantage a suspect class. Therefore, it is subject to strict scrutiny.

II. N.C.G.S. § 13-1's Denial of the Franchise to Individuals on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Free Elections Clause

A. N.C.G.S. § 13-1 Prevents Elections from Ascertaining the Will of the People

15. The Free Elections Clause of the North Carolina Constitution declares that "[a]ll elections shall be free." N.C. Const., art. I, § 10. It mandates that elections in North Carolina faithfully ascertain the will of the people. This clause has no federal counterpart.

16. N.C.G.S. § 13-1's denial of the franchise to people on community supervision violates the Free Elections Clause by preventing elections that ascertain the will of the people.

17. North Carolina's elections do not faithfully ascertain the will of the people when such an enormous number of people living in communities across the State—over 56,000 individuals—are prohibited from voting.

18. Section 13-1's denial of the franchise to persons on community supervision strikes at the core of the Free Elections Clause, moreover, because of its grossly disproportionate effect on African American people. Elections cannot faithfully ascertain the will of *all* of the people when the class of persons denied the franchise due to felony supervision is disproportionately African Americans by wide margins at both the statewide and county levels.

19. Nor do North Carolina elections faithfully ascertain the will of the people when the vote margin in both statewide and local elections is regularly less than the number of people disenfranchised in the relevant geographic area.

Elections do not ascertain the will of the people when the denial of the franchise to such a large number of people has the clear potential to affect the outcome of numerous close elections.

20. N.C.G.S. § 13-1 prevents thousands of people living in North Carolina communities who would otherwise vote from casting ballots, potentially preventing the will of the people from prevailing in elections that affect every aspect of daily life.

B. N.C.G.S. § 13-1's Interference with Free Elections Triggers Strict Scrutiny

21. Because the right to free elections is a fundamental requirement of the North Carolina Constitution, *Harper*, 2022-NCSC-17, P139, N.C.G.S. § 13-1's abridgment of that right triggers strict scrutiny. *See Northampton*, 326 N.C. at 747, 392 S.E.2d at 356. That is so regardless of the General Assembly's intent in passing the law. When statutes implicate state constitutional provisions concerning the right to vote, "it is the effect of the act, and not the intention of the Legislature, which renders it void." *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 225-26 (1875). The effect of section 13-1 is to deny the franchise to over 56,000 people, disproportionately African Americans.

22. In any event, strict scrutiny would apply here even if the General Assembly's intent were relevant in evaluating a Free Elections Clause claim. In manipulating the electorate by disenfranchising groups of voters perceived as undesirable, N.C.G.S. § 13-1 resembles the very English laws that were the impetus for North Carolina's original free elections clause.

23. Section 13-1's denial of the franchise to persons on felony supervision is therefore subject to strict scrutiny.

III. N.C.G.S. § 13-1's Denial of the Franchise to Persons on Community Supervision Cannot Satisfy Strict or Any Scrutiny

24. For the reasons set forth above, section 13-1's denial of the franchise to persons on community supervision is subject to strict scrutiny under both the Equal Protection Clause and the Free Elections Clause. To satisfy strict scrutiny, Defendants must establish that this provision furthers a compelling government interest and is narrowly tailored to do so. *Northampton Cnty.*, 326 N.C. at 747; *DOT v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001). Defendants failed to make such a showing on all claims.

25. At a minimum, section 13-1's denial of the franchise is subject to intermediate scrutiny. The Supreme Court has consistently applied intermediate scrutiny where the government's discretion to regulate in a particular field had to be balanced against other constitutional protections. Under intermediate scrutiny, the government must show that the challenged law "advance[s] important government interests" and is not more restrictive "than necessary to further those interests." *Id.* Defendants have failed to establish that section 13-1's denial of the franchise to people on felony supervision advances any "important" government interest, much less in an appropriately tailored manner.

26. Furthermore, because N.C.G.S. § 13-1 does not withstand an intermediate level of scrutiny, it fails strict scrutiny as well. *See M.E. v. T.J.,* 275

N.C. App. 528, 559, 854 S.E.2d 74, 101 (2020*)* (articulating intermediate scrutiny as a less restrictive standard than strict scrutiny).

27. Under any level of scrutiny, Defendants must show that the challenged law adequately serves sufficient state interests today, not just that the law served some state interest in the past. A "classification must substantially serve an important governmental interest *today*, for . . . new insights and societal understandings can reveal unjustified inequality that once passed unnoticed and unchallenged." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (internal quotation marks omitted) (emphasis original)). Defendants failed to do so.

28. Section 13-1's denial of the franchise to people on felony supervision does not advance any valid state interest. Further, much of the evidence presented demonstrates that section 13-1 causes grave harm and undermines important state interests such as voter participation.

29. N.C.G.S. § 13-1's denial of the franchise to persons on community supervision violates North Carolina's Equal Protection Clause, Article I, § 19, and the Free Elections Clause, N.C. Const., art. I, § 10 and does not satisfy strict scrutiny.

IV. The Constitutional Provision Regarding Felony Disenfranchisement Does Not Insulate N.C.G.S. § 13-1 From Constitutional Challenge

30. Defendants argue that Article VI, § 2, cl. 3 of the North Carolina Constitution precludes Plaintiffs from challenging the manner of rights restoration set forth in N.C.G.S. § 13-1. That is incorrect.

31. The Court rejected this argument from Defendants in its preliminary injunction order in September 2020 and rejects it again today.

32. Article VI, § 2, cl. 3 reflects a delegation of authority to the General Assembly to "prescribe[] by law" the contours of the restoration of the franchise, and legislation enacted by the General Assembly pursuant to this delegation must comport with all other provisions of the North Carolina Constitution. Because "all constitutional provisions must be read *in pari materia*," a constitutional provision "cannot be applied in isolation or in a manner that fails to comport with other requirements of the State Constitution." *Stephenson*, 355 N.C. at 377-78, 562 S.E.2d at 392, 394.

33. The Court recognizes that Article VI, § 2(3) of our Constitution grants the General Assembly the authority to restore citizen rights to persons convicted of felonies. As discussed above, however, Article I, § 19 of our Constitution forbids the General Assembly from interfering with the right to vote on equal terms, and Article I, § 10 requires that elections be free so as to ascertain the will of the people. Accordingly, when the General Assembly prescribes by law the manner in which a convicted felon's right to vote is restored, it must do so on equal terms and in a manner that ensures elections ascertain the will of the people.

34. "A court should look to the history" in interpreting a constitutional provision, *N.C. State Bd. of Educ. v. State*, 255 N.C. App. 514, 529, 805 S.E.2d 518, 527 (2017), *aff'd*, 371 N.C. 149, 814 S.E.2d 54 (2018), and throughout its history Article VI, § 2, cl. 3 has *always* been accompanied by implementing legislation. As explained above, the General Assembly enacted a statutory scheme providing for felony disenfranchisement and rights restoration in 1877, in the very first legislative session after ratification of the 1876 constitutional amendment. At no point in the 144 years since its adoption has Article VI, § 2, cl. 3 ever operated by its own force without implementing legislation.

35. In any event, implementing legislation *has* been enacted, and any statute enacted by the General Assembly must comport with all provisions of the North Carolina Constitution. As concluded above, section 13-1 fails, beyond all reasonable doubt, to do so.

It is therefore ORDERED, ADJUDGED, AND DECREED THAT:

1. N.C.G.S. § 13-1's denial of the franchise to persons on felony probation, parole, or post-release supervision violates the North Carolina Constitution's Equal Protection Clause and Free Elections Clause.
2. Defendants, their agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them, are hereby enjoined from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision.

3. For the avoidance of doubt, under this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina.

SO ORDERED, this the 28th day of March, 2022.

Lisa C. Bell, Superior Court Judge

3/28/22

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

DISSENT

Judge Dunlow dissents from the majority's decision and order.

For the reasons specified in my dissent to the majority's Order on Summary Judgment, I dissent from the final order of the majority issued today.

This Court would make the following:

FINDINGS OF FACT

1. Article VI, Section 2, Part 3 of the North Carolina Constitution provides:

> **Disqualification of felon.** No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

2. The Plaintiffs in this action do not challenge the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution.

3. Because the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution are not challenged in this litigation, this Court must, in analyzing this facial challenge, begin with the assumption that all convicted felons who have not had their rights of citizenship restored are properly and lawfully disenfranchised pursuant to Article VI, Section 2, Part 3 of the North Carolina Constitution.

4. The manner prescribed by law for the restoration to the rights of citizenship is found at N.C.G.S. § 13-1.

5. In the present action, Plaintiffs make a facial challenge to N.C.G.S. § 13-1 (the restoration provision), requesting this Court, "Declare that N.C.G.S. § 13-1's disenfranchisement of individuals while on probation, parole, or suspended sentence is facially unconstitutional and invalid . . . ."

6. The particular provision being challenged in this action is N.C.G.S. § 13-1(1) which provides:

> Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.

7. N.C.G.S. § 13-2(a) provides:

> The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of N.C.G.S. § 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

8. There has been no evidence presented that any agency, department or court having jurisdiction over an inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of N.C.G.S. § 13-1(1) has failed to immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

9. Each and every individual who is disqualified from voting under the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution is automatically restored the right to vote under the provision of N.C.G.S. § 13-1(1).[2]

10. The Plaintiffs have offered, and the Court received, a myriad of testimony, statistical analysis and evidence relating to the impact the provision of Article VI, Section 2, Part 3 of the North Carolina Constitution (felon disenfranchisement) has on the African American population.

11. The Plaintiffs have offered no testimony, statistical analysis or evidence relating to the impact, if any, N.C.G.S. § 13-1 has on the African American population or any other suspect class.

12. "[F]elons do not enjoy the same measure of constitutional protections . . . as do citizens who have not been convicted of a felony." *State v. Grady*, 372 N.C. 509, 567, 831 S.E.2d 542, 582 (2019). As a result of their own conduct, felons are subject to these reduced constitutional protections, which "society . . . recognize[s] as legitimate." *See id.* at 555, 831 S.E.2d at 575. Our courts have recognized that there is a dividing line, for constitutional rights, between those who have "served [their] sentence[s], paid [their] debt[s] to society, and had [their] rights restored," and those who have not. *Id.* at 534, 831 S.E.2d at 561.

[2] The Court will take judicial notice that the only prerequisite for an individual to have their citizenship rights restored automatically is that the individual live long enough to complete the term of their sentence, probation, parole and/or post-release supervision.

13. Establishing a process by which convicted felons can regain their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.

14. Establishing a restoration process that requires convicted felons to complete their terms of imprisonment, probation, parole or post-release supervision before regaining their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.

15. The Free Elections Clause of the North Carolina Constitution mandates that elections in North Carolina faithfully ascertain the will of the people. The people whose will is to be faithfully ascertained are the persons who are lawfully permitted to vote in North Carolina elections.

16. Because convicted felons, who have not had their citizenship rights restored, are not lawfully permitted to vote in North Carolina elections, the Free Elections Clause has no application to those persons.

Based on the foregoing findings of fact, this Court would make the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter.

2. N.C.G.S. § 13-1 does not bear more heavily on one race than another.

3. N.C.G.S. § 13-1 does not have the intent nor the effect of discriminating against African Americans.

4. The intent of the legislature in enacting N.C.G.S. § 13-1 was to, "substantially relax the requirements necessary for a convicted felon to have his citizenship restored." *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974).

5. N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right.

6. N.C.G.S. § 13-1 does not operate to the peculiar disadvantage of a suspect class.

7. Because N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right nor does it operate to the peculiar disadvantage of a suspect class, the appropriate level of review to apply in this facial challenge is rational-basis review.

8. N.C.G.S. § 13-1 bears a rational relationship to valid and legitimate governmental interests.

9. The Plaintiffs have failed to meet their heavy burden of showing that N.C.G.S. § 13-1 bears no rational relationship to any legitimate government interest.

10. N.C.G.S. § 13-1 does not violate the Equal Protection Clause of the North Carolina Constitution.

11. N.C.G.S. § 13-1 does not violate the Free Elections Clause of the North Carolina Constitution.

Based on the foregoing findings of fact and conclusions of law, this Court would:

ORDER, ADJUDGE and DECREE

1. The Plaintiffs' prayers for relief are DENIED, and the Plaintiffs' complaint is hereby DISMISSED.

This the 25 day of March, 2022.

John M. Dunlow
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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This the 28th day of March 2022.

Kellie Z. Myers
Trial Court Administrator
10th Judicial District
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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

EXHIBIT 18

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, et al., Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**THE STATE BOARD DEFENDANTS' NOTICE REGARDING IMPLEMENTATION OF INJUNCTION AND MOTION FOR CLARIFICATION**

The North Carolina State Board of Elections and its members ("State Board Defendants") hereby provide notice of the State Board Defendants' further efforts to implement this Court's Injunction of September 4, 2020, pursuant to this Court's direction to the State Board Defendants on August 19, 2021, and to seek clarification or guidance on this Court's direction.

In light of the pressing elections-administration deadlines that the State Board is under, and as discussed in greater detail in Section III below, the State Board must implement any changes to language on the voter registration forms by Monday, August 23, 2021, if they are to take effect in time for this fall's municipal elections. Accordingly, to the extent any clarification of this Court's direction is warranted, the State Board respectfully requests that such clarification be provided by Monday, August 23, 2021.

I. State Board Defendants' Efforts to Implement This Court's Injunction

Following this Court's oral ruling last Thursday to implement certain changes to the voter registration forms immediately, the State Board plans to update State Board forms and guidance regarding voting eligibility for people convicted of felonies with the following language:

> (a) you are not currently serving a felony sentence, including probation, post-release supervision, or parole; or (b) you are serving felony probation, post-release supervision, or parole with only fines, fees, costs, or restitution as conditions (besides the other regular conditions of probation in G.S. 15A-1343(b)) and you know of no other reason that you remain on supervision.

II. Practical Considerations Regarding Implementation

While the State Board Defendants stand ready to implement the Injunction as instructed by this Court on Thursday, they would like to raise for the Court's consideration certain practical considerations that will make implementation of the Injunction in this manner difficult for both the State and individual voters who might be beneficiaries of this Court's actions.

First, there are significant administrative challenges for the North Carolina Department of Public Safety (DPS) to be able to isolate those people on probation who are serving probation as a result of only monetary conditions (aside from the other regular conditions of probation). More broadly, the State Board is working with DPS to confirm whether DPS will be able to identify every person who is serving probation with only regular conditions and who have monetary obligations. But DPS, as a general matter, has no record of whether, putting aside the general conditions, these persons would not be serving probation but for the monetary obligations. The State Board understands that the judgment and administrative records and inputs into DPS's system do not account for this specific scenario.[1]

Accordingly, this presents administrative issues for the State Board in terms of informing a person as to whether State Board records indicate that they are permitted to register and vote.

[1] Separately, following this Court's injunction law fall, DPS was able to identify individuals on *extended* terms of supervision and who owe monetary obligations. Those individuals have been removed from the data used by the State Board to identify ineligible voters.

The State Board has identified two administrative solutions to this issue, both of which present concerns:

1. The State Board could rely on the current feed from DPS and inform people that, according to State Board records, they are not eligible to vote; inform such individuals in the notice that our information does not account for all people affected by the Court's order (namely, those on a non-extended term of supervision); and encourage those persons who *are* eligible under the terms of the Court's order to inform the county board of their eligibility so their registration and vote may be processed. The State Board would assist county boards who were alerted of this issue by communicating with DPS to determine if there was documentation of the person's eligibility—although, as discussed above, such documentation may not be available as a general matter. This proposal raises the concern that it places the onus on the voter to disprove their *in*eligibility, due to lack of confirming information available to the State Board. Such a system could have the unfortunate result of keeping people from voting who should vote under the Injunction.
2. Alternatively, the State Board could request that DPS remove from its feed of felons currently on supervision (and who are ineligible to vote) all persons whose probation terms include financial obligations and the regular conditions of probation only—again, this assumes that the State Board can confirm with DPS that it is possible to isolate this population in the data. This would allow any person covered by the Court's order to register and vote, without any prospect of an initial denial. But it would also be overinclusive, permitting people who are

not covered by the Court's injunction to register and vote (*i.e.*, people for whom the financial obligation is not the reason for being on their initial term of probation, setting aside the regular conditions). Such voters would not benefit from an administrative flagging that could prevent them from unknowingly violating election laws.

Accordingly, the State Board Defendants are in the unfortunate position of either permitting ineligible voters to vote or discouraging eligible voters from voting. They therefore would welcome the Court's guidance on carrying out the Injunction.

Second, the language the State Board has identified for implementing the Injunction requires the potential voter to ensure she is eligible by reviewing all the regular conditions of probation under N.C.G.S. § 15A-1343(b) and determine whether those are the only other conditions of her probation. This places the onus on the potential voter to compare the text of the statute to her probation order or her memory of her terms of probation to determine whether those "regular" conditions are the only ones that apply to her. Plaintiffs have raised the concern that requiring this type of analysis by the voter may chill a potential voter's ability to determine whether she is eligible.

III. Request for Clarification and/or Guidance

The State Defendants would appreciate the Court's guidance on which of the above two pathways most effectively implements the Court's injunction, or whether additional changes to the language on the voter registration forms need to be made.

Due to the administrative processes involved in conducting the upcoming elections, time is of the essence. Essentially, the State Board would need any further direction from this Court

by Monday, August 23, 2021, so that the State Board can properly implement the new language before the upcoming elections.

North Carolina will hold municipal elections in multiple counties on October 5, 2021. One-stop early voting begins for the October elections on September 16, 2021, and the statutory voter registration deadline for that election is September 10, 2021.

North Carolina will also hold municipal elections in multiple counties on November 2, 2021. One-stop early voting begins for the November elections on October 14, 2021, and the statutory voter registration deadline is October 8, 2021.

For the State Board to implement new language on the various forms used to conduct registration and the voting process, and for those updated forms to be used in the upcoming municipal elections, the State Board must initiate the process to update that language immediately. Administration of voter check-in at voting sites is largely conducted through electronic databases and information systems. In particular, the State and county boards of elections use the State Election Information Management System (SEIMS), which is a networked, computerized system that every election official and poll worker uses to conduct the voting process at the nearly 3,000 voting locations throughout this state.

To use one-stop early voting as an example, when a voter checks in to vote, a poll worker locates that person's information in SEIMS and, from the SEIMS system, the poll worker prints a One-Stop Application Form, which serves as the voter's affirmation that they are eligible to vote in the election. A sample of such a form was entered into evidence at trial as SDX-35, and it includes the relevant language regarding eligibility as a result of the Injunction. The form is prepopulated with the voter's information, drawing from the data in SEIMS.

The process of generating this form through SEIMS is the result of computer coding, which, in basic terms, is written into the SEIMS system and which instructs the system to generate all of the contents of the form in the exact way that form will appear when printed.

Changes to election administrative forms must be done well in advance of actual voting, because software developers must code those changes into the SEIMS system, test it (to ensure it operates as intended and does not create unintended consequences in the system), and implement the coding changes with a systemwide update. Generally, changes to the SEIMS system cannot be made while voting is occurring, because it runs the risk of interfering with the voting process which, again, is being conducted using the SEIMS system.

For comparison purposes, last fall, after the form language to implement the Injunction was finalized, it took the State Board approximately a month to implement the changes to the forms in SEIMS following this Court's Injunction.

Accordingly, in addition to being required by the Court to initiate changes immediately, the State Board, as an administrative matter, must also initiate the implementation of the Court's instructions immediately, in order for those changes to appear on voters' forms in the upcoming municipal elections.

* * *

Therefore, State Defendants respectfully provide notice to the Court of administrative challenges involved in the implementation of the Injunction and seek the Court's guidance, as soon as possible, on proper implementation of its Injunction.

This the 21st day of August, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Paul M. Cox

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email and was addressed to the following counsel:

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This the 21st day of August, 2021.

/s/ Paul M. Cox
Paul M. Cox
Special Deputy Attorney General

EXHIBIT 19

Exhibit A

From: Love, Katelyn <Katelyn.Love@ncsbe.gov>
Sent: Tuesday, March 29, 2022 4:19 PM
Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: [External]Update Regarding Court Order Restoring Felon Voting Rights

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Directors (bcc State Board members),

Yesterday afternoon, a North Carolina Superior Court ruled that the state law restricting persons with felony convictions who are not incarcerated from voting or registering to vote is unconstitutional. Under this ruling, people who are serving a felony sentence outside a jail or prison are now eligible to register to vote in North Carolina. This includes people on felony probation, parole, or post-release supervision. The decision is attached.

We are currently working to determine how to implement this decision in light of (1) an imminent appeal of the decision; and (2) an apparently conflicting order from the North Carolina Supreme Court last year in the same case. That decision ordered that "the status quo be preserved" pending appeal of the expanded preliminary injunction, an appeal that is still ongoing.

Until further instruction, county boards of elections should keep registration applications of voters who are on probation, parole, or post-release supervision it receives in the Incomplete Queue. Do not generate or send felon denial letters to these voters, regardless of whether the application was received before or after Monday, March 28. Do not send a removal letter to voters who are on probation, parole, or post-release supervision.

To complete this process, counties can refer to the DOC Felon County List, the DOC Felon State Matching List and the N.C. DPS Offender Search to confirm a registrant's status. The DOC Felon County List contains a "DOC Placement" column that will show whether the person is an inmate or on probation/parole. If a person is an **inmate** serving a felony conviction, they are ineligible to register to vote and you may proceed with your regular processes. Note that the DOC Felon State Matching List does not show whether a person is an inmate; therefore, you will need to also refer to the DOC Felon County List before processing a denial or a removal.

For registrants with **any status other than inmate**, the county should hold these registrations in the Incomplete Queue until further guidance is available. Counties should continue with the felony denial and removal processes for those classified as an inmate.

For the federal felon records found on Filezilla, the counties may use the Federal Bureau of Prisons' Search. If a felon's record identifies a prison in the "Location" column, they are ineligible to register to vote and may be removed/denied registration per current processes.

Counties should not remove or deny a voter registration application unless they can confirm the person is an inmate serving a felony conviction. If you are unsure, please keep the record in the Incomplete Queue.

We will send further instructions as soon as possible to address how to ultimately process these records in the Incomplete Queue, and whether registration and voting forms will be updated.

Sincerely,

Katelyn Love | General Counsel
o: 919-814-0756 | f: 919-715-0135

EXHIBIT 20

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, et al., Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**REQUEST FOR CLARIFICATION REGARDING IMPLEMENTATION OF INJUNCTION**

The North Carolina State Board of Elections and its members (State Board Defendants), provide additional information to the Court on its efforts to implement the Court's injunction of September 4, 2020, pursuant to the Court's direction to the State Board Defendants on August 19, 2021, and seek additional clarification on the implementation of the Court's orders.

The State Defendants' goal is to implement, as soon as possible, the Court's injunction in the manner in which the Court intended. Since this Court's oral ruling on August 19, the State Board has worked diligently with the North Carolina Department of Public Safety, other shareholders within State government, and Plaintiffs to (1) change the language on voter registration forms that will inform voters of their rights to register and vote and (2) identify the group of people who this Court intended to cover with the injunction and ensure that they are able to register to vote and vote. In working to find solutions, the State Board has identified several pathways, concerns, and solutions to both changing the language and identifying the affected group. There is no perfect pathway. Accordingly, the State Board requests this Court's guidance and assistance with determining which pathway best effectuates this Court's injunction.

I. The State Board Defendants' Efforts to Implement this Court's Injunction

Following this Court's oral ruling on August 19 to implement certain changes to the voter registration forms immediately, on Friday, August 20, the State Board proposed incorporating this Court's comments into the language below:

> (a) you are not currently serving a felony sentence, including probation, post-release supervision, or parole; or (b) you are serving felony probation, post-release supervision, or parole with only fines, fees, costs, or restitution as conditions (besides the other regular conditions of probation in G.S. 15A-1343(b)) and you know of no other reason that you remain on supervision.

The Court indicated during the August 20 hearing that this language appears to align with this Court's orders. However, since that time, Plaintiffs have requested that the Court order modification of this language in two ways.

First, Plaintiffs requested that the word "besides" be modified to "in addition to other." Pls' Br. at 2. The State Defendants' proposed language however says "besides the other regular conditions" not just "besides the regular conditions." Therefore, the State Defendants' proposal captures Plaintiffs' concern. Moreover, the State Defendants urge the Court to accept the "besides" formulation because it should resolve any confusion for a person who, for example, is on an extended term of probation for violating a regular condition but also has outstanding financial obligations that are not responsible for the extension (and therefore is not covered by the injunction).

Second, Plaintiffs have requested that in addition to a reference to regular conditions of probation, the proposed language be modified to include "or the required condition of post-release supervision in G.S. 15A-1368.4(b)." Pls' Br. at 2. The State Defendants' proposed language incorporates directly this Court's order which enjoins the State from preventing a person convicted of a felony from exercising their right to vote "if that person's only remaining

barrier to obtaining an 'unconditional discharge,' other than regular conditions of probation pursuant to N.C.G.S. § 15A-1343(b), is the payment of a monetary amount." Sept. 4, 2020 Order, Part I-A. Moreover, the State Defendants do not believe that there are people who would fall into this category of post-release supervision—but is working to confirm this with DPS. [1] Given that it is unlikely for there to be people who fall into this category, the State Defendants believe that including language that applies to a null set in the voter registration form will only cause confusion for the person who is on post-release supervision and has to assess whether this injunction applies to them. Therefore, in the interest of clarity, the State Board requests that the Court not include language in the voter registration form that may not apply to anyone.

II. Administrative Considerations in the Implementation of this Court's Orders

While the State Defendants stand ready to implement the injunction clarified by this Court yesterday, the State Defendants would like to raise for the Court's consideration certain practicalities that might make implementation of the injunction in this manner difficult for both the State and individual voters who might be beneficiaries of this Court's actions.

There are significant administrative problems that raise questions about the manner in which the State Defendants can most effectively implement this Court's injunction.

DPS cannot distinguish those on probation solely because of monetary conditions and those people who are placed on probation for other regular conditions in addition to monetary

[1] Plaintiffs state that the State Board's counsel "asserted for the first time" that the "Court's injunction in fact doesn't cover anyone on post-release supervision." Pls' Br. at 2 n.2. This is wrong. *See* State Bd. Defs' Br. Opp'n Mot. for Summ. J 11 ("Likewise, a person who fails to pay an obligation while on post-release supervision does not have their supervision period extended. Instead, violating conditions of post-release supervision leads to re-imprisonment for a period up to the remainder of the prison term imposed at sentencing. *Id.* § 15A-1368.3(c). If a person is then re-released into post-release supervision, they serve the time remaining on their original supervision period. *Id.* § 15A-1368.3(c)(1).").

conditions, and, if the Court accepts Plaintiffs' proposal, to isolate those people who are on post-release supervision only for monetary conditions (in addition to the required condition of post-release supervision). The judgment and administrative records and inputs into DPS's system do not account for this specific scenario.

Because DPS cannot isolate only those voters who are on probation or post-release supervision only for monetary conditions, the State Board will have to implement some kind of workaround based on the information DPS does have available.

The first option, which the State Defendants previewed to the Court at the hearing on Friday could potentially be incongruous with what the State Defendants understand the Court's intention to be, by requiring a process of establishing the voter's eligibility to vote, due to the lack of information available to verify all voters who may be covered by the injunction. This first option requires no further information from DPS, but requires the State Board to inform all individuals on probation and post-release supervision that there may be a subsect of them who would be beneficiaries of the injunction of their eligibility and encourage them to petition their respective county boards for the ability to register and vote. As the State Defendants explained to the Court on Friday, this pathway is difficult to administer.

The second option requires DPS to identify for the State Board all people on probation whose terms include only monetary conditions along with the other regular conditions of probation.[2] The list that DPS provides will identify the people who have been coded in the

[2] And, if the Court accepts the Plaintiffs' proposal, all people on post-release supervision whose terms include only monetary obligations with the required conditions. Just as with the conditions of probation, DPS has been working quickly to determine whether it will be able to identify individuals who are on post-release supervision and who are subject to monetary conditions in addition to the required condition of post-release supervision in § 15A-1368.4(b), should this Court grant Plaintiffs' request for modification. DPS is continuing to work through

system as having any regular condition of probation listed in § 15A-1343(b) and monetary conditions (fines, fees, costs, or restitution).[3] The State Board would then inform county boards to not reject the registrations and ballots of individuals on this list.

This list will be over-inclusive in two ways.

First, it will likely include people who are serving probation not *just* because of their monetary obligations—and, accordingly, people whom this Court's injunction does not cover.

Second, the list may include some individuals who are subject to some special conditions because of the way in which sentencing laws have changed over the years. Over time, a number of conditions that used to be special conditions have been re-codified as regular conditions. For example, the regular condition of not using, possessing, or controlling any illegal drug or controlled substance only became a regular condition after December 1, 2009—until then, it was a special condition. Similarly, the regular condition of submitting to drug screening when instructed by the person's probation officer became a regular condition after December 1, 2011—until then, it was a special condition. Therefore, when DPS runs a search for anyone who is not coded with one of the special conditions, it will capture everyone who is subject to conditions that are *currently categorized* as regular conditions—regardless of whether the condition was a special condition at the time of that person's sentencing. This list then, may include people who were sentenced to a condition that was categorized as special at the time of sentencing (*e.g.*, drug screening) but is no longer categorized as special. These people will not

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the evening to try to confirm its capabilities by the time of the hearing tomorrow morning.

[3] This list will also include those individuals who are currently living in North Carolina but who are currently under community corrections resulting from a sentence from another state who are subject to conditions that are the same as any of North Carolina's regular conditions and who are subject to other monetary obligations like fines, fees, costs, and restitution.

be prevented from registering to vote and voting—even though the Court's injunction does not technically apply to them.

These two over-inclusive categories raise two very serious issues regarding elections administration. The State Board is the body responsible for certifying elections. If voters who do not fall within this Court's injunction are not restricted from registering to vote and voting, the State Board is concerned that, in the future, individuals will challenge election results in tight races on the basis that the races were decided by ineligible voters. The over-inclusive list will also make it more difficult for the State Board to determine the eligibility of voters and resolve voter challenges and other protests—without a clear indication of whether voters are properly covered by the injunction or not, the State Board will have no ability to resolve questions about voter eligibility.

In addition, these over-inclusive categories also raise a very serious issue for individuals who have monetary obligations and are serving probation or post-release supervision for reasons other than just those obligations. The State Board could not prevent them from registering and voting—even when this Court's injunction does not technically cover them.

As the State Defendants told this Court on Friday when it previewed these concerns, the State Defendants do not believe that they should take actions that could allow a person who is ineligible to register to vote and vote. Currently, individuals who are ineligible to register due to a State felony conviction are prevented from doing so by the State Board's automated registration check. The State Board is obligated to ensure that only eligible voters cast a ballot. Therefore, should the Court order the State Board to follow this approach, the State Defendants would urge the Court to incorporate into the remedy provisions a method for the State Board to properly identify the eligible voting population.

III. Timing Considerations in the Implementation of this Court's Orders

As discussed above, time is of the essence. Essentially, the State Board needs this Court's input by Monday, August 23, 2021, so that the State Board can properly implement the new language.

North Carolina will hold municipal elections in multiple counties on October 5, 2021. One-stop early voting begins for the October municipal elections on September 16, 2021, and the statutory voter registration deadline for that election is September 10, 2021.

North Carolina will hold municipal elections in multiple counties on November 2, 2021. One-stop early voting begins for the November municipal elections on October 14, 2021, and the statutory voter registration deadline October 8, 2021.

In order for the State Board to implement new language on the various forms used to conduct registration and the voting process, and for those updated forms to be used in the upcoming municipal elections, the State Board must initiate the process to update that language immediately. Administration of voter check in at voting sites is conducted largely conducted through electronic databases and information systems. In particular, the State and county boards of elections use the State Election Information Management System (SEIMS), which is a networked, computerized system that every election official and poll worker uses to conduct the voting process at the nearly 3,000 voting locations throughout this state.

To use one-stop early voting as an example, when a voter checks in to vote, a poll worker locates that person's information in SEIMS and, from the SEIMS system, the poll worker prints a One-Stop Application Form, which serves as the voter's affirmation that they are eligible to vote in the election. A sample of such a form was entered into evidence at trial as SDX-35. The form is prepopulated with the voter's information, drawing from the data in SEIMS.

The process of generating this form through SEIMS is the result of computer coding, which, in basic terms, is written into the SEIMS system and which instructs the system to generate all of the contents of the form in the exact way that form will appear when printed.

Changes to election administrative forms must be done well in advance of actual voting, because software developers must code those changes into the SEIMS system, test it (to ensure it operates as intended and does not create unintended consequences in the system), and implement the coding changes with a systemwide update. Generally, changes to the SEIMS system cannot be made while voting is occurring, because it runs the risk of interfering with the voting process which, again, is being conducted using the SEIMS system.

For comparison purposes, last fall, after the language was finalized it took the State Board approximately a month to implement the changes to forms in SEIMS following this Court's Injunction.

Accordingly, in addition to being ordered to initiate changes in time, as an administrative matter, the State Board must initiate the implementation of the Court's instructions immediately, in order for those changes to appear on voters' forms in the upcoming municipal elections.

Therefore, the State Defendants respectfully request guidance from the Court as soon as possible to determine how best to fully comply with this Court's orders.

This the 22nd day of August, 2021.

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This the 22nd day of August, 2021.

/s/ Paul M. Cox
Paul M. Cox
Special Deputy Attorney General

EXHIBIT 21

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Statement on Community Success Initiative v. Moore Case

Raleigh, N.C.

Mar 31, 2022

11:14 a.m: The following is a statement from Damon Circosta, chairman of the State Board of Elections, on today's Board meeting:

"This morning, the five members of the State Board of Elections met in closed session with the Board's legal counsel to discuss the *Community Success Initiative v. Moore* case. The Board voted unanimously to direct the Attorney General's Office, the Board's litigation counsel, to file a response as soon as possible to a pending motion to stay in that case. It will ask the court how to proceed under the trial court's order. In this response, the Board will establish for the benefit of the court the urgency of the situation and timelines that should be contemplated in light of the April 22 voter registration deadline for the May 17 primary. Any voter registration applications filed by affected individuals are pending. We will take action on those following direction from the court."

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This press release is related to:

Board decisions
(/news/press-releases?field_press_release_terms_target_id=787)

Statements
(/news/press-releases?field_press_release_terms_target_id=788)

EXHIBIT 22

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 15941
COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; NORTH CAROLINA STATE CONFERENCE OF THE NAACP, Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**STATE BOARD DEFENDANTS' RESPONSE TO EMERGENCY MOTION FOR STAY PENDING APPEAL**

The North Carolina State Board of Elections and its members ("State Board Defendants") hereby respond to Legislative Defendants' emergency motion to stay the Court's final order issued on March 28, 2022 pending appeal.

State Board Defendants stand ready to continue their efforts to implement this Court's final order expeditiously, including the provision enjoining the State Board "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (Mar. 28, 2022 Order p. 64, ¶ 2) Pursuant to that mandate, the State Board has directed all county boards, among other things, not to reject pending applications for registration from applicants who are on probation, parole, or post-release supervision. Further implementation is ongoing and expected to continue in the coming days, as explained in more detail below, absent further court order.

With respect to Legislative Defendants' emergency motion for a stay, the State Board Defendants take no position and respectfully defer to the Court's discretion, but request that the Court take into account the State Board's need for certainty and consistency, and the administrative considerations that implementation presents.

BRIEF FACTUAL BACKGROUND

At an August 23, 2021 hearing, this Court expanded an injunction it had previously entered to require the State Board Defendants to ensure that all persons serving felony community supervision could register to vote and could vote. In order to implement this, the Court directed the State Board to refrain from refusing registration to any person on community supervision. The Court expressly directed the State Board to immediately implement the expanded injunction starting that day and not to wait for a written order from the Court. Pursuant to that express directive, the State Board immediately worked to implement the Court's expanded injunction. The Court would later enter an order to this same effect on August 27, 2021.

Both State Board Defendants and Legislative Defendants filed notices of appeal of the Court's above-noted order. Legislative Defendants also sought a stay from this Court of its expanded preliminary injunction, which the Court denied, and then sought a writ of supersedeas in the Court of Appeals, which was granted on September 3, 2021.

That same day, Plaintiffs sought a writ of supersedeas in the Supreme Court of North Carolina. On September 10, 2021, the Supreme Court issued an order on plaintiffs' petition for writ of supersedeas. The Supreme Court ordered that "the status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections." (Ex. A, N.C. Sup. Ct. Order, No. 331P21-1 (Sept. 10, 2021)). The Court also ordered that the Court of Appeals' stay entered on September 3, 2021, "be implemented prospectively only, meaning that any person registered to vote at a time when it was legal for that person to register under then-valid court orders as they were interpreted at the time, shall remain legally registered voters." The Court directed the State Board not to

remove from any database any person legally registered under the expanded preliminary injunction between August 23, 2021 and Sept. 3, 2021, and declared those individuals werere legally registered voters until further order was entered. Finally, the Supreme Court otherwise denied the petition for writ of supersedeas without prejudice.

The appeal of the expanded preliminary injunction order remains pending in the Court of Appeals. The parties sought an order from the Court of Appeals to have that appeal held in abeyance until this Court issued its final order. Based upon that motion, the Court of Appeals extended the deadline for the State Board Defendants and Legislative Defendants to file their Appellant Briefs until May 18, 2022.

This Court issued its final order this past Monday, March 28, 2022. Therein, the Court declared the statute challenged by this litigation, N.C.G.S. § 13-1, in violation of the state Constitution's Equal Protection and Free Speech Clauses, to the extent it denied franchise to persons on felony probation, parole, or post-release supervision. The Court also enjoined the State Board and others "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (Mar. 28, 2022 Order p. 64, ¶ 2) The Court clarified that "if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina." (*Id.* at 65, ¶ 3)

On the same day this Court issued its order, March 28, 2022, absentee ballots distribution for the May 17, 2022 primary began.[1] *See* N.C.G.S. § 163-227.10(a) (providing that absentee ballots are distributed 50 days before the primary). Voter registration will end on April 22, 2022,[2]

[1] Mailing of Absentee Ballots | 2022 Statewide Primary | NCSBE (Last visited Mar. 31, 2022).
[2] Voter Registration Deadline | 2022 Statewide Primary | NCSBE (Last visited Mar. 31, 2022).

see id. § 163-82.6(d) (providing that voter registration ends 25 days prior to the primary), and early voting for the primary starts on April 28, 2022,[3] *see id.* § 163-227.2(b).

Legislative Defendants filed a notice of appeal and an emergency motion for stay pending appeal on March 30, 2022.

DISCUSSION

I. Administrative Steps Already Taken by the State Board to Comply with this Court's Order.

Pursuant to this Court's March 28, 2022 order and within less than 24 hours of receiving it, the State Board sent instructions to county boards to comply with that order by ensuring that no one will be denied registration status. (*See* Ex. B, Mar. 29, 2022 Email to Cty. Bds.) The State Board instructed the county boards not to generate or send felon denial letters to voters and not to send removal letters to voters who are on probation, parole, or post-release supervision. The Board also instructed county boards to hold, pending further instruction, any registration applications they receive from voters who are on probation, parole, or post-release supervision.

Subsequent to that email, the State Board suspended the automated removal process for non-incarcerated felons who were already in the removal queue in the Statewide Election Information Management System ("SEIMS") software. In accordance with N.C.G.S. 163-82.14(c)(3), 35 days after a felon removal letter is generated, SEIMS will automatically process the record for removal; to prevent this automated process from removing non-incarcerated felons who were already in the removal queue, the State Board created a customized process that it applied to the over 800 voter registration records that were in the removal queue. The State Board also instructed the county boards to research individual cases where a voter registration was in the

[3] One-Stop Early Voting Period Starts | 2022 Statewide Primary | NCSBE (last visited Mar. 31, 2022).

removal queue and the State Board could not match it to the felon matching list by first name, last name and birthdate; only after the county boards conducted an individual review and determined that the voter was currently incarcerated would the registration be processed for removal.

These steps demonstrate compliance with the Court's March 28, 2022 order: no one is being denied registration status and no one is being denied the opportunity to vote. The State Board made it clear to county boards that the directive to "hold" registration applications from voters on probation, parole, or post-release supervision was only temporary directing those boards to proceed in this manner "until further instruction," to allow the Board to ensure that its actions were appropriate.

As noted above, the State Board remains ready to fully comply with the Court's order and respectfully invites further direction from the Court, if the Court believes the State Board's manner of compliance requires adjustment.

The State Board Defendants complied with the Court's order in this manner in a good-faith attempt to avoid any possible conflict with the Supreme Court's September 10, 2021 order. The Board recognizes the preliminary injunction stayed by the Supreme Court has now merged into the permanent injunction, and the appeal of the preliminary injunction is mooted. But there is no order dismissing that appeal. As previously stated, the Supreme Court's order required that the "status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections." (Ex. A, N.C. Sup. Ct. Order) Though the appeal itself may be moot, there has been no action by the appellate courts to dispose of that appeal, which remains pending. The State Board welcomes any further guidance from this Court on this issue as

well, and continues to endeavor to be in full compliance with the Court's order and in a manner that is acceptable to the Court.

As explained above, the State Board Defendants believe in good faith that it is currently in compliance with the Court's March 28, 2022 order. If the Court concludes otherwise, the State Board Defendants hereby seek the Court's guidance, as it is ready and willing to comply.

II. Administrative Steps Required for the Board to Fully Implement Voter Registration for Non-Incarcerated Felons Who Are on Probation, Parole, or Post-Release Supervision.

In considering Legislative Defendants' emergency motion to stay, the State Board Defendants wish to apprise the Court of the administrative steps required to comply with the Court's order with full implementation of voter registration for non-incarcerated felons who are on probation, parole, or post-release supervision. The State Board Defendants provide the following to give the Court information about the complexity of the task at hand. The State Board Defendants are happy to provide additional details, along with supporting documents, to the Court at its request.

Implementing a change in felon registration processing takes considerable time and effort and largely depends on proper administration by the 100 county boards of elections' staff. There are many moving parts that may not be obvious to the external observer. Also, having multiple forms in circulation and contradictory guidance within a short period of time creates a risk of confusion both to voters and county administrators. Changes to forms and processes in rapid succession can create confusion among voters as well as elections officials, who conduct voting across the state, and for whom training is already underway.

Three elections will occur this year—a May 17 primary, July 26 municipal election and any second primaries, and November 8 general election—and any change in the qualifications to

vote, especially if there were multiple changes in course during this time, could disrupt the orderly administration of the election. The voter registration deadline for the upcoming May 17 primary is April 22,[4] and, as explained in the paragraphs that follow, it is essential that the State Board receive clarity prior to that time as to what the qualifications to vote will be for elections this year.

Changes to forms coded into SEIMS are difficult to reverse. Those changes can take up to a week or more to make, and include altering one-stop applications and authorization-to-vote forms. These applications and forms are populated through the State Board's e-pollbook system in SEIMS used by county boards during early voting and on Election Day. Absentee voting is already underway for the May primary, and absentee envelopes have been procured and printed and sent out to voters who have requested absentee ballots. State Board staff estimate that to source materials, build, reprint and deliver new absentee envelopes could take 10 to 12 weeks.

Additionally, printing and distributing revised forms can take a significant amount of time and, because of that, there is a risk of having multiple versions of forms in circulation. There are likely hundreds of thousands of voter registration forms in circulation. They are in every county board office, Department of Motor Vehicle ("DMV") office, local Department of Social Services and WIC office, and in the hands of dozens of political and civic organizations throughout the state. The State Board has been working to resolve a backlog of registration forms, which resulted, in part, from the need to replace the stock of previous forms due to changes required by the earlier preliminary injunction in this matter. If the State Board were to revise those forms and order new ones, it would take significant time, and substantial funds that have not been allocated for that purpose, to completely replace forms in circulation. If the current forms were withdrawn, it would likely mean that voter registration forms would not be available to many individuals wanting to

[4] *See* n.2 *supra*.

register, and groups conducting voter registration, in advance of the upcoming April 22 voter registration deadline.

It is not just State Board systems that would need to be changed. The State Board would need to work with the Department of Public Safety ("DPS") to have them update the data feed the State Board receives to remove from the felon reports those who are now eligible to register under the trial court's order. Much of the felon removal process is automated and does not parse the supervision status of a felon. There are a number of steps that the State Board has to work through to identify the population at issue to administer either removals/denials or approvals. When changes to the felon eligibility requirements are made, the workaround process of ensuring all eligible individuals are permitted to register, while also insuring ineligible individuals are not permitted to register, is highly time- and labor-intensive, and requires the involvement of local county boards, particularly in cases where a manual review of individual records is required due to gaps data matching.

The State Board will also need to work with the DMV to update its system, which is used for online voter registration. A large portion of registration occurs via online registration through the DMV. The DMV and its vendor typically require extensive documentation and months for the State Board to accomplish changes to the online voter registration system. The State Board will also have to ensure that DHHS and the many county DSS and WIC agencies that it oversees get the right information and implement the changes correctly when they are conducting registration. The same is true with local DMV offices.

CONCLUSION

As explained above, the State Board Defendants are currently in compliance with the Court's March 28, 2022. If the Court believes otherwise, the State Board Defendants hereby seek

the Court's guidance, and the State Board is ready and willing to comply. The State Board Defendants take no position concerning the Legislative Defendants' emergency motion for stay. The State Board Defendants take this opportunity to outline administrative steps that will be required to comply with the Court's order with full implementation of voter registration for non-incarcerated felons who are on probation, parole, or post-release supervision in ruling on that motion.

Respectfully submitted, this the 1st day of April, 2022.

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This the 1st day of April, 2022.

Mary Carla Babb
Special Deputy Attorney General

EXHIBIT A

North Carolina Supreme Court Order, No. 331P21-1 (Sept. 10, 2021)

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * *

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; AND SHAKITA NORMAN	)	
	)	WAKE COUNTY
v.	)	
TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAVID C. BLACK, IN HIS OFFICIAL	)	

CAPACITY AS MEMBER OF THE NORTH)
CAROLINA STATE BOARD OF)
ELECTIONS)

* * * * * * * * * * * * * * * * * * *

ORDER

On Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay, this Court orders that the status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections. Further, the Court orders that the Court of Appeals stay issued 3 September 2021 be implemented prospectively only, meaning that any person who registered to vote at a time when it was legal for that person to register under then-valid court orders as they were interpreted at the time, shall remain legally registered voters. The North Carolina Board of Elections shall not remove from the voter registration database any person legally registered under the expanded preliminary injunction between 23 August 2021 and 3 September 2021, and those persons are legally registered voters until further Order.

In all other respects, Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay is denied without prejudice.

By order of the Court in conference, this the 10th day of September 2021.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10 day of September 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

Copy to:
North Carolina Court of Appeals
Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Nathan A. Huff, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Whitley J. Carpenter, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Terence Steed, Assistant Attorney General, For State Board of Elections - (By Email)
Mr. Stephen D. Feldman, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Matthew W. Sawchak, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative, et al.
Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections - (By Email)
Mr. Jared M. Butner, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

EXHIBIT B

Email from
N.C. State Board of Elections
General Counsel Katelyn Love
to
County Boards of Elections
(Mar. 29, 2022)

Babb, Mary Carla (Hollis)

From: Love, Katelyn <Katelyn.Love@ncsbe.gov>
Sent: Tuesday, March 29, 2022 4:19 PM
Cc: SBOE_Grp - Legal
Subject: Update Regarding Court Order Restoring Felon Voting Rights
Attachments: 2022.03.28 Final Judgment and Order 19 CVS 15941.pdf

Directors (bcc State Board members),

Yesterday afternoon, a North Carolina Superior Court ruled that the state law restricting persons with felony convictions who are not incarcerated from voting or registering to vote is unconstitutional. Under this ruling, people who are serving a felony sentence outside a jail or prison are now eligible to register to vote in North Carolina. This includes people on felony probation, parole, or post-release supervision. The decision is attached.

We are currently working to determine how to implement this decision in light of (1) an imminent appeal of the decision; and (2) an apparently conflicting order from the North Carolina Supreme Court last year in the same case. That decision ordered that "the status quo be preserved" pending appeal of the expanded preliminary injunction, an appeal that is still ongoing.

Until further instruction, county boards of elections should keep registration applications of voters who are on probation, parole, or post-release supervision it receives in the Incomplete Queue. Do not generate or send felon denial letters to these voters, regardless of whether the application was received before or after Monday, March 28. Do not send a removal letter to voters who are on probation, parole, or post-release supervision.

To complete this process, counties can refer to the DOC Felon County List, the DOC Felon State Matching List and the N.C. DPS Offender Search to confirm a registrant's status. The DOC Felon County List contains a "DOC Placement" column that will show whether the person is an inmate or on probation/parole. If a person is an **inmate** serving a felony conviction, they are ineligible to register to vote and you may proceed with your regular processes. Note that the DOC Felon State Matching List does not show whether a person is an inmate; therefore, you will need to also refer to the DOC Felon County List before processing a denial or a removal.

For registrants with **any status other than inmate**, the county should hold these registrations in the Incomplete Queue until further guidance is available. Counties should continue with the felony denial and removal processes for those classified as an inmate.

For the federal felon records found on Filezilla, the counties may use the Federal Bureau of Prisons' Search. If a felon's record identifies a prison in the "Location" column, they are ineligible to register to vote and may be removed/denied registration per current processes.

Counties should not remove or deny a voter registration application unless they can confirm the person is an inmate serving a felony conviction. If you are unsure, please keep the record in the Incomplete Queue.

We will send further instructions as soon as possible to address how to ultimately process these records in the Incomplete Queue, and whether registration and voting forms will be updated.

Sincerely,

Katelyn Love | General Counsel
o: 919-814-0756 | f: 919-715-0135

NORTH CAROLINA
STATE BOARD OF ELECTIONS

EXHIBIT 23

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 15941
COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; NORTH CAROLINA STATE CONFERENCE OF THE NAACP, Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**STATE BOARD DEFENDANTS' RESPONSE TO NOTICE OF ALLEGED VIOLATION OF MARCH 28, 2022 INJUNCTION AND REQUEST FOR EMERGENCY HEARING**

The North Carolina State Board of Elections and its members ("State Board Defendants") hereby respond to Plaintiffs' Notice of Violation of March 28, 2022 Injunction and Request for Emergency Hearing.

Plaintiffs' allegations of violations of the Court's final order are unwarranted and meritless. State Board Defendants stand ready to continue their efforts to implement this Court's final order expeditiously, including the provision enjoining the State Board "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (Mar. 28, 2022 Order p. 64, ¶ 2) Pursuant to that mandate, the State Board has directed all county boards, among other things, not to reject pending applications for registration from applicants who are on probation, parole, or post-release supervision. Further implementation is ongoing and expected to continue in the coming days, absent further court order.

For these and other reasons detailed below, Plaintiffs' Notice alleging violations is meritless and no emergency hearing is necessary. Nonetheless, in responding to Plaintiffs' Notice, the State Board seeks and invites any further guidance the Court considers appropriate as to its methods of compliance.

BRIEF FACTUAL BACKGROUND

At an August 23, 2021 hearing, this Court expanded an injunction it had previously entered to require the State Board Defendants to ensure that all persons serving felony community supervision could register to vote and could vote. In order to implement this, the Court directed the State Board to refrain from refusing registration to any person on community supervision. The Court expressly directed the State Board to immediately implement the expanded injunction starting that day and not to wait for a written order from the Court. Pursuant to that express directive, the State Board immediately worked to implement the Court's expanded injunction. The Court would later enter an order to this same effect on August 27, 2021.

Both State Board Defendants and Legislative Defendants filed notices of appeal of the Court's above-noted order. Legislative Defendants also sought a stay from this Court of its expanded preliminary injunction from this Court, which the Court denied, and then sought a writ of supersedeas in the Court of Appeals, which was granted on September 3, 2021.

That same day, Plaintiffs sought a writ of supersedeas in the Supreme Court of North Carolina. On September 10, 2021, the Supreme Court issued an order on plaintiffs' petition for writ of supersedeas. The Supreme Court ordered that "the status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections." (Ex. A, N.C. Sup. Ct. Order, No. 331P21-1 (Sept. 10, 2021)). The Court also ordered that the Court of Appeals' stay entered on September 3, 2021, "be implemented prospectively only, meaning that any person registered to vote at a time when it was legal for that person to register under then-valid court orders as they were interpreted at the time, shall remain legally registered voters." The Court directed the State Board not to

remove from any database any person legally registered under the expanded preliminary injunction between August 23, 2021 and Sept. 3, 2021, and declared those individuals were legally registered voters until further order was entered. Finally, the Supreme Court otherwise denied the petition for writ of supersedeas without prejudice.

The appeal of the expanded preliminary injunction order remains pending in the Court of Appeals. The parties sought an order from the Court of Appeals to have that appeal held in abeyance until this Court issued its final order. Based upon that motion, the Court of Appeals extended the deadline for the State Board Defendants and Legislative Defendants to file their Appellant Briefs until May 18, 2022.

This Court issued its final order this past Monday, March 28, 2022. Therein, the Court declared the statute challenged by this litigation, N.C.G.S. § 13-1, in violation of the state Constitution's Equal Protection and Free Speech Clauses, to the extent it denied franchise to persons on felony probation, parole, or post-release supervision. The Court also enjoined the State Board and others "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (Mar. 28, 2022 Order p. 64, ¶ 2) The Court clarified that "if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina." (*Id.* at 65 ¶ 3)

Legislative Defendants filed a Notice of Appeal and an Emergency Motion for Stay pending appeal on March 30, 2022. Contemporaneous with the filing of this Response, State Board Defendants are filing a Response to Legislative Defendants' Emergency Motion for Stay.

On March 31, 2022, Plaintiffs filed their Notice of Violation of March 28, 2022 Injunction and Request for Emergency Hearing, contending incorrectly that the State Board Defendants have failed to comply with this Court's March 28, 2022 order.

DISCUSSION

The State Board Has Already Taken Administrative Steps to Comply with this Court's Order.

Pursuant to this Court's March 28, 2022 order and within less than 24 hours of receiving it, the State Board sent instructions to county boards to comply with that order by ensuring that no one will be denied registration status. (*See* Ex. B, Mar. 29, 2022 Email to Cty. Bds.) The State Board instructed the county boards not to generate or send felon denial letters to voters and not to send removal letters to voters who are on probation, parole, or post-release supervision. The Board also instructed county boards to hold, pending further instruction, any registration applications they receive from voters who are on probation, parole, or post-release supervision.

Subsequent to that email, the State Board suspended the automated removal process for non-incarcerated felons who were already in the removal queue in the Statewide Election Information Management System ("SEIMS") software. In accordance with N.C.G.S. 163-82.14(c)(3), 35 days after a felon removal letter is generated, SEIMS will automatically process the record for removal; to prevent this automated process from removing non-incarcerated felons who were already in the removal queue, the State Board created a customized process that it applied to the over 800 voter registration records that were in the removal queue. The State Board also instructed the county boards to research individual cases where a voter registration was in the removal queue and the State Board could not match it to the felon matching list by first name, last name and birthdate; only after the county boards conducted an individual review and determined that the voter was currently incarcerated would the registration be processed for removal.

Despite what Plaintiffs contend in their Notice, these steps demonstrate compliance with the Court's March 28, 2022 order: no one is being denied registration status and no one is being denied the opportunity to vote. The State Board made it clear to county boards that the directive

to "hold" registration applications from voters on probation, parole, or post-release supervision was only temporary, directing those boards to proceed in this manner "until further instruction," to allow the Board to ensure that its actions were appropriate.

As noted above, the State Board remains ready to fully comply with the Court's order and respectfully invites further direction from the Court, if the Court believes the State Board's manner of compliance requires adjustment.

The State Board Defendants complied with the Court's order in this manner in a good-faith attempt to avoid any possible conflict with the Supreme Court's September 10, 2021 order. The Board recognizes the preliminary injunction stayed by the Supreme Court has now merged into the permanent injunction, and the appeal of the preliminary injunction is mooted. But there is no order dismissing that appeal. As previously stated, the Supreme Court's order required that the "status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections." (Ex. A, N.C. Sup. Ct. Order) Though the appeal itself may be moot, there has been no action by the appellate courts to dispose of that appeal, which remains pending. The State Board welcomes any further guidance from this Court on this issue as well, and continues to endeavor to be in full compliance with the Court's order and in a manner that is acceptable to the Court.

Plaintiffs are incorrect in suggesting that the State Board Defendants' understanding of the Supreme Court's September 10, 2022 conflicts with the statement in the Joint Motion to Hold Briefing Deadlines in Abeyance filed in the appeal of the expanded preliminary injunction pending in the Court of Appeals. (*See* Joint Motion at ¶ 4, attached to Plns.' Not. of Violation) Specifically,

in that motion, it was noted that "[t]he Superior Court's final judgment, which could issue at any time, *will likely moot or at least alter the issues in this appeal*." (*Id.* (emphasis added)) This is consistent with what is detailed above about the Supreme Court's order. State Board Defendants welcome any further guidance the Court deems appropriate.

Finally, Plaintiffs contend in their Notice that "[t]his is not the first time the State Board Defendants have failed to comply with an injunction of this Court in this case." (Not. of Violation, ¶ 6) Plaintiffs do not say what this statement refers to. State Board Defendants surmise that Plaintiffs may be referencing State Board Defendants revision of its voter registration forms and other documents in an attempt to comply with this Court's preliminary injunction entered on September 4, 2020, based upon the parties' original interpretation of order.

To the extent Plaintiffs are suggesting that the State Board previously, intentionally violated an order of this Court is flatly wrong and mischaracterizes what occurred during the Board's implementation of the September 4, 2020 preliminary injunction. After that injunction was issued, the State Board worked directly with the Plaintiffs to ensure the proper interpretation that preliminary injunction. Despite what Plaintiffs now imply in their Notice, their counsel previously told this Court that "the plaintiffs also don't believe that any errors in the -- in the forms following the Court's injunction were intentional." (Ex. C, Trial Tr. Vol. 4 p. 800) In fact, the State Board worked with Plaintiffs' counsel to ensure that the language for the revised forms was appropriate. (*See id.* at 798) Indeed, Plaintiffs' counsel acknowledged that they "did work with counsel for the defendants to -- in connection with the language that appears, I -- I believe, on all of the forms[.]" (*Id.* at 800)

State Board Defendants have acted in good faith at all times, and are not in violation of this Court's final order.

CONCLUSION

As explained above, the State Board is currently in compliance with the Court's March 28, 2022 order. Plaintiffs' Notice of Violation is meritless and no emergency hearing is necessary. If the Court believes otherwise, the State Board Defendants hereby seeks the Court's guidance and will continue to comply with court directives.

Respectfully submitted, this the 1st day of April, 2022.

JOSHUA H. STEIN
Attorney General

Mary Carla Babb
Special Deputy Attorney General
N.C. State Bar No. 25731
mcbabb@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Fax: 919-716-6763

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email and was addressed to the following counsel:

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Peter Patterson
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Counsel for Legislative Defendants

This the 1st day of April, 2022.

Mary Carla Babb
Special Deputy Attorney General

EXHIBIT A

North Carolina Supreme Court Order, No. 331P21-1 (Sept. 10, 2021)

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * *

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; AND SHAKITA NORMAN	)	
	)	WAKE COUNTY
v.	)	
TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAVID C. BLACK, IN HIS OFFICIAL	)	

CAPACITY AS MEMBER OF THE NORTH)
CAROLINA STATE BOARD OF)
ELECTIONS)

* * * * * * * * * * * * * * * * * * *

ORDER

On Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay, this Court orders that the status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections. Further, the Court orders that the Court of Appeals stay issued 3 September 2021 be implemented prospectively only, meaning that any person who registered to vote at a time when it was legal for that person to register under then-valid court orders as they were interpreted at the time, shall remain legally registered voters. The North Carolina Board of Elections shall not remove from the voter registration database any person legally registered under the expanded preliminary injunction between 23 August 2021 and 3 September 2021, and those persons are legally registered voters until further Order.

In all other respects, Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay is denied without prejudice.

By order of the Court in conference, this the 10th day of September 2021.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10 day of September 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

Copy to:
North Carolina Court of Appeals
Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Nathan A. Huff, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al. - (By Email)
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Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Terence Steed, Assistant Attorney General, For State Board of Elections - (By Email)
Mr. Stephen D. Feldman, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Matthew W. Sawchak, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For Community Success Initiative, et al. - (By Email)
Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative, et al.
Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections - (By Email)
Mr. Jared M. Butner, Attorney at Law, For Moore, Timothy K., et al - (By Email)
Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

EXHIBIT B

Email from
N.C. State Board of Elections
General Counsel Katelyn Love
to
County Boards of Elections
(Mar. 29, 2022)

Babb, Mary Carla (Hollis)

From: Love, Katelyn <Katelyn.Love@ncsbe.gov>
Sent: Tuesday, March 29, 2022 4:19 PM
Cc: SBOE_Grp - Legal
Subject: Update Regarding Court Order Restoring Felon Voting Rights
Attachments: 2022.03.28 Final Judgment and Order 19 CVS 15941.pdf

Directors (bcc State Board members),

Yesterday afternoon, a North Carolina Superior Court ruled that the state law restricting persons with felony convictions who are not incarcerated from voting or registering to vote is unconstitutional. Under this ruling, people who are serving a felony sentence outside a jail or prison are now eligible to register to vote in North Carolina. This includes people on felony probation, parole, or post-release supervision. The decision is attached.

We are currently working to determine how to implement this decision in light of (1) an imminent appeal of the decision; and (2) an apparently conflicting order from the North Carolina Supreme Court last year in the same case. That decision ordered that "the status quo be preserved" pending appeal of the expanded preliminary injunction, an appeal that is still ongoing.

Until further instruction, county boards of elections should keep registration applications of voters who are on probation, parole, or post-release supervision it receives in the Incomplete Queue. Do not generate or send felon denial letters to these voters, regardless of whether the application was received before or after Monday, March 28. Do not send a removal letter to voters who are on probation, parole, or post-release supervision.

To complete this process, counties can refer to the DOC Felon County List, the DOC Felon State Matching List and the N.C. DPS Offender Search to confirm a registrant's status. The DOC Felon County List contains a "DOC Placement" column that will show whether the person is an inmate or on probation/parole. If a person is an **inmate** serving a felony conviction, they are ineligible to register to vote and you may proceed with your regular processes. Note that the DOC Felon State Matching List does not show whether a person is an inmate; therefore, you will need to also refer to the DOC Felon County List before processing a denial or a removal.

For registrants with **any status other than inmate**, the county should hold these registrations in the Incomplete Queue until further guidance is available. Counties should continue with the felony denial and removal processes for those classified as an inmate.

For the federal felon records found on Filezilla, the counties may use the Federal Bureau of Prisons' Search. If a felon's record identifies a prison in the "Location" column, they are ineligible to register to vote and may be removed/denied registration per current processes.

Counties should not remove or deny a voter registration application unless they can confirm the person is an inmate serving a felony conviction. If you are unsure, please keep the record in the Incomplete Queue.

We will send further instructions as soon as possible to address how to ultimately process these records in the Incomplete Queue, and whether registration and voting forms will be updated.

Sincerely,

Katelyn Love | General Counsel
o: 919-814-0756 | f: 919-715-0135

NORTH CAROLINA
STATE BOARD OF ELECTIONS

EXHIBIT C

CSI v. Moore, No. 19 CVS 15941
Excerpts from Trial Transcript, Volume 4
(Aug. 19, 2021)

IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMMY LOCKLEAR; SUSAN MARION; HENRY HARRISON; and SHAKITA NORMAN, Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; KENNETH RAYMOND, in his official capacity as member of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as member of the North Carolina State Board of Elections, Defendants.	WAKE COUNTY 19 CVS 15941

TRANSCRIPT - THREE-JUDGE PANEL TRIAL
Thursday, August 19, 2021
Volume 4 of 4

Transcript of proceedings in the General Court of Justice, Superior Court Division, Wake County, North Carolina at the August 16, 2021, Civil Session, before the Honorables Lisa C. Bell, John M. Dunlow, and Keith O. Gregory, Judges Presiding.

Tammy L. Johnson, CVR-CM-M
Official Court Reporter
Tenth Judicial Circuit
Wake County, North Carolina

was that predicating franchise on the basis of financial obligations was a wealth-based voting, which is prohibited. So I wanted the record to -- we -- we wanted the record to reflect that.

JUDGE GREGORY: That's correct.

JUDGE BELL: Judge Dunlow, did you have anything you wanted to add, or --

JUDGE DUNLOW: I do not wish to add anything.

JUDGE BELL: -- clarification? Judge Gregory, any clarification on that?

JUDGE GREGORY: No. You said everything that we've discussed.

JUDGE BELL: For counsel that was present, do you wish to add anything in terms of what was discussed?

MR. COX: This is Paul Cox for the State Board of Elections. I would just say we take the Court's direction, and I want to reiterate what Your Honor said at the beginning, is that certainly this was not done with the intention to thwart the Court's order and, in fact, we worked with the plaintiffs' counsel in crafting the language and we will -- we will endeavor to get this changed to the Court's satisfaction immediately.

I -- I will -- I would just simply raise for the record there -- there -- we'll just need to work through this with the Department of Public Safety because the State

Board of Elections has no way of identifying the population that doesn't have their supervision term extended and -- and may be on their initial term and only on their initial term by reason of a financial obligation. We'll just need to work through that.

There -- the reason I raise that is because, you know, the current process brings a data feed in from DPS to determine who -- who has to be sent a denial of registration letter, and so we -- we will need to work with the Department of Public Safety to determine whether it's possible to -- I don't know whether it's possible. I hope it's possible to identify this population of people that were not included in the language earlier and to ensure that that population is not informed of their denial of registration. I guess that's -- that's all I have to add.

I guess the only other thing would be, you know, we -- just to put on the record that in crafting the language, the State Board is always very sensitive to making sure that its language is not confusing to a voter and does not lead a voter to do something that may be illegal, so, you know, a lot of care and effort went into ensuring that, and, you know, we will make this change and -- consistent with the Court's order. Thank you.

JUDGE BELL: All right. Thank you, Mr. Cox.

MR. JONES: Could we just have one minute?

JUDGE BELL: Uh-huh.

MR. JONES: First of all, I'll be the third to say that the plaintiffs also don't believe that any errors in the -- in the forms following the Court's injunction were intentional. Mr. Cox is right, that the plaintiffs' counsel did work with counsel for the defendants to -- in connection with the language that appears, I -- I believe, on all of the forms that -- that you mentioned, so I just wanted to -- to put that out there.

We certainly welcome the change to the forms because the change that -- that Your Honors described would allow more people to -- to vote, so -- so we certainly welcome that in terms of changing the forms. However, as Mr. Cox alluded to, and I know from our discussions with them last fall around these issues, my understanding is that you can change the forms to -- to say there that there is this class of people who are now able to vote, but DPS doesn't have any -- any way to identify who they are, and you heard testimony that DPS is the one who feeds information through the night feed to the State Board of Elections so that the State Board of Elections has records, lists of who is allowed to register and who's not, who is allowed to vote and who is not, who could be investigated, prosecuted, and convicted of a felony if they -- if they weren't actually allowed to vote, and so if the DPS has no

ability to identify these people, that's problematic for -- for our clients, for their clients, for this -- this population.

So in addition to confirming that -- that the forms will be changed, we would ask that -- that the defendants be given some time period, a deadline to tell us whether DPS actually believes that there is a feasible mechanism to identify the individuals who are now re-enfranchised as a result of the correct interpretation of the Court's order because without an ability to identify them, it would be -- it would very problematic for just a lot of obvious reasons, and we would potentially seek additional relief.

JUDGE BELL: Okay. Thank you. So with all of the evidence having been presented, I believe we are in a position to move to closing arguments. It is 2:35. Are you-all prepared to proceed?

MR. ATKINSON: I am, Your Honor.

JUDGE BELL: You'll be arguing for the plaintiffs, Mr. Atkinson? Will -- will you be the only one arguing for the plaintiffs, sir?

MR. ATKINSON: Yes.

JUDGE BELL: Okay. So why don't we -- do you want to take break? We're going to take a quick break and you-all are welcome to do the same and come right back in.

EXHIBIT 24

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE 2022 MAR 31 P 1:23 SUPERIOR COURT DIVISION

WAKE COUNTY, C.S.C. No. 19-CVS-15941

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.

NOTICE OF VIOLATION OF MARCH 28, 2022 INJUNCTION AND REQUEST FOR EMERGENCY HEARING

Plaintiffs submit this notice to advise that the State Board Defendants are openly violating this Court's March 28, 2022 Final Judgment and Order, specifically its order enjoining Defendants and their agents from preventing North Carolinians from registering to vote based on felony supervision. In light of the State Board Defendants' refusal to comply with the Court's injunction and the upcoming election, Plaintiffs request an emergency hearing at the Court's earliest convenience, today if possible. In support, Plaintiffs state as follows:

1. On March 28, 2022, this Court issued its Final Judgment and Order declaring N.C.G.S. § 13-1's disenfranchisement of persons on felony supervision invalid under the North Carolina Constitution's Equal Protection Clause and Free Elections Clause.

2. The Court's Final Judgment and Order (at p. 64) "hereby enjoined" all Defendants and their agents from preventing persons with felony convictions "from registering to vote or voting due to [felony supervision]." The Court further stated (at p. 65) as follows: "For the avoidance of doubt, under this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina."

3. Despite this unambiguous injunction, on March 30, 2022, the State Board's General Counsel sent an email to county boards directing them not to register people if they remain on felony supervision. The State Board instructed county boards instead to "keep registration applications of voters who are on probation, parole, or post-release supervision it receives in the Incomplete Queue." Ex. A (Mar. 29, 2022 email from K. Love).

4. There is no legitimate basis for the State Board Defendants or county boards to hold registration applications from persons on felony supervision as "Incomplete" or otherwise refuse to register such persons, and doing so is an open violation of this Court's injunction. Contrary to the email from the State Board's General Counsel, an "imminent appeal" is not a valid basis to violate a court injunction. Nor does this Court's March 28 Final Judgment and Order in any way "conflict" with the North Carolina Supreme Court's previous order concerning a stay of the amended preliminary injunction order. This Court's Final Judgment and Order supersedes the Court's prior amended preliminary injunction, thus rendering the pending appeal of that preliminary injunction moot. Indeed, that is what all parties, including the State Board Defendants themselves, recently advised the Court of Appeals. *See* Ex. B (Joint Motion to Hold Briefing Deadlines in Abeyance, at ¶ 4).

5. On March 30, 2022, upon learning of the State Board's email to county boards, Plaintiffs promptly wrote to State Board Defendants' counsel requesting that the State Board Defendants' violation of this Court's injunction be immediately resolved. State Board Defendants' counsel initially advised that they would reply by 9 a.m. on March 31, but as of this filing, they still have not responded.

6. This is not the first time the State Board Defendants have failed to comply with an injunction of this Court in this case.

7. Voter registration for the 2022 primaries ends in 22 days, on April 22, 2022.

8. In light of the State Board Defendants' open violation of the Court's March 28, 2022 injunction, Plaintiffs request that an emergency hearing at the Court's earliest convenience. Plaintiffs' counsel are prepared to appear in person or via WebEx, as the Court directs.

9. The Court should take prompt action to enforce its March 28, 2022 injunction, and should order other appropriate relief to remedy the State Board Defendants' unjustifiable noncompliance and deter future noncompliance with court orders.

Respectfully submitted this the 31st day of March 2022.

FORWARD JUSTICE

/s/ Daryl Atkinson
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* Admitted pro hac vice

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 31st day of March, 2022, served a copy of the foregoing document on the parties to this action via email and was addressed to the following counsel:

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EXHIBIT 25

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2022 APR -1 AM 10:46

WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, *et al.*, Plaintiffs,	)	
v.	)	**ORDER**
TIMOTHY K. MOORE, in his official, capacity as speaker of the North Carolina House of Representatives, *et al.*, Defendants.	)	

This matter comes before the undersigned three-judge panel upon Legislative Defendants' Motion for a Stay Pending Appeal. After considering Legislative Defendants' Motion and the matters contained there, and having reviewed the submissions of the parties, the Court, in its discretion, hereby **DENIES** the Legislative Defendants' Motion.

This the 1st day of April 2022.

Lisa C. Bell, Superior Court Judge

Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

DISSENT

For the reasons stated in Legislative Defendants' Motion, I would grant the Motion for Stay Pending Appeal.

This the 1st day of April 2022.

_____
John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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Counsel for State Board Defendants

This the 1st day of April 2022.

Kellie Z. Myers
Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

EXHIBIT B

North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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From Wake
(19CVS15941)

No. P22-153

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARIUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; and SHAKITA NORMAN,
PLAINTIFFS,

V.

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS Speaker OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS President PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLOINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONSs; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

DEFENDANTS.
))

O R D E R

The following order was entered:

The motion for temporary stay and petition for writ of supersedeas filed in this cause by defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, and Phillip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, on 1 April 2022 are decided as follows: The motion temporary stay is allowed. The "Final Judgment and Order" entered by a divided three-judge panel of Wake County Superior Court on 28 March 2022 is hereby stayed pending

this Court's ruling on the petition for writ of supersedeas. The North Carolina State Board of Elections shall not order the denial of felon voter registration applications received pursuant to the 'Final Judgment and Order' but shall order such applications to be held and not acted on until further order of this Court. A ruling on the petition for writ of supersedeas will be made after the filing of the response to the petition or the expiration of the time for response if no response is filed.

By order of the Court this the 5th of April 2022.

WITNESS my hand and official seal this the 5th day of April 2022.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
Ms. Nicole J. Moss, Attorney at Law, For Anderson, Stella (as Secretary of State Board of Elections)
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative
Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative
Ms. Whitley J. Carpenter, Attorney at Law, For Community Success Initiative
Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative
Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative
Mr. Terence Steed, Assistant Attorney General, For The North Carolina State Board of Elections
Ms. Elisabeth S. Theodore, Attorney at Law, Pro Hac Vice, For Community Success Initiative
Mr. Farbod K. Faraji, Attorney at Law, For Community Success Initiative
Ms. Mary Carla Babb, Special Deputy Attorney General, For The North Carolina State Board of Elections
Mr. R. Stanton Jones, Attorney at Law, Pro Hac Vice, For Community Success Initiative
Hon. Frank Blair Williams, Clerk of Superior Court