STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 19-cv-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.

PLAINTIFFS' MOTION TO ESTABLISH A THREE-JUDGE PANEL

INTRODUCTION

Plaintiffs respectfully move for the establishment of a three-judge panel pursuant to N.C.G.S. § 1-267.1. In November 2019, Plaintiffs filed this action asserting facial constitutional challenges to North Carolina's felony disenfranchisement statute, N.C. Gen. Stat. § 13-1. In January 2020, all Defendants agreed that this case was "fit and ready" for appointment of a three-judge panel. On May 11, 2020, Plaintiffs filed a motion for summary judgment or in the alternative a preliminary injunction, seeking an injunction that would restore voting rights to roughly 60,000 people living in North Carolina communities for the November 3, 2020 general election. Plaintiffs' motion for summary judgment or a preliminary injunction is time-sensitive: if Plaintiffs prevail, these citizens must register to vote before the November election, the State Board Defendants must update their protocols, and the organizational Plaintiffs must conduct outreach to currently disenfranchised citizens about their right to vote. Any further delay in establishing a three-judge panel to adjudicate this case will irreparably prejudice Plaintiffs and tens of thousands of other North Carolinians with respect to their constitutional rights.

The current spotlight on racial inequities in the criminal justice system powerfully underscores the need to promptly establish a three-judge panel in this case. Indeed, the lack of a panel to adjudicate Plaintiffs' claims nearly seven months after this case was filed only exacerbates the perception that the justice system does not take seriously alleged violations of the constitutional rights of African Americans in North Carolina. As detailed in Plaintiffs' motion for summary judgment or a preliminary injunction, North Carolina's felony disenfranchisement law is the product of an explicitly racist effort after the Civil War to suppress the political power of African Americans, and the law continues to have its intended effect to this day. Although African Americans constitute 21.51% of North Carolina's voting-age population, they represent

42.43% of the people disenfranchised due to probation, parole, or post-release supervision. North Carolina's disenfranchisement scheme continues to have this racially discriminatory impact because, as this State's leaders have acknowledged in recent days, North Carolina continues to have a two-tiered system of criminal justice in which "African-Americans are more harshly treated, more severely punished and more likely to be presumed guilty." https://twitter.com/JusticeCBeasley/status/1267846844186603522; *see also* Statement from Attorney General Josh Stein: George Floyd, https://ncdoj.gov/statement-from-attorney-general-josh-stein-george-floyd (noting "systemic racism" in the "criminal justice system"). The grossly disproportionate disenfranchisement of African Americans resulting from these biases in the criminal justice system creates a vicious feedback loop that stymies the ability of African Americans to effect change. And disenfranchisement does more than just minimize the political power of African American communities in North Carolina; for many African Americans, "the devaluation of their lives" (*see* Stein statement) includes stripping them of the most fundamental attribute of citizenship, the right to vote. North Carolina's African American communities can wait no longer. Justice delayed will be justice denied in this case.

BACKGROUND

Plaintiffs filed the Complaint in this action on November 20, 2019, raising facial constitutional challenges to N.C. Gen. Stat. § 13-1, which denies the right to vote to individuals who are on probation, parole, or post-release supervision following a felony conviction. Defendants are the Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate (together, "Legislative Defendants"), and the State Board of Elections and its members (collectively, "State Board Defendants").

On the same day they filed their Complaint, Plaintiffs also filed a motion for an expedited scheduling order and case management order ("Motion to Expedite"). *See* Ex. B. The Motion to Expedite sought a case schedule that would ensure this case was resolved sufficiently in advance of the November 2020 elections so that tens of thousands of North Carolinians would not be unlawfully deprived of the right to vote in another election if Plaintiffs prevailed on their claims. Plaintiffs subsequently calendered the Motion to Expedite for a hearing before a single judge on February 4, 2020.

Plaintiffs filed an Amended Complaint on December 3, 2019, *see* Ex. A, and the State Board Defendants and Legislative Defendants filed answers on January 16, 2020 and January 21, 2020, respectively, *see* Exs. C, D. Although both sets of Defendants initially filed motions to dismiss the Amended Complaint, *id.*, eight days later, on January 29, 2020, all Defendants withdrew their motions to dismiss, *see* Exs. E, F.

Upon Defendants' withdrawal of their motions to dismiss, all parties agreed that this case met the criteria for appointment of a three-judge panel and that the case was "fit," "ready," and "ripe" for the appointment of a panel. Ex. G at 2; *see also* Ex. H (1/29/20 email from P. Cox stating that "the parties agree that the case is ready for assignment to a three-judge panel"). The parties further agreed to seek a continuance of the February 4 hearing that had been scheduled on Plaintiffs' Motion to Expedite, because "the parties agree[d] that Plaintiffs' Motion to Expedite should be heard and decided by the three-judge panel that is appointed, rather than a single judge." Ex. G at 2. The Court granted the requested continuance, but Plaintiffs' Motion to Expedite still has not been heard because a three-judge panel has not yet been appointed.

On May 11, 2020, Plaintiffs filed a Motion for Summary Judgment or in the Alternative a Preliminary Injunction. Ex. I. The motion seeks an injunction, either permanent or preliminary,

barring enforcement of N.C.G.S. § 13-1's disenfranchisement provisions with respect to individuals living in North Carolina communities on probation, parole, or post-release supervision. The motion is time-sensitive: Plaintiffs seek an injunction in time to restore the right to vote for such disenfranchised persons before the November 2020 general election.

Contemporaneous with filing the motion for summary judgment or a preliminary injunction, Plaintiffs submitted a letter to Judge Ridgeway renewing their request for appointment of a three-judge panel to adjudicate this case. Ex. L. Plaintiffs had previously submitted two letters requesting appointment of a panel, on November 20, 2019 and March 6, 2020. Exs. J, K. While Plaintiffs received a response to the initial letter from the Trial Administrator indicating that a panel would not be appointed until after any jurisdictional motions to dismiss were resolved, Plaintiffs have received no response to their two most recent letters, which were submitted after both sets of Defendants withdrew their motions to dismiss and consented to the appointment of a three-judge panel. Plaintiffs thus respectfully file the instant motion.

ARGUMENT

I. The Establishment of a Three-Judge Panel to President Over This Case is Mandatory Under N.C.G.S. § 1-267.1

Defendants do not dispute that this case meets the criteria for the appointment of a three-judge panel pursuant to N.C.G.S. § 1-267.1. *See* Exs. G, H. And for good reason: this suit plainly meets the statute's criteria.

N.C.G.S. § 1-267.1 provides for the appointment of a three-judge panel in any case asserting a facial constitutional challenge to a North Carolina statute. Specifically, N.C.G.S. § 1-267.1 provides, in relevant part:

> (a1) Except as otherwise provided in subsection (a) of this section, any facial challenge to the validity of an act of the General Assembly shall be transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County, organized as provided by subsection (b2) of this section.
>
> (b1) Any facial challenge to the validity of an act of the General Assembly filed in the Superior Court of Wake County … shall be assigned by the senior resident Superior Court Judge of Wake County to a three-judge panel established pursuant to subsection (b2) of this section.
>
> (b2) For each challenge to the validity of statutes and acts subject to subsection (a1) of this section, the Chief Justice of the Supreme Court shall appoint three resident superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge.

N.C.G.S. §§ 1-267.1(a1), (b1), (b2). Thus, for facial constitutional challenges, the establishment of a three-judge panel is mandatory several times over: the case "*shall* be heard and determined by a three-judge panel of the Superior Court of Wake County"; the case "*shall* be assigned by the senior resident Superior Court Judge of Wake County to a three-judge panel"; and the Chief Justice of the Supreme Court "*shall* appoint three resident superior court judges."

This lawsuit presents a "facial challenge to the validity of an act of the General Assembly"—namely, N.C.G.S. § 13-1. Plaintiffs contend that, on its face, N.C.G.S. § 13-1 violates multiple provisions of the North Carolina Constitution by withholding the restoration of voting rights from persons on "probation," "parole," or a "suspended sentence," and from persons who have received a conditional discharge (*i.e.*, post-release supervision) from incarceration in North Carolina or another state. N.C.G.S. §§ 13-1(1)-(5); *see* Ex. A (Am. Compl.); Ex. I (Plaintiff's motion for summary judgment or a preliminary injunction). The establishment of a three-judge panel to adjudicate this case is thus mandatory under § 1-267.1.

II. The Prompt Appointment of a Panel Is Essential to Avoid Severe Prejudice and to Protect the Constitutional Rights of 60,000 North Carolinians

Time is of the essence to establish a three-judge panel to adjudicate Plaintiffs' constitutional claims. Plaintiffs commenced this action nearly seven months ago, on November 20, 2019, and it is been more than four months since both sets of Defendants withdrew their motions to dismiss and agreed that the case was ready and fit for appointment of a panel. *See* Exs. E, F, G. Plaintiffs have now filed a motion for summary judgment or a preliminary injunction, seeking an injunction that would restore voting rights for persons on probation, parole, or post-release supervision for the November 2020 general elections.

Any additional delay in establishing a three-judge panel risks imperiling Plaintiffs' ability to obtain the injunctive relief sought. Indeed, under Wake County Local Rule 14.4, preliminary injunction motions must be "given priority over all other matters." It is especially urgent that this preliminary injunction motion be heard expeditiously because it concerns the fundamental right to vote of roughly 60,000 individuals living in North Carolina communities who are currently disenfranchised. "The right to vote is one of the most cherished rights in our system of government." *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Id.* (internal quotation marks omitted).

Prompt appointment of a three-judge panel is necessary to ensure that, if Plaintiffs are correct on the merits, roughly 60,000 North Carolinians—who are disproportionately African American—are not unconstitutionally denied their right to vote in another election. Indeed, while the general election is scheduled for November 3, 2020, Plaintiffs must obtain relief

sufficiently in advance of that date to enable currently disenfranchised persons to vote in the election. North Carolina's deadline to register for the general election is October 9. And extensive public education will be necessary to inform currently disenfranchised persons that they have regained their right to vote, particularly given the confusion that exists under the current law. Accordingly, prompt adjudication of the merits of this case is necessary to avoid irreparably injuring tens of thousands of North Carolinians.

WHEREFORE, Plaintiffs request that this Court declare that a three-judge panel is required for the adjudication of this case, and request that the Chief Justice of the Supreme Court appoint members of the panel consistent with N.C.G.S. §§ 1-267.1.

Respectfully submitted this the 5th day of June, 2020.

FORWARD JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants via *e-mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 5th day of June, 2020.

/s/Daryl Atkinson
Daryl Atkinson (NC Bar # 39030)

EXHIBIT A

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

Docket No. 19-cv-15941

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

Plaintiffs,

v.

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

AMENDED COMPLAINT

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

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

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

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

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

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

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N.C. Const., Art. VI, § 2, cl. 3.

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

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

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

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

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

N.C.G.S.A. § 13-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Today's Law Disproportionately Disenfranchises African Americans

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

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

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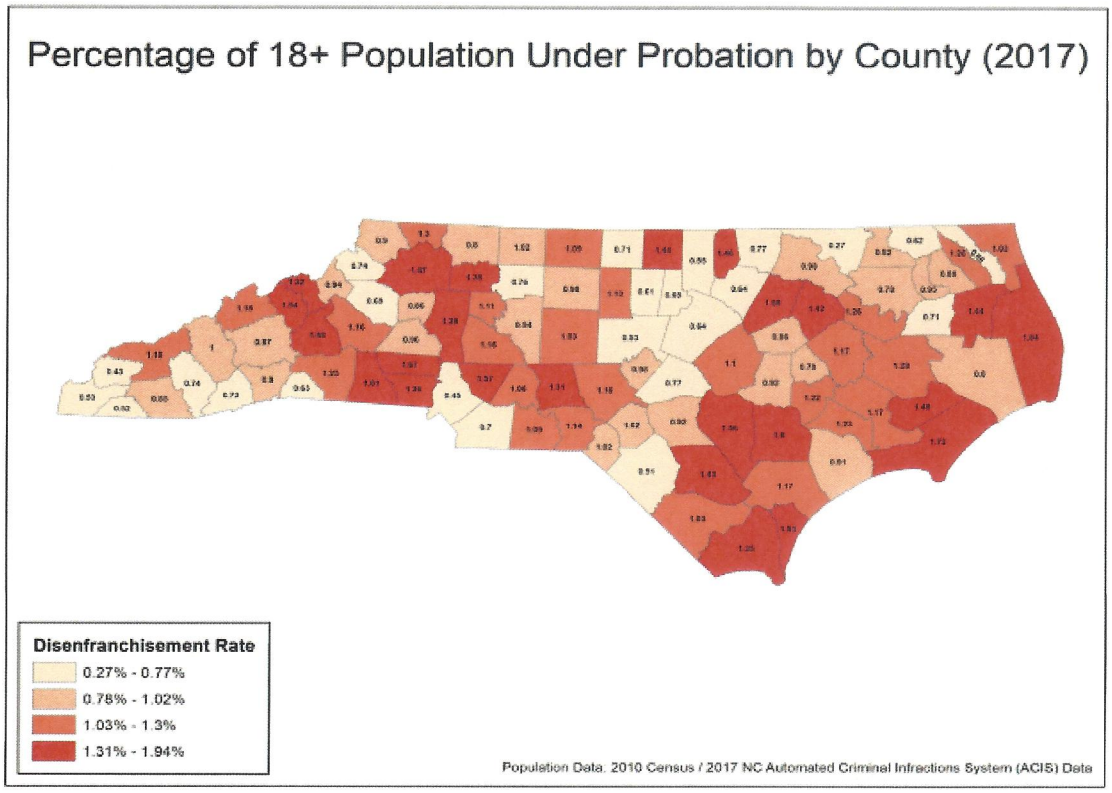
[4] https://er.ncsbe.gov/?election_dt=11/05/2019&county_id=0&office=CCL&contest=0.
[5] https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=0&office=FED&contest=0.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

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

FORWARD JUSTICE

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**Pro Hac Vice* motion forthcoming

EXHIBIT B

19 CV 015941

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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

Plaintiffs,

v.

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY OF SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY 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.

MOTION FOR EXPEDITED SCHEDULING ORDER AND CASE MANAGEMENT ORDER

Pursuant to North Carolina Rule of Civil Procedure 26(d) and this Court's inherent authority, Plaintiffs respectfully file this motion seeking an Expedited Scheduling Order and Case Management Order. In support thereof, Plaintiffs state as follows:

1. Plaintiffs filed the Complaint in this action on November 20th, 2019, challenging North Carolina's statutory scheme for disenfranshising people formerly convicted of felonies ("returning citizens"), N.C. Gen. Stat. § 13-1, because it violates the North Carolina Constitution's Free Elections Clause, Equal Protection Clause, Freedom of Speech and Assembly Clauses, and the Ban on Property Qualifications. Defendants are the Speaker of the state House and the President Pro Tempore of the state Senate (together, "Legislative Defendants"), and the State Board of Elections and its members (collectively, "State Board Defendants").

2. Plaintiffs file this Motion to Expedite the case schedule in conjunction with their Complaint.

3. In order to enable relief before the November 2020 elections, it is in the overwhelming interest of the parties and the public to resolve this case as expeditiously as possible. Based on recent estimates, if Plaintiffs were to prevail in this case, approximately 70,000 North Carolina residents who are currently disenfranchised would regain their right to vote. *See, e.g.*, Southern Coalition for Social Justice, The Freedom to Vote Felony Disenfranchisement in North Carolina (Aug. 2019), *available at* https://bit.ly/31WFtQI. Many of these individuals have been disenfranchised for years following their release from incarceratation, even though they are law-abiding members of their communities and their lives

are governed by the laws passed by elected officials. "The right to vote is one of the most cherished rights in our system of government." *Blankenship v. Bartlett*, 363 N.C. 518 (2009) (citing N.C. Const. art. I, Sec. 10). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Id.* (internal quotation marks omitted). Accordingly, an expedited case schedule is necessary to ensure that, if Plaintiffs prevail on the merits, Plaintiffs and tens of thousands of other North Carolinians do not risk suffering through another election in which they are denied their fundamental right to vote.

4. Moreover, an expedited case schedule is needed so that, if Plaintiffs prevail, there is sufficient time before the November 2020 election to reach out to affected communities, educate them on the changes in the law, and allow them time to register to vote. Individuals re-entering society following their incarceration are often difficult to reach and alerting these individuals on any newly obtained right to vote may be especially difficult given that there have been high-profile criminal prosecutions in North Carolina of people formerly convicted of felony violations who voted while on probation. *See* Lynn Bonner, *Felony charges of illegal voting dismissed for five NC residents*, News & Observer, Aug. 14, 2018, https://bit.ly/322babK.

5. An expedited case schedule is also in the interests of the State Board Defendants. The State Board Defendants, as well as local boards of elections, will benefit from having as much time as possible to process voter registrations from Plaintiffs and other individuals who regain their right to vote if Plaintiffs prevail.

6. To promote a timely resolution of this case, Plaintiffs have effectuated prompt service on Defendants and will in short order serve written discovery requests. Plaintiffs now propose the following deadlines and procedures relating to pleadings, procedures, discovery, motions practice, and trial if necessary:

- All pleadings, motions, briefs, discovery requests, and discovery responses shall be served by e-mail. Depositions may be taken upon 10 days' notice.

- Defendants shall file any motion(s) to dismiss and brief(s) in support no later than December 13, 2019. Plaintiffs shall file any opposition to any motion(s) to dismiss no later than December 23, 2019, and Defendants shall file any reply(ies) no later than January 6, 2020.[1]

- All written fact discovery shall be completed no later than January 10, 2020. The parties by agreement may continue document or written discovery beyond this deadline, but the Court will not intervene in this voluntary process except in extraordinary circumstances, and the date on which summary judgment motions are due will not be modified because of information obtained through this voluntary process.

- Expert reports shall be served no later than January 21, 2020. Those reports shall include the information stated in Rule 26(b)(4)(A)(2) of the North Carolina Rules of Civil Procedure. Rebuttal expert reports shall be served no later than February 7, 2020. Reply expert reports shall be served no later than February 18, 2020.

- All fact depositions and fact discovery shall be completed by January 31, 2020.

- Expert depositions shall be completed by February 25, 2020, which shall be the same day that all discovery shall be completed.

- Plaintiffs anticipate that this case will be appropriate for resolution on summary judgment. Any summary judgment motion(s) shall be due on March 6, 2020. Any opposition to summary judgment motion(s) shall be due on March 20, 2020, and any reply(ies) shall be due on March 27, 2020.

[1] Plaintiffs propose this extended window of time for Defendants to file any reply(ies) to accommodate for the holidays.

- Should the Court determine that this case is not appropriate for resolution on summary judgment, trial shall commence, subject to the court's availability, on April 20, 2020.

7. Plaintiffs' proposed schedule will allow adequate time for this Court to enter judgment and for any appellate review before the November 2020 general elections. The schedule proposed above is also reasonable given that there should be minimal fact and expert discovery in this case. There is no need for this case to have a drawn-out schedule, and the public interest overwhelmingly favors an expeditious resolution of this matter.

WHEREFORE, Plaintiffs request that the Court enter an order providing for the expedited case schedule set out above.

Respectfully submitted this the 20th day of November, 2019.

FORWARD JUSTICE

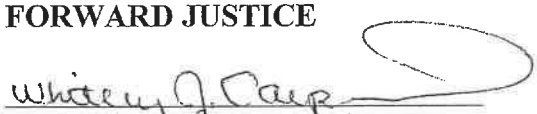

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EXHIBIT C

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY 2020 JAN 16 P 12:14 19 CVS 15941

WAKE CO., C.S.C.

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

Plaintiffs,

v.

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

Defendants.

THE STATE BOARD DEFENDANTS' MOTION TO DISMISS AND ANSWER

NOW COME Defendants the North Carolina State Board of Elections; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina The 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 a member of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as a member of the North Carolina State Board of Elections, (collectively referred to as the "State Board Defendants"), by and through the undersigned counsel and hereby submit the following motion to dismiss and answer to Plaintiffs' Amended Complaint:

MOTION TO DISMISS
N.C. R. Civ. P. 12(b)(6)

The State Board Defendants move this Court pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure to dismiss this action, in whole or in part, for failure to state a claim upon which relief can be granted.

The State Board Defendants respond to the allegations in the numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. The allegations of this Paragraph state legal conclusions and require no response from State Board Defendants. To the extent a response is required, the allegations are denied.

2. The allegations of this Paragraph contain Plaintiffs' legal conclusions, to which no response is required from the State Board Defendants. To the extent a response to any factual allegations contained in this Paragraph is required, the State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of such factual allegations, and the same are therefore denied. 3. It is admitted that the General Assembly must exercise its legislative authority consistent with the North Carolina Constitution. The North Carolina Constitution speaks for itself and serve as the best evidence of its own contents. The remaining allegations of this Paragraph state legal conclusions and require no response from the State Board Defendants.

4. The North Carolina Constitution and the court order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speak for themselves and serve as the best evidence of their own contents. The remaining allegations of this Paragraph contain Plaintiffs' legal conclusions and their general description of the cause of action, to which no response is required from the State Board Defendants.

5. The North Carolina Constitution and *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002), speak for themselves and serve as the best evidence of their own contents. The remaining allegations of this Paragraph contain Plaintiffs' legal conclusions and their general description of the cause of action, to which no response is required from the State Board Defendants.

6. The North Carolina Constitution and the referenced order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speak for themselves and serve as the best evidence of their own contents. The remaining allegations of this Paragraph contain Plaintiffs' legal conclusions and their general description of the cause of action, to which no response is required from the State Board Defendants.

7. The allegations of this Paragraph state legal conclusions and require no response from the State Board Defendants.

8. The allegations of this Paragraph state legal conclusions, recite the relief requested by Plaintiffs in this action, and require no response from the State Board Defendants.

THE PARTIES

9. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9, and the same are therefore denied.

10. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 10, and the same are therefore denied.

11. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 11, and the same are therefore denied.

12. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 12, and the same are therefore denied.

13. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 13, and the same are therefore denied.

14. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 14, and the same are therefore denied.

15. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 15, and the same are therefore denied.

16. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 16, and the same are therefore denied.

17. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 17, and the same are therefore denied.

18. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 18, and the same are therefore denied.

19. It is admitted that Defendant Timothy K. Moore is being sued in his official capacity as Speaker of the North Carolina House of Representatives.

20. It is admitted that Defendant Philip E. Berger is being sued in his official capacity as President Pro Tempore of the North Carolina Senate.

21. It is admitted that Defendant the North Carolina State Board of Elections is the agency that is charged with statutory responsibilities for the regulation and administration of elections in North Carolina.

22. It is admitted that Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections, and is sued in his official capacity only.

23. It is admitted that Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections, and is sued in her official capacity only.

24. It is admitted that Defendant Ken Raymond is a member of the North Carolina State Board of Elections, and is sued in his official capacity only.

25. It is admitted that Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections, and is sued in his official capacity only.

26. It is admitted that Defendant David C. Black is a member of the North Carolina State Board of Elections, and is sued in his official capacity only.

JURISDICTION AND VENUE

27. To the extent Plaintiffs seek a declaratory judgment regarding N.C. Gen. Stat. § 13-1, or assert a facial challenge to the constitutionality of N.C. Gen. Stat. § 13-1, it is admitted that this Court has jurisdiction over declaratory judgment claims or facial claims pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes. Otherwise denied.

28. To the extent Plaintiffs seek to assert a facial challenge to the constitutionality of N.C. Gen. Stat. § 13-1, it is admitted that such a facial challenge must be filed in or transferred to the Superior Court of Wake County and must be heard by a three-judge panel of the Superior Court of Wake County as delineated in N.C. Gen. Stat. § 1-267.1. Otherwise denied.

29. To the extent Plaintiffs seek to assert a facial challenge to the constitutionality of N.C. Gen. Stat. § 13-1, it is admitted that a three-judge court must be convened to determine the merits of a facial challenge in the manner delineated in N.C. Gen. Stat. § 1-267.1. Otherwise denied.

FACTUAL ALLEGATIONS

30. The North Carolina Constitution of 1776 speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

31. Upon information and belief, it is admitted that limitations on certain felon citizenship rights trace their roots to English common law. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

32. Upon information and belief, it is admitted that North Carolina Constitution of 1776, as amended in 1835, authorized the General Assembly to pass general laws regulating the restoration of the rights of citizenship to persons convicted of infamous crimes, which the General Assembly did in Chapter 36, 1840 N.C. Sess. Laws 68. The North Carolina Constitution of 1776, as a whole, speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

33. The law review article referenced in this Paragraph, along with the letter cited therein, speak for themselves and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

34. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

35. It is admitted, upon information and belief, that a North Carolina Constitutional Convention was convened in 1868, and that the Constitutional Convention included white and black delegates. Upon information and belief, it is further admitted that North Carolina adopted a new Constitution after the Civil War in 1868. The State Board Defendants lack knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

36. The Constitution of North Carolina of 1868 and the writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. Upon information and belief, it is however admitted that the Constitution of 1868 abolished slavery, eliminated property qualifications for voting, and provided for universal male suffrage. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

37. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. It is admitted on information and belief that in 1871 the General Assembly submitted to voters the question as to whether to call a constitutional convention, and the voters rejected the proposition. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

38. Upon information and belief, it is admitted that the North Carolina Constitutional Convention of 1875 was convened to consider constitutional revisions. The 1875 Amendments and the writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

39. Upon information and belief, it is admitted that North Carolina Constitution of 1868, as amended in 1875, contained in relevant part the following language:

> But no person who, upon conviction or confession in open Court, shall be adjudged guilty of felony, or any other crime infamous by

> the laws of this State, and hereafter committed, shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a mode prescribed by law.

All other 1875 Amendments to the North Carolina Constitution of 1868 speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

40. Upon information and belief, it is admitted that the General Assembly enacted a session law that contained the following language:

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

1876 N.C. Sess. Laws 519-20, Ch. 275. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

41. All writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

42. It is admitted that under the 1840 session law cited in this Paragraph, persons convicted of an "infamous crime" were required to petition the superior court for restoration of their rights of citizenship, and the court would rule on that petition under the standards prescribed

in that law. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

43. All writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

44. *The Democratic Handbook* referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

45. All writings and the cartoon referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

46. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

47. Upon information and belief, it is admitted that Democrats prevailed in 1898 legislative elections. All writings and Session Laws referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants admit that the General Assembly enacted 1899 N.C. Sess. Laws 658 and 681. The State Board

Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

48. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this Paragraph, and the same are therefore denied.

49. It is admitted that a new North Carolina Constitution was ratified by the voters on November 3, 1970, and became effective on July 1, 1971, *see* 1969 N.C. Sess. Laws 1258, and that the 1971 Constitution contains the following language:

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

N.C. Const., Art. VI, § 2, cl. 3.

50. The 1971 statute referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this Paragraph, and the same are therefore denied.

51. Amendments to the 1971 statute referenced in this Paragraph speak for themselves, and serves as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

52. Admitted.

53. N.C.G.S. § 13-1 speaks for itself, and serves as the best evidence of its own contents.

54. N.C.G.S. § 13-1 and the cited provisions of Chapter 15A speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

55. The statutes and the North Carolina Court of Appeals' opinion in *State v. Sellars*, 185 N.C. App. 726, 649 S.E.2d 656 (2007), referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

56. The Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

57. The Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

58. The allegations of this Paragraph state legal conclusions, and require no response from the State Board Defendants. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

59. The statutes and writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

60. The statute referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

61. The statute referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

62. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this Paragraph, and the same are therefore denied.

63. The statutes and writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

64. The ACLU Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the factual allegations of this Paragraph, and the same are therefore denied.

65. The statutes referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The allegations of this Paragraph, moreover, call for legal conclusions, and require no response from the State Board Defendants.

66. The ACLU Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

67. Upon information and belief, it is admitted that N.C.G.S. § 163-82.14(c)(3) delineates the North Carolina State Board of Elections' duties to report felony convictions to county boards of elections. That statute speaks for itself, and serves as best evidence of its own contents. The remainder of this paragraph states legal conclusions to which no response is required.

68. The North Carolina Court of Appeals opinion in *State v. Hoskins*, 242 N.C. App. 168, 775 S.E.2d 15 (2015) speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

69. The statute and the AOC form referenced in this Paragraph speak for themselves, and serve as best evidence of their own contents.

70. The statute and the post in North Carolina Criminal Law Blog referenced in this Paragraph speak for themselves, and serve as best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

71. The Southern Coalition for Social Justice Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

72. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this Paragraph, and the same are therefore denied.

73. It is admitted that one of the 2014 nonpartisan elections for District Court Judge was decided by 5 votes. It is further admitted that this Paragraph correctly reports the outcome of a 2019 Burlington city council race. It is further admitted that elections for General Assembly districts are sometimes decided by hundreds of votes, although much more often by thousands of votes. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

74. The allegations of this Paragraph state legal conclusions and require no response from the State Board Defendants. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

75. The U.S. Census Bureau statistics referenced in this Paragraph speaks for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

76. The Southern Coalition Report referenced in this Paragraph speaks for itself, and serves as the best evidence of its own contents. The State Board Defendants lack knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

77. The allegations of this Paragraph state legal conclusions and require no response from the State Board Defendants. To the extent a response is required, State Board Defendants deny that there is no legitimate, let alone compelling, government interest in waiting until a felon's sentence has been fully served before restoring their right to vote.

78. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

79. The studies referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

80. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

81. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

82. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

83. The allegations of this Paragraph state legal conclusions and require no response from the State Board Defendants. To the extent a response is required, State Board Defendants deny that North Carolina's restrictions on voting by persons convicted of a felony who have not completed their sentences are arbitrary or unconstitutional. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

84. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. Further, the allegations of this Paragraph contain factual speculations as to future events, and require no response from the State Board Defendants. The State Board Defendants deny that the State Board frequently misclassifies voters or often inaccurately removes voters from the rolls on account of a felony conviction. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

CLAIMS FOR RELIEF

COUNT ONE

85. The State Board Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the Paragraphs of this Answer, as though fully set forth herein.

86. Admitted.

87. The writings referenced in this Paragraph speak for themselves as to the history of the Free Elections Clause, and serve as the best evidence of their own contents.

88. The writings referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

89. Pennsylvania's Constitution and the Pennsylvania state case referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

90. The North Carolina Constitution of 1776, the North Carolina Constitution of 1868, and the North Carolina Supreme Court's opinion in *N.C. State Bar v. DuMont*, 304 N.C. 627, 286 S.E.2d 89 (1982) speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

91. The court order in *Common Cause v. Lewis, No.* 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speaks for itself, and serves as the best evidence of its own contents. The remaining allegations of this Paragraph call for legal conclusions, and otherwise require no response from the State Board Defendants.

92. The North Carolina Supreme Court's opinion in *Blankenship v. Bartlett*, 363 N.C. 518, 681 S.E.2d 759 (2019), speaks for itself, and serves as the best evidence of its own contents. The remaining allegations of this Paragraph call for legal conclusions, and otherwise require no response from the State Board Defendants.

93. Denied.

94. The court order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speaks for itself, and serves as the best evidence of its own contents. The remaining allegations of this Paragraph are denied.

95. Denied.

96. It is admitted that the North Carolina Constitution authorizes the General Assembly to regulate the citizenship rights' restoration for North Carolina felons, and that the General Assembly must abide by the North Carolina Constitution in its legislative activities. The remaining allegations of this Paragraph are denied.

COUNT TWO

97. The State Board Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the Paragraphs of this Answer, as though fully set forth herein.

98. N.C. Const., Art. I § 19 speaks for itself, and serves as the best evidence of its own contents.

99. The North Carolina Constitution and *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002), speak for themselves, and serve as the best evidence of their own contents. The remaining allegations of this Paragraph contain Plaintiffs' legal conclusions, to which no response is required from the State Board Defendants.

100. Denied.

101. The allegations of this Paragraph, including the legal conclusions and constitutional interpretations in it, are denied.

102. Denied that the statute in question has discriminatory intent. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining factual allegations of this Paragraph, and the same are therefore denied.

103. Denied.

104. The allegations of this Paragraph state legal conclusions to which no response is required from the State Board Defendants. The remaining factual allegations of this Paragraph are denied.

105. It is admitted that the North Carolina Constitution authorizes the General Assembly to regulate the citizenship rights' restoration for North Carolina felons, and that the General Assembly must abide by the North Carolina Constitution in its legislative activities. The remaining allegations of this Paragraph are denied.

COUNT THREE

106. The State Board Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the Paragraphs of this Answer, as though fully set forth herein.

107. N.C. Const., Art. I § 12 speaks for itself, and serves as the best evidence of its own contents.

108. N.C. Const., Art. I § 14 speaks for itself, and serves as the best evidence of its own contents.

109. The court order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speaks for itself, and serves as the best evidence of its own contents.

110. The court order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speaks for itself, and serves as the best evidence of its own contents.

111. The court order in *Common Cause v. Lewis*, No. 18 CVS 014001 (Wake Cty. Super. Ct., Sep. 03, 2019), speaks for itself, and serves as the best evidence of its own contents. The remaining allegations of this Paragraph are denied.

112. The allegations of this Paragraph state legal conclusions to which no response is required from the State Board Defendants. The remaining factual allegations of this Paragraph are denied.

113. It is admitted that the North Carolina Constitution authorizes the General Assembly to regulate the citizenship rights' restoration for North Carolina felons, and that the General Assembly must abide by the North Carolina Constitution in its legislative activities. The remaining allegations of this Paragraph are denied

COUNT FOUR

114. The State Board Defendants incorporates by reference and reassert their responses to Plaintiffs' allegations in all of the Paragraphs of this Answer, as though fully set forth herein.

115. N.C. Const. Art. I § 11 speaks for itself, and serves as the best evidence of its own contents.

116. The statutes and cases referenced in this Paragraph speak for themselves, and serve as the best evidence of their own contents. The State Board Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the factual allegations, and the same is therefore denied. The remaining allegations of this Paragraph are denied.

117. Denied.

PRAYER FOR RELIEF

The State Board Defendants admit that Plaintiffs seek the relief described in the prayer's Paragraphs a through f. The specific requests in Plaintiffs' prayer for relief require no factual response from State Board Defendants. To the extent a response is deemed necessary, State Board

Defendants deny the allegations in Plaintiffs' prayer for relief and further aver that Plaintiffs are not entitled to any relief from the answering State Board Defendants.

THE STATE BOARD DEFENDANTS DENY, GENERALLY, EACH AND EVERY ALLEGATION OF THE COMPLAINT NOT SPECIFICALLY ADMITTED, DENIED OR OTHERWISE QUALIFIED ABOVE.

FURTHER DEFENSES

The State Board Defendants plead and reserve the right to assert any further defenses against Plaintiffs that may become apparent during the course of litigation and discovery.

WHEREFORE, State Board Defendants pray for the following relief:

1. That Plaintiffs' action against the State Board Defendants be dismissed, in its entirety or in part;

2. That Plaintiffs have and recover nothing from State Board Defendants in this action;

3. That the costs, expenses and fees in this action be taxed against Plaintiffs;

4. For trial by jury on all issues so triable; and

5. For such other and further relief to the State Board Defendants as the Court deems just and proper.

Respectfully submitted, this 16th day of January, 2020.

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Attorneys for the State Board Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing **STATE BOARD DEFENDANTS' MOTION TO DISMISS AND ANSWER** was served on the parties to this action by depositing a copy of same on the date shown below with the United States Mail, first-class postage prepaid, and addressed as follows:

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This the 16th day of January, 2020.

Paul M. Cox
Special Deputy Attorney General

EXHIBIT D

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, IN HIS OFFICIAL CAPACITY OF SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; *et al.*, Defendants.	**LEGISLATIVE DEFENDANTS' MOTION TO DISMISS AND ANSWER**

NOW COME 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"), by and through undersigned counsel, and hereby submit the following motion to dismiss and answer to Plaintiffs' Amended Complaint:

MOTION TO DISMISS
N.C. R. Civ. P. 12(b)(6)

Legislative Defendants move this Court, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, to dismiss this action for failure to state a claim upon which relief can be granted.

ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

Legislative Defendants respond to the allegations in the numbered paragraphs of the Amended Complaint as follows:

INTRODUCTION

1. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

2. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

3. Legislative Defendants admit that Article VI, § 2, Clause 3 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

4. Legislative Defendants admit that Article I, § 10 of the North Carolina Constitution and *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019) speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

5. Legislative Defendants admit that Article I, § 19 of the North Carolina Constitution and *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

6. Legislative Defendants admit that Article I, §§ 12 and 14 of the North Carolina Constitution and *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019) speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

7. Legislative Defendants admit that Article I, § 11 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

8. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

THE PARTIES

9. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

10. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

11. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

12. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

13. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

14. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

15. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

16. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

17. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

18. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

JURISDICTION AND VENUE

27. Legislative Defendants admit that Articles 26 and 26A of Chapter 1 of the North Carolina General Statutes speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

28. It is admitted that the venue is proper in the Wake County. Further, Legislative Defendants admit that N.C. Gen. Stat. § 1-267.1 speaks for itself and requires no response from Legislative Defendants.

29. Legislative Defendants admit that N.C. Gen. Stat. § 1-267.1 speaks for itself and requires no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

FACTUAL ALLEGATIONS

30. Legislative Defendants admit that the 1776 North Carolina Constitution speaks for itself and requires no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required the allegations of this paragraph are denied.

31. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

32. Legislative Defendants admit that the constitutional and statutory provision referenced in this paragraph speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

33. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

34. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

35. Legislative Defendants admit that in 1868 a North Carolina constitution convention was called and North Carolina adopted a new constitution. The remaining allegations of this paragraph are legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

36. Legislative Defendants admit that the 1868 North Carolina Constitution speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

37. Legislative Defendants admit that in 1870, the General Assembly submitted to voters a proposal for a constitutional convention and this proposal was rejected by the voters. Legislative Defendants further admit that the Conservatives won control of the General Assembly in 1870. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

38. Legislative Defendants admit that the General Assembly called a constitutional convention in 1875 without submitting the question to voters. Legislative Defendants further admit that several amendments to the 1898 North Carolina Constitution were adopted in 1875, which speak for themselves and require no response from Legislative Defendants. The remaining allegations of this paragraph are legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

39. Legislative Defendants admit that the 1875 Amendments to the 1868 North Carolina Constitution speak for themselves and require no response from Legislative Defendants.

40. Legislative Defendants admit that the 1876 North Carolina law referenced in this paragraph speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this Paragraph, and the same are therefore denied.

41. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

42. Legislative Defendants admit that the 1840 North Carolina law referenced in this paragraph speaks for itself and requires no response from Legislative Defendants.

43. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

44. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

45. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

46. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this Paragraph, and the same are therefore denied.

47. Legislative Defendants admit that the North Carolina law referenced in this paragraph speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

48. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

49. Legislative Defendants admit that the Article VI, § 2, Clause 3 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

50. Legislative Defendants admit that the North Carolina session law quoted in this paragraph, 1971 N.C. Sess. Laws 902, speaks for itself and requires no response from Legislative Defendants.

51. Legislative Defendants admit that the North Carolina session law quoted in this paragraph, 1973 N.C. Sess. Laws 251, speaks for itself and requires no response from Legislative Defendants.

52. Legislative Defendants admit that N.C. Gen. Stat. § 13-1 speaks for itself and requires no response from Legislative Defendants.

53. Legislative Defendants admit that N.C. Gen. Stat. § 13-1 speaks for itself and requires no response from Legislative Defendants.

54. Legislative Defendants admit the N.C. Gen. Stat. §§ 15A-1372, -1342, and -1344 speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

55. Legislative Defendants admit the N.C. Gen. Stat. §§ 15A-1344 and *State v. Sellars,* 185 N.C. App. 726, 649 S.E.2d 656 (2007) speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

56. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

57. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

58. Legislative Defendants admit that N.C. Gen. Stat. § 13-1 speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

59. Legislative Defendants admit that N.C. Gen. Stat. § 15A-1343 speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

60. Legislative Defendants admit that N.C. Gen. Stat. § 7A-304 speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

61. Legislative Defendants admit that N.C. Gen. Stat. § 15A-1343 speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

62. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

63. Legislative Defendants admit that N.C. Gen. Stat. §§ 7A-304 and -305 speak for themselves and require no response from Legislative Defendants. Further, Legislative Defendants

lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

64. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

65. Legislative Defendants admit that N.C. Gen. Stat. §§ 15A-1342, -1343, and -1344 speak for themselves and require no response from Legislative Defendants.

66. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

67. Legislative Defendants admit that N.C. Gen. Stat. § 163.82.14 speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

68. Legislative Defendants admit that *State v. Hoskins*, 242 N.C. App. 168 S.E.2d 15 (2015) speaks for itself and requires no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

69. Legislative Defendants admit that N.C. Gen. Stat. § 15A-1022 and AOC form AOC-CR-300 speak for themselves and require no response from Legislative Defendants.

70. Legislative Defendants admit that N.C. Gen. Stat. § 15A-1368.4 speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

71. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

72. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

73. The election records cited in this paragraph speak for themselves and require no response from Legislative Defendants. Further, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

74. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

75. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

76. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

77. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

78. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

79. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

80. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

81. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

82. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

83. Legislative Defendants deny that the conditions for restoration of the right to vote for persons convicted of felonies are unconstitutional or arbitrary. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied. In addition, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

84. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

CLAIMS FOR RELIEF

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

85. Legislative Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the paragraphs of this Answer, as though fully set forth herein.

86. Legislative Defendants admit that Article I, § 10 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

87. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

88. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

89. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph, and the same are therefore denied.

90. Legislative Defendants admit that the North Carolina Constitutional provisions referenced in this paragraph and *N.C. State Bar v. DuMont*, 304 N.C. 627, 286 S.E.2d 89 (1982) speak for themselves and require no response from Legislative Defendants. Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and the same are therefore denied.

91. Legislative Defendants admit that *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019) speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

92. Legislative Defendants admit that *Blankenship v. Bartlett,* 363 N.C. 518 (2009) speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

93. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 10 of the North Carolina Constitution. The remaining allegations are denied.

94. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 10 of the North Carolina Constitution. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the remaining allegations are denied. In addition, Legislative Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this

paragraph, and the same are therefore denied. Legislative Defendants specifically deny that N.C. Gen. Stat. § 13-1 prevents "the will of the people—the majority" from prevailing.

95. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 10 of the North Carolina Constitution. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

96. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 10 of the North Carolina Constitution. The remaining allegations of this paragraph are legal conclusions, arguments, and conclusory allegations to which no response is required.

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

97. Legislative Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the paragraphs of this Answer, as though fully set forth herein.

98. Legislative Defendants admit that Article I, § 19 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

99. Legislative Defendants admit that Article I, § 19 of the North Carolina Constitution and *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) speak for themselves and require no response from Legislative Defendants. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

100. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 19 of the North Carolina Constitution.

101. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

102. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

103. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

104. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

105. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 19 of the North Carolina Constitution. The remaining allegations of this paragraph are legal conclusions, arguments, and conclusory allegations to which no response is required.

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

106. Legislative Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the paragraphs of this Answer, as though fully set forth herein.

107. Legislative Defendants admit that Article I, § 12 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

108. Legislative Defendants admit that Article I, § 14 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

109. Legislative Defendants admit that *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019) speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

110. Legislative Defendants admit that *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019) speaks for itself and requires no response from Legislative Defendants. In addition, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required.

111. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

112. This paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. The factual allegations of this paragraph are denied.

113. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, §§ 12 or 14 of the North Carolina Constitution. The remaining allegations of this paragraph are legal conclusions, arguments, and conclusory allegations to which no response is required.

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

114. Legislative Defendants incorporate by reference and reassert their responses to Plaintiffs' allegations in all of the paragraphs of this Answer, as though fully set forth herein.

115. Legislative Defendants admit that Article I, § 11 of the North Carolina Constitution speaks for itself and requires no response from Legislative Defendants.

116. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 11 of the North Carolina Constitution. Further, Legislative Defendants admit that N.C. Gen. Stat. §§ 13-1, 15A-1342, -1343, -1344, *Reiter v. Sonotone Corp.*, 442 U.S. 330,338 (1979), and *State v. Robinson*, 248 N.C. 282, 103 S.E.2d 376 (1958) speak for themselves and require no response from Legislative Defendants. Except as expressly admitted, denied.

117. Legislative Defendants deny that N.C. Gen. Stat. § 13-1 violates Article I, § 11 of the North Carolina Constitution. Further, this paragraph contains legal conclusions, arguments, and conclusory allegations to which no response is required. To the extent a response is required, the allegations are denied.

LEGISLATIVE DEFENDANTS DENY, GENERALLY, EACH AND EVERY ALLEGATION OF THE COMPLAINT NOT HEREINBEFORE SPECIFICALLY ADMITTED, DENIED, OR OTHERWISE QUALIFIED.

FURTHER DEFENSES

Legislative Defendants plead and reserve the right to assert any further defenses against Plaintiffs that may become apparent during the course of litigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, Legislative Defendants respectfully pray that the Court:

1. Dismiss Plaintiffs' action;

2. Deny Plaintiffs all relief sought by them;

3. Tax the costs, expenses, and fees in this action against Plaintiffs; and

4. Grant such other and further relief to Legislative Defendants as the Court deems just and proper.

Respectfully submitted, this 21st day of January, 2020.

JOSHUA H. STEIN
Attorney General

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Attorney for Legislative Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing **LEGISLATIVE DEFENDANTS' MOTION TO DISMISS AND ANSWER** was served on the parties by electronic mail and by depositing a copy of same on the date shown below with the United States Mail, first-class postage prepaid, and addressed as follows:

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Attorneys for Plaintiffs

This the 21st day of January, 2020.

Brian D. Rabinovitz
Special Deputy Attorney General

EXHIBIT E

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

Defendants.

LEGISLATIVE DEFENDANTS' NOTICE OF WITHDRAWAL OF MOTION TO DISMISS

NOW COME 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"), by and through undersigned counsel, and hereby give notice to the Court of the withdrawal of their Motion to Dismiss, which was filed together with their Answer to the Amended Complaint in this matter on January 21, 2020.

Respectfully submitted, this 29th day of January, 2020.

JOSHUA H. STEIN
Attorney General

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Attorney for Legislative Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email, pursuant to an agreement among the parties for electronic service, and was addressed to the following counsel:

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Attorneys for Plaintiffs

This the 29th day of January, 2020.

Brian D. Rabinovitz
Special Deputy Attorney General

EXHIBIT F

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 15941

FILED
2020 JAN 29 P 3:42
WAKE CO., C.S.C.
BY

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

Plaintiffs,

v.

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

Defendants.

THE STATE BOARD DEFENDANTS' NOTICE OF WITHDRAWAL OF MOTION TO DISMISS

NOW COME Defendants 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 a member of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections; and DAVID C. BLACK, in his official capacity as a member of the North Carolina State Board of Elections, and hereby give notice to the Court of the withdrawal of their Motion to Dismiss, which was filed together with their Answer to the Amended Complaint in this matter on January 16, 2020.

Respectfully submitted, this 29th day of January, 2020.

JOSHUA H. STEIN
Attorney General

Paul M. Cox

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Counsel for the State Board Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email, pursuant to an agreement among the parties for electronic service, and was addressed to the following counsel:

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Attorneys for Plaintiffs

This the 29th day of January, 2020.

Paul M. Cox
Special Deputy Attorney General

EXHIBIT G

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

2020 JAN 29 P 3:42

WAKE CO., C.S.C.

BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 19-cv-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.

CONSENT MOTION FOR A CONTINUANCE

Pursuant to Local Rule 8.2, Plaintiffs file this Consent Motion for a Continuance of the hearing scheduled in this matter for February 4, 2019 on Plaintiffs' Motion for Expedited Scheduling Order and Case Management Order (the "Motion to Expedite").

1. Plaintiffs filed the Complaint in this action on November 20th, 2019, challenging North Carolina's statutory scheme disenfranchising individuals while they remain on probation, parole or other supervision, *see* N.C. Gen. Stat. § 13-1. Defendants are the Speaker of the state House and the President Pro Tempore of the state Senate (together, "Legislative Defendants"), and the State Board of Elections and its members (collectively, "State Board Defendants").

2. On the same day Plaintiffs filed their Complaint, November 20, 2019, Plaintiffs filed the Motion to Expedite. Plaintiffs subsequently filed a calendar request, and the Motion to Expedite has been scheduled for a hearing before a single judge on February 4, 2020.

3. On January 16, 2020 and January 21, 2020, the State Board Defendants and Legislative Defendants respectively filed answers to Plaintiffs' amended complaint, along with motions to dismiss under Rule 12(b)(6).

4. On January 29, 2020, the State Board Defendants and Legislative Defendants both withdrew their motions to dismiss.

5. The parties all agree that this matter, which involves a facial challenge to the constitutionality of legislation, is fit and and ready for the appointment of a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1(b1) & (b2).

6. Because the case is ripe for appointment of a three-judge panel, the parties agree that Plaintiffs' Motion to Expedite should be heard and decided by the three-judge panel that is appointed, rather than a single judge at the February 4 hearing.

7. The parties accordingly seek a continuance of the Motion to Expedite until the earliest date at which the three-judge panel, once appointed, is able to hear the motion.

8. This case has not previously been continued.

WHEREFORE, Plaintiffs request that the Court grant a continuance of the hearing on Plaintiffs' Motion to Expedite.

Respectfully submitted this the 29th day of January, 2020.

FORWARD JUSTICE

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***Pro Hac vice motion forthcoming*

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* *Pro hac vice motions pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants via *e-mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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Counsel for State Board Defendants

This the 27th day of January, 2020.

/s/Daryl Atkinson
Daryl Atkinson (NC Bar # 39030)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 19-cv-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.

[PROPOSED] ORDER ON CONSENT MOTION FOR A CONTINUANCE

The Court, having considered Plaintiffs' Consent Motion for a Continuance of the hearing scheduled on February 4, 2020 on Plaintiffs' Motion for Expedited Scheduling Order and Case Management Order, and for good cause shown, hereby GRANTS the motion for a continuance.

So ORDERED this _____ day of January, 2020.

_____

_____

EXHIBIT H

Jacobson, Daniel

From: Cox, Paul <pcox@ncdoj.gov>
Sent: Wednesday, January 29, 2020 4:43 PM
To: Jacobson, Daniel; Jones, Stanton
Cc: Rabinovitz, Brian; Vysotskaya, Olga; Collier, Pamela; zzz.External.wcarpenter@forwardjustice.org; zzz.External.ben.berwick@protectdemocracy.org; Theodore, Elisabeth; White, Graham; zzz.External.daryl@forwardjustice.org; zzz.External.farbod.faraji@protectdemocracy.org; zzz.External.phair@forwardjustice.org; zzz.External.stephanie.llanes@protectdemocracy.org
Subject: RE: Community Success Initiative v. Moore - Legislative Defendants' Answer and MTD

External E-mail

Hey Dan,

It looks like your email crossed with Pam's, serving the filed versions of all the papers. So you should be able to email the TCA re the continuance. And yes, I can email Kellie about the withdrawal of the MTDs and that the parties agree that the case is ready for assignment to a three-judge panel.

Paul

From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Sent: Wednesday, January 29, 2020 4:31 PM
To: Cox, Paul <pcox@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>
Cc: Rabinovitz, Brian <BRabinovitz@ncdoj.gov>; Vysotskaya, Olga <OVysotskaya@ncdoj.gov>; Collier, Pamela <pcollier@ncdoj.gov>; wcarpenter@forwardjustice.org; ben.berwick@protectdemocracy.org; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; White, Graham <Graham.White@arnoldporter.com>; daryl@forwardjustice.org; farbod.faraji@protectdemocracy.org; phair@forwardjustice.org; stephanie.llanes@protectdemocracy.org
Subject: RE: Community Success Initiative v. Moore - Legislative Defendants' Answer and MTD

Hey Paul, just let us know when everything's filed and I can then email the TCA the continuance request. You guys will email about the withdrawal of the MTDs and the parties' agreement that the case is ready for assignment to a three-judge panel right?

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Senior Associate

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From: Cox, Paul <pcox@ncdoj.gov>
Sent: Wednesday, January 29, 2020 1:46 PM

Exhibit I

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 19-cv-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.

PLAINTIFFS' MOTION AND BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE A PRELIMINARY INJUNCTION

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INTRODUCTION

The North Carolina Constitution guarantees the right to vote to every person who shares "in the public burthens and ha[s] had a residence in the State long enough to learn its true policy, and to feel an interest in its welfare." *Roberts v. Cannon,* 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260-61 (1839). For every member of the community who shares "humane, economic, ideological, and political concerns," the right to vote "is at the foundation of a constitutional republic." *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980).

But North Carolina law fails to live up to this foundational guarantee. The General Assembly has stripped the right to vote from nearly 60,000 members of North Carolina's communities because they are on probation, parole, or post-release supervision from a felony conviction. These North Carolinians are neighbors, co-workers, family members, taxpayers, and participants in civic groups. Like all other citizens, their lives are governed by the laws enacted and enforced by elected officials, but they are denied the fundamental right to participate in choosing their representatives. This mass disenfranchisement of tens of thousands of members of North Carolina's communities serves no compelling government interest and infringes upon the fundamental right to free and fair elections.

Worse yet, this disenfranchisement is the product of an explicitly racist effort after the Civil War to suppress the political power of African Americans. The law continues to have its intended effect to this day. Although African Americans constitute 21.51% of the voting-age population in North Carolina, they represent 42.43% of the people disenfranchised while on probation, parole, or post-release supervision. In *every county* across the State for which sufficient data is available, the law disenfranchises the African American population at a higher rate than the white population. In 19 different counties, more than 2% of the African American

voting-age population is disenfranchised under this law by virtue of being on probation, parole, or post-release supervision. This disenfranchisement severely and disproportionately suppresses the political power of African American communities across the state.

The law also discriminates against poor and low wealth people, who may be denied the right to vote based solely on their inability to pay court costs, fees, and restitution. Individuals often have their probation extended for failure to pay financial obligations, and the amounts owed are staggering. The average person on felony probation in North Carolina owes more than $2,400 in total fees, costs, and restitution. A substantial percentage of probationers cannot afford to pay such amounts, prolonging their disenfranchisement. In no democracy should lack of wealth be a basis for denying a citizen the right to vote, but in North Carolina, it is.

As the North Carolina Court of Appeals recently made clear in the analogous context of the General Assembly's voter ID laws, even though the North Carolina Constitution delegates authority to the General Assembly to regulate rights restoration for people with a felony conviction, the General Assembly must exercise that authority consistent with other constitutional limitations. The General Assembly's decision to disenfranchise people living in North Carolina communities violates multiple other provisions of the North Carolina Constitution. First, it violates the constitutional guarantee that "all elections shall be free," which mandates that elections "freely and honestly . . . ascertain . . . the will of the people." *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *109-12 (N.C. Super. Sep. 03, 2019). Elections do not ascertain the will of the people when large segments of society—a grossly disproportionate number of whom are African American—cannot vote. In 2018 alone, there were 16 county-level elections where the vote margin was less than the number of persons disenfranchised in the county due to probation, parole, or post-release supervision.

Second, disenfranchising persons living in North Carolina communities violates North Carolina's Equal Protection Clause, which affords broader protections than its federal counterpart and protects "the fundamental right of each North Carolinian to substantially equal voting power." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (N.C. 2002). North Carolina's felony disenfranchisement scheme deprives all people on probation, parole and post-release supervision of "substantially equal voting power" relative to their neighbors, and it discriminates in particular against African Americans and poor persons. The law also violates this State's free speech and assembly guarantees. "Voting for the candidate of one's choice" is a "core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses." *Common Cause*, 2019 WL 4569584, at *119. Probation and post-release disenfranchisement constitutes an outright ban on such core political expression. Lastly, the requirement that people pay money to ensure they regain access to the franchise violates the constitutional Ban on Property Qualifications.

There are no material facts that can be genuinely disputed, and the law is clear. This Court should grant summary judgment and permanently enjoin enforcement of N.C.G.S. § 13-1 with respect to persons living in North Carolina communities on probation, parole, or post-release supervision. In the alternative, given the irreparable harm that will result if Plaintiffs and tens of thousands of North Carolinians are denied the right to vote in another election, this Court should enter a preliminary injunction.

BACKGROUND

A. North Carolina's Felony Disenfranchisement Scheme

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

Before the Civil War, North Carolina excluded "infamous" persons from suffrage. Infamy could result either "from the commission of an infamous crime," such as treason, bribery, or perjury, "or from the receipt of an infamous punishment such as whipping," which could be inflicted for crimes like petty larceny. *See* Expert Report of Dr. Vernon Burton ("Burton Report") at 11 (quoting Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship* 6, 34, 91 (2014)). North Carolina amended its constitution in 1835 to provide that the General Assembly "shall have power to pass general laws regulating" the "restor[ation] to the rights of citizenship any person convicted of an infamous crime." N.C. Const. Art. I, Sec. 4, pt. 4 (1776, amended in 1835). The General Assembly first exercised this power in 1840, requiring persons convicted of infamous crimes to seek rights restoration in the courts, which had unfettered discretion to grant or deny it. *See* Ch. 36, 1840 N.C. Sess. Laws 68. African Americans could not vote in North Carolina during this period. Burton Report at 12-15.

In the period after the Civil War, when federal law required North Carolina to extend the franchise to African Americans, the State's disenfranchisement of persons convicted of certain crimes became a powerful tool of race-based political suppression. Former white rebels in North Carolina began an extensive campaign of whipping African Americans for minor offenses like petty larceny, because whipping was an "infamous" punishment that triggered disenfranchisement. *Id*. at 19-22 (citing Steven F. Miller et al., *Between Emancipation and Enfranchisement: Law and the Political Mobilization of Black Southerners, 1865-1867*, 70 Chi.-Kent L. Rev. 1059, 1074 (1995)). Contemporary sources acknowledged that the "real motive"

for these whippings was to disqualify large numbers of African Americans from the franchise without violating the "letter of the [federal] civil rights act [of 1866]." *Id*. at 20. In one county in North Carolina, "every adult male negro" was whipped. *Id*. *Harper's Weekly* described a scene outside a courthouse in Raleigh where a crowd of 500 people watched public whippings of African Americans "every day," noting that "this sentence of whipping" operates to "disqualif[y] in advance" African Americans from the franchise. *Id*. at 20-21 (quoting *Whipping and Selling American Citizens*, Harper's Weekly (Jan. 12, 1867)).

North Carolina adopted a new constitution after the Civil War as a condition of rejoining the Union. *See* N.C. Const. of 1868; John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1781 (1992). Congress, then in the hands of the "Radical Republicans," called a North Carolina Constitutional Convention in 1868. Reconstruction legislation required that delegates to the convention include both white and black citizens. Orth, *supra*, at 1777. Fifteen of the 120 delegates to the 1868 Convention were black. *Id*.

The Constitution enacted at the 1868 Convention provided for universal male suffrage, eliminated property requirements to vote, and abolished slavery. *See* N.C. Const. of 1868, Art. I, § 33; *id*. art. VI, § 1. Like its predecessor, the 1868 Constitution did not expressly disenfranchise persons convicted of certain crimes. *See id*. Art. VI. In the years that followed, African Americans achieved some success in municipal, state legislative, and even congressional elections. *See, e.g*., William Mabry, *White Supremacy and the North Carolina Suffrage Amendment*, 13 N.C. Hist. Rev. 1 (1936).

But the 1868 Constitution's suffrage provisions were short-lived. Reacting to Reconstruction, the Conservative Party in North Carolina (soon rebranded as Democrats) regained control of North Carolina's General Assembly using intimidation, violence, and fraud.

Burton Report at 24-26; Orth, *supra*, at 1781. They immediately sought to replace the "hated" 1868 Constitution and took particular aim at its suffrage provisions. Orth, *supra*, at 1781; Burton Report at 24-29.

In 1875, a flurry of amendments were added to the North Carolina Constitution to erode the civil rights of African Americans. Two of the amendments required segregation in public schools and banned interracial marriage, respectively. *See* 1875 Amendments to the N.C. Const. of 1868, Amends. XXVI & XXX. And another amendment stripped counties of the ability to elect their own local officials, including judges, giving that power instead to the Conservative-controlled General Assembly. *See id*. Amend. XXV. "The purpose of this amendment, as was well understood, was to block control of local government in the eastern counties by blacks who were in the majority there." Orth, *supra*, at 1783; Burton Report at 31.

The 1875 amendments also codified disenfranchisement for *all felonies* in the state constitution for the first time. *See* 1875 Amendments to the N.C. Const. of 1868, Amend. XXIV. In the pre-Civil War era, when only whites could vote, disenfranchisement for crimes had been limited to persons who committed "infamous" crimes or received "infamous" punishments. Now that African Americans could vote, the 1875 Amendment expanded disenfranchisement to all persons convicted of a felony. The text of the original 1875 amendment largely mirrors the analogous provision in North Carolina's current constitution. It provided:

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

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

In 1877, the General Assembly enacted a statute to enforce felony-based disenfranchisement. It provided that "persons who, upon conviction or confession in open court, shall have been adjudged guilty of felony or other crime infamous by the laws of this state," "shall not be allowed to register to vote . . . unless they shall have been legally restored to the rights of citizenship in the manner prescribed by law." Ch. 275, § 10, 1876 N.C. Sess. Laws. At the time, the "manner prescribed by law" was the existing statute that allowed persons convicted of "infamous" crimes to seek rights restoration in the courts. Ch. 36, 1840 N.C. Sess. Laws 68. Under this statute, a person had to wait four years from the date of their conviction to file the petition seeking rights restoration, and there was also a mandatory three-month waiting period between the filing of the petition and the hearing. *Id*. It was then left to the unfettered discretion of the judge to restore a person's right to vote. *Id*.

North Carolina's new laws providing for felony-based disenfranchisement and depriving localities of the ability to elect their own judges worked hand-in-hand to enforce white supremacy. Burton Report at 31. "The change in the composition of the judiciary . . . and the expanded disenfranchisement provision, added up to an increase in the number of Democratic judges" able to deprive African Americans of the right to vote. Holloway, *supra*, at 62; *see Notes from the Capital*, N.Y. Times, Oct. 11, 1875, at 5 (the "evident purpose" of these changes was "to prevent colored men and poor white men from exercising the right of suffrage").

What's more, in the same 1877 legislation that denied persons convicted of felonies the ability to register to vote, the General Assembly enacted harsh new penalties for voting before one's rights were restored. Ch. 275, § 62, 1876 N.C. Sess. Laws. The legislation provided that a person who voted before having their rights 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*. 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.

These expanded felony disenfranchisement efforts were an intentional effort to disenfranchise African-American voters. Burton Report at 24-37. At the time, it was well-recognized that the provisions would target African Americans. Burton Report at 29-37. Contemporary conservative sources and politicians stated that "the great majority of the criminals are negroes" and declared that "all Negroes are natural born thieves." *Id*. at 31, 33-34. The principal proponents of felony disenfranchisement in North Carolina were well-known racists who were involved in lynching and other efforts to maintain Jim Crow. *Id*. at 35-36. 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. Republicans and African Americans strenuously but unsuccessfully opposed the new felony disenfranchisement provisions. *Id*. at 32-35. Every African American representative voted against it. *Id*. at 35.

As many historians have recognized, "disenfranchisement for prior criminal convictions was among the first strategies employed to block African American suffrage in North Carolina." *Id*. at 22 (quoting Holloway, *supra*, at 34). As plaintiffs' expert historian Dr. Vernon Burton concludes, the felony disenfranchisement efforts in the 1875 constitution marked the beginning of a systematic effort to "restore white Supremacy" and undermine the voting rights of black North Carolinians. *Id*. at 37.

2. The General Assembly Has Chosen to Prolong Disenfranchisement Through Probation, Parole, and Post-Release Supervision

As described, since the 1875 constitutional amendments that were adopted for overtly racist reasons, the North Carolina Constitution has delegated responsibility to the General Assembly to enact laws regarding the disenfranchisement of persons with felony convictions. In carrying out that delegation, the same General Assembly that pushed the 1875 constitutional amendments established a regime that prolonged disenfranchisement even after individuals with felony convictions had completed their term of incarceration and returned to living in communities across the State. *Supra* at pp. 6-8.

Then, in 1898 when Democrats regained control of the General Assembly, they enacted a series of laws designed to further exclude African Americans from voting, including a poll tax and a literacy test with a "grandfather clause" exception for white voters. Burton Report at 41. They also re-enacted the criminal provisions that punished any person who voted while ineligible due to a felony conviction with a fine or two years of hard labor. Ch. 507, § 72, 1899 N.C. Sess. Laws 658, 681. The passage of these provisions marked the culmination of a violent and explicitly racist election campaign by white Democrats that included a two-day rampage in Wilmington, where white Democrats murdered African Americans and took over by force municipal government positions that blacks and Republicans had held. Burton Report at 40-41.

With African Americans effectively prevented from voting through these other means, the General Assembly acted to slightly soften the felony disenfranchisement statute. In 1899, the General Assembly amended the statute to allow petitions for re-enfranchisement in cases which "the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor." Ch. 44, § 1, 1899 N.C. Sess. Laws 139. This legislation was aimed at restoring the rights of the Mayor of Burlington and its board of commissioners, who

had been convicted of the felony of disinterring a body, but had been pardoned. Burton Report at 42-44. The 1899 legislation also eliminated the 4-year waiting period following completion of a prison sentence, and subsequent 1905 legislation eliminated the requirement of a pardon from the governor for faster restoration of rights for individuals who had been sentenced to no prison time. Ch. 547, §§ 1-2, 1905 N.C. Sess. Laws 553-554. Throughout this entire period, however, the General Assembly retained the requirement that individuals seeking restoration of rights were to petition individually before a (white) judge and secure ten acceptable witnesses who could testify on their behalf. Burton Report at 45. As Dr. Burton concludes, it is no coincidence that white Democrats in the legislature were willing to soften certain restrictions on restoration of rights only after they had disenfranchised African Americans by other means. *Id*. at 42-45.

North Carolina's felony disenfranchisement provisions were largely unchanged until 1971. As part of a broader reworking of North Carolina's Constitution, the felony disenfranchisement provision was amended to remove the reference to "infamous" crimes, and thus the constitutional provision now allows for disenfranchisement only in the case of felony convictions. N.C. Const., Art. VI, § 2, cl. 3. The General Assembly then amended its felony disenfranchisement statutes in 1971 and again in 1973. The statutory revisions were initially sponsored by three African American representatives to the General Assembly—the first three to serve in the General Assembly since Reconstruction. Burton Report at 51, 60; *see* Decl. of Daniel F. Jacobson ("Jacobson Decl.") Ex. K, Aff. of Henry M. Michaux Jr. ("Michaux Aff.") ¶¶ 7-9, 15. As Representative Michaux explains in the attached affidavit, these three representatives—himself, Joy Johnson, and Henry Frye—were the only African American representatives in an 170-person General Assembly, and they faced racism from members of both parties. Ex. K (Michaux Aff.) ¶ 10. Michaux, Johnson, and Frye were working with the

North Carolina chapter of the NAACP, which had identified automatic restoration of rights for those previously convicted of a felony as a civil rights priority. *Id.* ¶ 12. It was well-known in the legislature during this period that the existing felony disenfranchisement had been adopted in the post-Reconstruction era as an effort to discriminate against and disenfranchise African Americans, and that the operation of the law in the 1970s continued to discriminate against African Americans and had a "major impact" on African American voter registration. *Id.* ¶ 15.

Michaux, Johnson, and Frye sought automatic restoration of voting rights for all persons convicted of felonies immediately upon the completion of their prison sentence, without any need to petition before a judge or to pay the fines and fees associated with probation or supervised release. *Id.* ¶¶ 15-16; Burton Report at 50-56, 59-60; *see also* Ex. L (original proposed bill in 1971). But they were only partially successful. Ex. K (Michaux Aff.) ¶¶ 16-19. The legislation that ultimately passed in 1973 removed the requirement to petition a court for rights restoration, but maintained the policy of disenfranchising persons even after their release from incarceration. Their "aim was a total reinstatement of rights," but they were not able to convince the legislature to fully undo the racist felony disenfranchisement provisions. *Id.* ¶ 16. As Rep. Michaux explains, they achieved a "step forward," but their efforts "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." *Id.* ¶ 17. The amendments made the system "somewhat less discriminatory," but did not fully erase the "bitter pill of the original," "racially motivated" disenfranchisement. *Id.* ¶ 18.

The General Assembly's refusal to amend the statute to allow automatic restoration upon release from incarceration came as other efforts by white supremacists to suppress the African American vote grew less efficacious. By that time, federal law prohibited poll taxes and literacy

tests, and by 1960 a third of eligible African Americans in North Carolina were registered to vote, as opposed to just 5% in 1940. Burton Report at 48. Many of the opponents of automatic voting-rights restoration were segregationists who opposed the Civil Rights Movement and the Voting Rights Act and who expressly linked felony disenfranchisement laws with other racist tools like literacy tests. *Id*. at 48-51. Opponents of automatic restoration were also proponents of the "law and order" campaigns that were emerging in the 1960s and 1970s. *Id*. at 56-60. "Law and order" was a dog whistle for many North Carolinians and part of a broader effort aimed at resisting integration and other civil rights efforts. *Id*. at 56.

The current felony disenfranchisement statute, last amended in 2013, provides as follows:

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

N.C.G.S. § 13-1. Under this law, North Carolinians who have been released from incarceration—or who were never incarcerated—cannot vote until they have been "unconditionally discharged" from probation, parole, or post-release supervision.

N.C.G.S. § 13-1 thus disenfranchises individuals for lengthy periods of times after they have been released from incarceration and returned to society. Of the currently disenfranchised North Carolinians on probation, the median length of probation imposed in their original sentence is 30 months. *See* Expert Report of Frank R. Baumgartner ("Baumgartner Report") at 23. And of the currently disenfranchised North Carolinians on post-release supervision, the median duration of post-release supervision in their original sentence is nine months. *Id*.

3. N.C.G.S. § 13-1 Conditions the Right to Vote on the Payment of Court Costs, Fees, and Restitution

People with felony convictions must pay court costs, fees, and restitution as "conditions" of probation, parole, and post-release supervision. N.C.G.S. §§ 15A-1343(b)(9) (probation), 15A-1374(b)(11a)-(11b) (parole), 15A-1368(e)(11)-(12) (post-release supervision). These costs can be sizeable and have increased by nearly 400% over the past two decades in North Carolina. *See* Expert Report of Dr. Traci Burch ("Burch Report") at 23. In 1999, a North Carolinian charged with a felony would face a total of $106 in possible court fines and fees, but today "$106 would barely cover two-thirds of the General Court of Justice fee in district court." *Id*.

Notwithstanding that the overwhelming majority of criminal defendants in North Carolina are indigent, the General Assembly has imposed a wide array of court costs on those who are convicted or plead guilty in Superior Court, which has jurisdiction over all felony cases. These costs include a "General Court of Justice Fee" of $154 plus additional fees for "Facilities" ($30), "telecommunications" ($4), "retirement and insurance benefits of . . . law enforcement officers" ($6.25), "supplemental pension benefits of sheriffs" ($1.25), "services, staffing, and operations of the Criminal Justice Education and Standards Commission" ($2), "Pretrial Release Services" ($15), "arrest or personal service of criminal process" ($5), and "DNA" ($2).

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

Among all persons currently on felony probation in North Carolina who owed court costs as part of their original sentence, the median amount owed in court costs is $573. Baumgartner Report at 22. For probationers who owed fees as part of their sentence, the median amount owed in fees is $340. *Id.* And the median amount of restitution owed by probationers with restitution obligations is $1,400. *Id.* For persons on parole or post-release supervision, the corresponding median amounts owed is $40 in fees, $839 in court costs, and $1,500 in restitution. *Id.*

Probation, parole, and post-release supervision also impose additional costs. Each requires payment of a monthly $40 "supervision fee." N.C.G.S. § 15A-1343(b)(6), (c1) (probation); *id.* § 15A-1374(c) (parole); *id.* § 15A-1368.4(f) (post-release supervision). These fees add up. The average person on probation will owe $1,198 in total supervision fees, and the average person on parole or post-release supervision will owe $356 in supervision fees. Baumgartner Report at 22. On top of that, people must also "[p]ay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation." N.C.G.S. § 15A-1343(b)(10).

For probationers, failure to pay the amount owed in court costs, fees, and restitution empowers a court to extend the term of probation—and thus the denial of the right to vote. *Id.* § 15A-1344(a), (d). Courts may extend probation up until a total of five years for failure to pay these amounts. *Id.* § 15A-1342(a). A court may also extend probation for an additional three years, even if that extends beyond the total five-year probationary period, "for the purpose of allowing the defendant to complete a program of restitution." *Id.* § 15A-1342(a). Defendants have no mechanism to appeal these extension orders when they are issued, and people have

remained on probation—and disenfranchised—for years in error. *See State v. Hoskins*, 242 N.C. App. 168, 775 S.E.2d 15 (2015) (finding, after the defendant had completed eight years on probation, that the trial court lacked jurisdiction to enter the three-year extension).[1]

Notwithstanding high rates of indigence among individuals convicted of felonies and the failure of courts to assess ability to pay, people are regularly subjected to extended periods of probation for failing to pay court fines. Burch Report at 22-34. The result is that people remain disenfranchised based on nothing other than their inability to pay court costs and restitution.

4. N.C.G.S. § 13-1 Currently Disenfranchises More than 56,516 Individuals Living in North Carolina Communities, a Grossly Disproportionate Number of Whom Are African American

Based on data produced by the North Carolina Department of Public Safety in this case, N.C.G.S. § 13-1 currently disenfranchises 51,441 persons who are on probation, parole, or post-release supervision following a conviction in North Carolina state court. Baumgartner Report at 5. Of those persons, 40,832 are on probation and 12,376 are on parole or post-release supervision (some are on both probation and post-release supervision). *Id.* In addition, according to the most recent federal government data, there are 5,075 persons on some form of community supervision from a conviction in federal court in North Carolina. *Id.* at 6. Thus, N.C.G.S. § 13-1 currently disenfranchises more than 56,516 people in total. *Id.* This figure does not include the unknown number of persons living in North Carolina who are disenfranchised because they are on community supervision from a conviction in another state's courts. *Id.*

The policy of disenfranchising people living in North Carolina communities disproportionately harms people of color. Although African Americans represent 21.51% of the

[1] For persons on post-release supervision, failure to pay court courts or restitution can result in revocation of post-release supervision, for which the individual can be sent back to prison and the supervised release period is tolled during such re-incarceration. N.C.G.S. § 15A-1368.4(d) & (f).

voting population in North Carolina, they represent 42.43% of the people disenfranchised while on probation, parole, or post-release supervision. *Id*. at 7. In *every county* across the State for which sufficient data is available, the disenfranchisement rate of the African American population is higher than that of the white population, with African Americans being disenfranchised 2.75 times the rate of whites statewide. *Id*. at 14-15. More than 1.24% of the total African American voting-age population in North Carolina is disenfranchised as a result of being on probation, parole, or post-release supervision. *Id*. at 7. In 19 different counties, more than 2% of the African American voting-age population is disenfranchised on these bases. *Id*. at 4, 34-35. African American men, in particular, comprise a disproportionate percentage of those disenfranchised. Black men make up 9.2% of the North Carolina voting-age population, but comprise 36.6% of non-incarcerated persons who are disenfranchised. *See id*. at 7.

B. Procedural History

Plaintiffs filed their Complaint in this action on November 20, 2019 and filed a motion to set an expedited case schedule that same day. On December 3, 2019, Plaintiffs filed an Amended Complaint, and State Board Defendants and Legislative Defendants filed their Answers on January 16, 2020 and January 21, 2020, respectively. Both sets of Defendants initially filed motions to dismiss the Amended Complaint, but they withdrew those motions on January 28, 2020. In turn, Plaintiffs agreed to a continuance of a hearing that Plaintiffs had calendared for February 4, 2020 on Plaintiffs' motion to set an expedited case schedule, as the parties all agreed that the case was ripe and fit for appointment of a three-judge panel.

Plaintiffs are six individuals and four organizations directly impacted by N.C.G.S. § 13-1's disenfranchisement of persons living in North Carolina communities on probation, parole, or post-release supervision. Plaintiffs Timothy Locklear, Drakarus Jones, Susan Marion, Henry

Harrison, Ashley Cahoon, and Shakita Norman are North Carolina residents currently or previously on probation or post-release supervised from a felony conviction. For those still under supervision, each would be eligible to vote, and would exercise their right to vote, if not for the disenfranchisement law. *See* Ex. A, Aff. of Timothy Locklear ¶¶ 10-11; *id*., Ex. B, Aff. of Susan Marion ¶¶ 11-15; *id*., Ex. D, Aff. of Shakita Norman ¶¶ 11-15. Each of these Plaintiffs could not vote in North Carolina's March 2020 primaries and will be precluded from voting in future elections until the conclusion of their probation or post-release supervision. *See id*.; *see also* Ex. C, Aff. of Henry Harrison ¶¶ 12-14.

As a consequence of N.C.G.S. § 13-1, the four organizational Plaintiffs must divert scarce resources away from other critical work toward helping North Carolinians with felony convictions comply with the law and re-register when allowed. The fundamental missions of Plaintiffs Community Success Initiative, Justice Served N.C., Inc., and Wash Away Unemployment are to ensure that persons entangled in the criminal justice system can reintegrate into society. *See* Ex. E, Aff. of Dennis Gaddy ¶ 8; Ex. F, Aff. of Diana Powell ¶ 6; Ex. G, Aff. of Corey Purdie ¶ 9. The current law frustrates that mission by raising barriers to rehabilitation and reintegration. Ex. E ¶ 19; Ex. F ¶ 23; Ex. G ¶ 16. Plaintiff North Carolina State Conference of the NAACP ("NC NAACP") is dedicated to the advancement and improvement of the political, civil, social, and economic status of racial minorities in North Carolina. Ex. H, Aff. of Anthony Spearman ¶ 8. The current law frustrates that mission by disproportionately burdening African Americans. *Id*. ¶ 29. N.C.G.S. § 13-1 also disenfranchises some of the North Carolina NAACP's members. *Id*.

LEGAL STANDARDS

Summary judgment is appropriate if "there is no genuine issue as to any material fact and [the movant] is entitled to a judgment as a matter of law." N.C. R. Civ. P. 56(c).

A preliminary injunction should issue if (1) the plaintiff can "show likelihood of success on the merits of his case," (2) the plaintiff "is likely to sustain irreparable loss unless the injunction is issued," and (3) a "balancing of the equities" supports injunctive relief. *Triangle Leasing Co. v. McMahon*, 327 N.C. 224, 227, 393 S.E.2d 854, 856-57 (1990); *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983).

ARGUMENT

The material facts are undisputed, and Plaintiffs are entitled to judgment as a matter of law that N.C.G.S. § 13-1's disenfranchisement of North Carolinians on probation, parole, or post-release supervision violates multiple provisions of the North Carolina Constitution. Alternatively, the Court should enter a preliminary injunction again enforcement of the law against such persons pending final resolution of this action.

I. The North Carolina Constitution's Felony Disenfranchisement Clause Does Not Immunize the General Assembly's Rights Restoration Statutes from Compliance With Other Constitutional Guarantees

Article VI, § 2, cl. 3 of the North Carolina Constitution provides that "no 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." This provision delegates authority to the General Assembly to "prescribe[] by law" the contours of disenfranchisement, but it does not give the General Assembly unfettered discretion in enacting a disenfranchisement scheme. Rather, in carrying out this delegation, the General Assembly must comply with all other

provisions of the state constitution, including the Free Elections Clause, the Equal Protection Clause, the Free Speech and Assembly Clauses, and the Ban on Property Qualifications.

The understanding that Article VI, § 2, cl. 3 does not immunize North Carolina felony disenfranchisement statutes from constitutional review follows from the "basic canon of constitutional construction . . . [that] separate provisions" of the North Carolina Constitution must be interpreted "in harmony." *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). As the North Carolina Supreme Court explained over 80 years ago, "[r]econciliation is a postulate of constitutional as well as of statutory construction." *Sessions v. Columbus Cty.*, 214 N.C. 634, 200 S.E. 418, 420 (1939); *see also Stephenson v. Bartlett*, 355 N.C. 354, 382, 562 S.E.2d 377, 396 (2002) (holding that one provision of the North Carolina Constitution relating to elections, the Whole County Provision, "must also be reconciled with other legal requirements of the State Constitution").

Thus, while Article VI, § 2, cl. 3 may authorize the General Assembly to adopt *some* form of felony disenfranchisement, it does not empower the General Assembly to enact any disenfranchisement scheme it wishes. For example, the General Assembly could not pass a statute providing that only people of a certain race, sex, or religion may regain their voting rights following a felony conviction. Or "[s]uppose [the General Assembly] adopted a statute automatically restoring the right to vote for felons with a net worth of $100,000 or more but not for other felons." *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1302 (N.D. Fla. 2019), *aff'd* 950 F.3d 795 (11th Cir. 2020). Nobody would seriously defend the constitutionality of such legislation. Nor could the General Assembly adopt wholly arbitrary requirements such as height or weight thresholds for restoration of voting rights.

The recent Court of Appeals decision in *Holmes v. Moore*, 840 S.E.2d 244 (N.C. Ct. App. 2020), recognized as much and forecloses any argument that Article VI, § 2, cl. 3 precludes Plaintiffs' claims here. *Holmes* concerned the State's voter ID requirements. Analogous to the situation here, North Carolina's Constitution provides that "[v]oters offering to vote in person shall present photographic identification before voting," and explicitly authorizes the General Assembly to enact implementing legislation. N.C. Const., art. VI, §§ 2(4), 3(2). In defending the implementing legislation, Legislative Defendants and State Board Defendants argued that the law should be upheld because it was "crafted and enacted to fulfill our Constitution's newly added mandate that North Carolinians must present ID before voting." *Holmes*, 840 S.E.2d at 265. The Court of Appeals rejected this "proffered justification." *Id.* "Although the General Assembly certainly had a duty, and thus a proper justification, to enact some form of a voter-ID law, . . . this mandate alone [could not] justify the legislature's choices when it drafted and enacted S.B. 824 specifically." *Id.* (internal quotation marks omitted). The Court of Appeals held that, notwithstanding the Constitution's voter ID provisions, any implementing legislation must comply with North Carolina's Equal Protection Clause, and the plaintiffs established a strong likelihood that the legislation did not because of its discriminatory intent. *Id.*

In reconciling constitutional provisions like the voter ID provision or the felony disenfranchisement provision with other state constitutional guarantees, this Court must be guided by the principle that provisions of the North Carolina Constitution relating to elections "should be liberally construed . . . to promote a fair election or expression of th[e] popular will." *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *109 (N.C. Super. Sep. 03, 2019) (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896)). "[T]he North Carolina Supreme Court has directed that in construing provisions of the Constitution,

[courts] should keep in mind that this is a government of the people, in which the will of the people—the majority—legally expressed, must govern." *Id*. (quoting *State ex rel*. *Quinn v*. *Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897)).

The North Carolina Supreme Court applied this principle in reconciling competing constitutional provisions in *Stephenson*. There, the Court held that the North Carolina Constitution's "Whole County Provision" for state legislative redistricting should not be accorded a literal meaning that would conflict with other constitutional voting-rights protections. *See Stephenson*, 355 N.C. at 382, 562 S.E.2d at 396. "[A]n application of the [Whole County Provision] that abrogates the equal right to vote, a fundamental right under the State Constitution, must be avoided in order to uphold the principles of substantially equal voting power and substantially equal legislative representation arising from that same Constitution." *Id*. The same principle applies here: Article VI, § 2, cl. 3 must be interpreted in a manner consistent with the North Carolina Constitution's commitment—embodied in the Free Elections Clause, the Equal Protection Clause, the Free Speech and Assembly Clauses, and the Ban on Property Qualifications—to free and fair elections in which members of North Carolina's communities have substantially equal voting power and the will of the people prevails.

II. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Violates the Free Elections Clause

N.C.G.S. § 13-1's disenfranchisement of persons living in North Carolina communities violates the Free Election Clause's mandate that elections in North Carolina faithfully ascertain the will of the people. Elections do not faithfully ascertain the will of the people when more than 56,500 citizens living and working in North Carolina communities cannot vote. And this disenfranchisement strikes at the heart of the Free Elections Clause because it disproportionately strips the right to vote from discrete racial and social classes. The law disenfranchises greater

than 2% of the African American voting-age population in at least 19 counties, and it targets poor persons of all races. The disenfranchisement of persons living in the community under N.C.G.S. § 13-1 is so widespread that, in a staggering number of elections, it may actually turn the outcome of the elections. In the 2018 general elections, for example, there were 16 county-level elections where the vote margin was smaller than the number of persons disenfranchised in the county due to probation, parole, or post-release supervision. Because N.C.G.S. § 13-1 interferes with the fundamental right of North Carolinians to vote in free elections, strict scrutiny applies. Defendants have advanced no compelling interest to which the law is narrowly tailored for indiscriminately removing all persons on probation, parole, or post-release supervision from the electorate that expresses the community's collective will at the ballot box.

A. The Free Elections Clause Mandates That Elections in North Carolina Ascertain the Will of the People, and Precludes Laws That Unduly Interfere with That Mandate

The North Carolina Constitution's Free Elections Clause declares that "[a]ll elections shall be free." N.C. Const., art. I, § 10. This clause, which has no federal counterpart, dates back to the North Carolina Declaration of Rights of 1776. *See Common Cause*, 2019 WL 4569584, at *111. 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.)); *see* Orth, *supra*, at 1797-98.

The English Bill of Rights provision responded to the king's efforts to manipulate parliamentary elections by manipulating the composition of the electorate. J.R. Jones, *The Revolution of 1688 in England 148* (1972); George H. Jones, *Convergent Forces: Immediate Causes of the Revolution of 1688 in England* 75-78 (1990). Those efforts led to a revolution, and after dethroning the king, the revolutionaries called for a "free and lawful parliament" as a

critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007). They enacted the free elections clause to this end. *See id*.; *Common Cause*, 2019 WL 4569584, at *111.

In the United States, many states enacted free elections clauses modeled on the English Bill of Rights provisions. For instance, Pennsylvania adopted its free elections clause in 1776. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 806-07 (Pa. 2018). As the Pennsylvania Supreme Court has explained, Pennsylvania's free elections clause reflected "a desire to secure access to the election process by all people with an interest in the communities in which they lived—universal suffrage—by prohibiting exclusion from the election process of those without property or financial means." *Id*. at 807.[2]

North Carolina adopted its Free Elections Clause in 1776, and since then has "broadened and strengthened" the clause to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. *Common Cause*, 2019 WL 4569584, at *111. The original 1776 clause stated that "elections of members, to serve as Representatives in the General Assembly, ought to be free." N.C. Declaration of Rights, VI (1776). The 1868 Constitution, which expanded African American political rights after the Civil War, revised the clause to state that "[*a*]*ll* elections ought to be free." N.C. Const. art. I, § 10 (1868). The 1971 Constitution revised the clause again to state that "[a]ll elections *shall* be free." N.C. Const. art. I, § 10. "This change was intended to 'make [it] clear' that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights 'are commands and not mere admonitions' to

[2] Other states with free elections clauses in their constitutions include Arizona, Arkansas, Colorado, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Mexico, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Virginia.

proper conduct on the part of the government." *Common Cause*, 2019 WL 4569584, at *111 (quoting *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982)).

Given this text and history, "the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people." *Common Cause*, 2019 WL 4569584, at *110; *accord Harper v. Lewis*, 19 CVS 12667, Order on Inj. Relief at 7 (N.C. Super. Oct. 28, 2019). As the Supreme Court 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").

North Carolina courts have applied this principle to invalidate laws that unnecessarily restrict or burden the right to vote. In *Clark v. Meyland*, for instance, the Supreme Court struck down a law that required primary voters to take an oath to support their party's nominees. 261 N.C. 140, 141, 134 S.E.2d 168, 169 (1964). By unduly conditioning voters' "right to participate in [a] primary," the law "violate[d] the constitutional provision that elections shall be free." *Id.* at 143, 134 S.E.2d at 170. In *Common Cause* and *Harper*, three-judge Superior Court panels held that partisan gerrymandering violates the Free Elections Clause because it "deprive[s] North Carolina citizens of the right to vote . . . in elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people." *Common Cause*, 2019 WL 4569584, at *112; *Harper v. Lewis*, Order on Inj. Relief at 6-7. The panels emphasized that the right to free elections that "ascertain . . . the will of the people" is "a fundamental right of the citizens

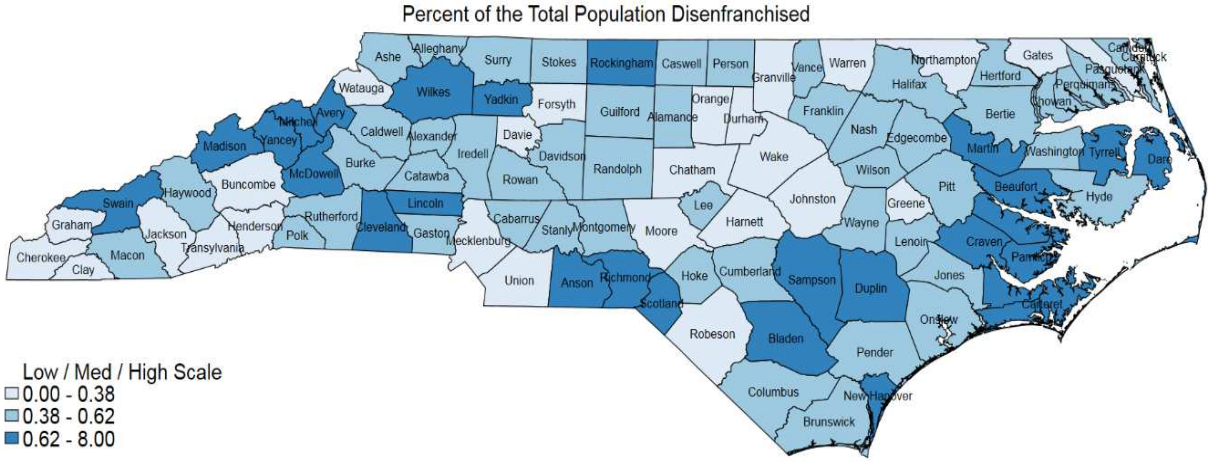
enshrined in our Constitution's Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government." *Common Cause*, 2019 WL 4569584, at *2.

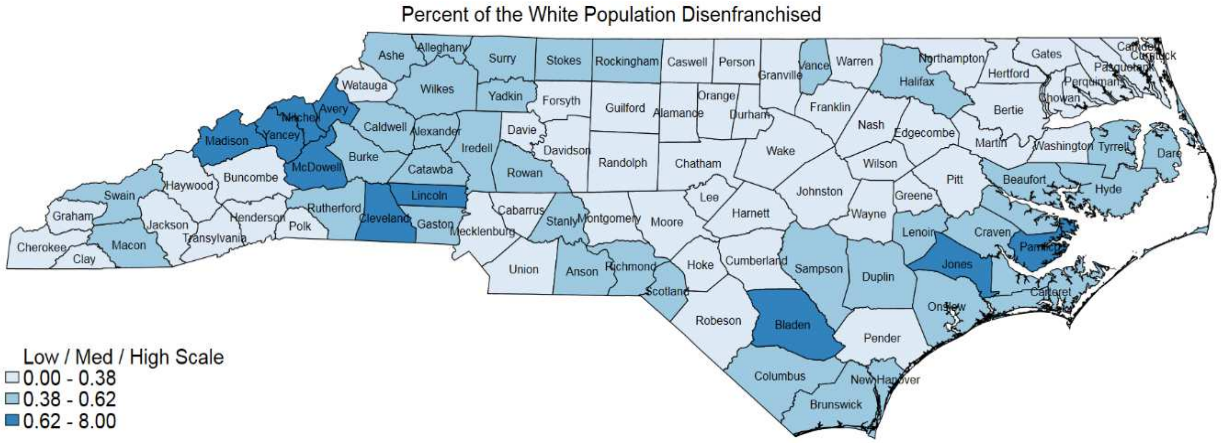
B. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Infringes Upon the Guarantee of Free Elections That Reflect the Will of the People

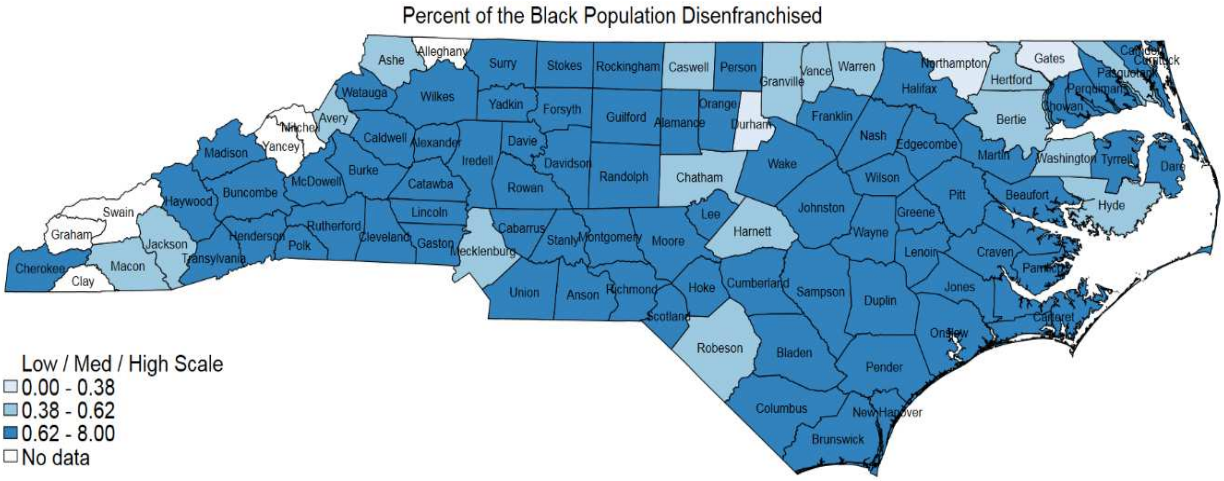
Just like the invalidated statutes in the above cases, N.C.G.S. § 13-1 violates the Free Elections Clause by preventing elections that "ascertain, faithfully and truthfully, the will of the people." *Common Cause*, 2019 WL 4569584, at *2. The statute denies the right to vote to more than 56,516 of "the people" living in North Carolina communities who are on some form of probation, parole, or post-release supervision. *See* Baumgartner Report at 6. In at least nine counties—Cleveland, McDowell, Pamlico, Beaufort, Madison, Sampson, Duplin, Lincoln, and Scotland Counties—more than 1% of the total voting-age population is disenfranchised by virtue of being on probation, parole, or post-release supervision from a state court conviction. *Id*. at 10, 34-35. Elections do not faithfully or truthfully ascertain the will of the people when such large segments of a community cannot vote on its elected leaders.

This disenfranchisement scheme strikes at the core of the Free Elections Clause, moreover, because of its grossly disproportionate effects on two sets of citizens: racial minorities and poor persons. Interpreting Pennsylvania's analogous clause, the Pennsylvania Supreme Court has explained that free election clauses enacted at the founding were designed "to secure access to the election process by all people with an interest in the communities in which they lived," "no matter their financial situation or social class." *League of Women Voters*, 178 A.3d at 807. But contrary to this intent, N.C.G.S. § 13-1's ban falls disproportionately on historically disadvantaged racial and social classes.

With respect to the disparate racial impact, N.C.G.S. § 13-1 disenfranchises a grossly disproportionate number of African Americans living in North Carolina communities. In *every county* in North Carolina for which there is sufficient data to perform comparisons, the law disenfranchises a greater percentage of the African American voting-age population than the white voting-age population. Baumgartner Report at 14-15. The maps below show these glaring disparities, as well as the high rates of disenfranchisement of African Americans across the State. The first map depicts the percentage of the total voting-age population that is disenfranchised in each county by virtue of being on probation, parole, or post-release supervision from a North Carolina state court conviction; the second map shows the percentage of the white voting-age population in each county disenfranchised on these bases; and the third map shows the corresponding percentage of the African American voting-age population disenfranchised:







Baumgartner Report at 18-19.

Statewide, more than 1.24% of the total African American voting-age population is disenfranchised by virtue of being on probation, parole, or post-release supervision. Baumgartner Report at 8-9. In 19 different counties, the disenfranchisement rate is greater than 2% of the African American voting-age population. *Id*. at 4, 34-35. In Dare County, the law disenfranchises greater than 5% of the total African American voting-age population. *Id*. Elections cannot "ascertain, faithfully and truthfully, the will of the people" when such large and disproportionate percentages of one race are barred from voting. *Common Cause*, 2019 WL 4569584, at *2

N.C.G.S. § 13-1 also reduces access to the franchise for poor persons of all races. Under North Carolina law, probation may be extended for failure to pay courts costs, fees, or restitution. And many disenfranchised individuals lack the financial means to make the payments they owe. Burch Report at 32-34. Across all disenfranchised individuals in North Carolina who are on probation, the average amount owed in fines, fees, and restitution is $2,441. Baumgartner Report at 22. Many North Carolinians therefore just do not have the money necessary to regain the franchise. Burch Report at 32-34. Elections cannot be considered "free" when a large number of citizens are denied the ability to cast a ballot for no reason other than their lack of financial resources.

The large number of disenfranchised persons across the state, and the disproportionate disenfranchisement of discrete racial and socioeconomic classes, prevent elections from being free regardless of whether it swings any particular election, but the disenfranchisement may actually be outcome-determinative with alarming frequency. In the 2018 general elections alone, there were 16 elections at the county level where the number of persons disenfranchised while on probation, parole, or post-release supervision exceeds the vote margin in the election. Baumgartner Report 27. For example, the vote margin in the Beaufort County Board of Commissioners race was just 63 votes, but 457 persons living in Beaufort County are disenfranchised. *Id*. The Lee County Board of Education election was decided by a mere 78 votes, with 332 people being disenfranchised in Lee County because they are probation, parole, or post-release supervision. *Id*. The Alleghany County Board of Commissioners race came down to just six votes, and over ten times that many Alleghany County residents are disenfranchised. *Id*. There can be no assurance that these elections accurately ascertained the will of the people.

Voter registration and turnout data reveals that a substantial percentage of persons disenfranchised while living in North Carolina communities would vote if their rights were restored. Of the persons currently on probation, parole, or post-release supervision from a state court felony conviction, 38.5% were registered to vote at some point prior to their conviction. Burch Report at 4, 9. Moreover, among persons who previously had been disenfranchised but had their rights restored before the 2016 general election, at least 27.69% voted in the 2016 general election. *Id*. at 17. And this turnout figure would be higher if not for the confusion that exists under current law among persons with felony convictions about when their voting rights are restored. *See, e.g*., Ex. F ¶¶ 20-21. Regardless, it is clear that N.C.G.S. § 13-1 has the effect of prevents many thousands of individuals living in North Carolina communities who would otherwise vote from casting their ballots, potentially preventing the will of the people from prevailing in elections that affect every aspect of daily life.

C. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Cannot Satisfy Strict Scrutiny

Because the right to free elections is a "fundamental right of North Carolina citizens," *Common Cause*, 2019 WL 4569584, at *2, the abridgment of that right under N.C.G.S. § 13-1 triggers strict scrutiny. *See Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990). 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." *Von Bokkelen*, 73 N.C. at 225-26. The effect of N.C.G.S. § 13-1 is to disenfranchise more than 56,516 North Carolinians, a grossly disproportionate number of whom are African Americans.

In any event, strict scrutiny would apply here even if the General Assembly's intent were relevant in evaluating a Free Elections Clause claim. On the most basic level, it is undisputed

that the General Assembly intended to disenfranchise all 56,516 persons in North Carolina who are on probation, parole, or other supervision; the disenfranchisement is no accident. Moreover, the history of North Carolina's felony disenfranchisement scheme, culminating in N.C.G.S. § 13-1 today, reflects an intentional effort to target African Americans and poor persons. *See supra* at pp. 4-12; Burton Report at 2-3; Ex. K (Michaux Aff.). 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.

Defendants therefore must show that the disenfranchisement of individuals on probation, parole, or post-release supervision under N.C.G.S. § 13-1 furthers a compelling government interest and that N.C.G.S. § 13-1 is narrowly tailored to advance that interest. *Common Cause*, 2019 WL 4569584, at *2; *Northampton Cnty.*, 326 N.C. at 747.

1. Defendants Have Not Identified Any Compelling Government Interest That the Challenged Scheme Is Narrowly Tailored to Advance

Given the fundamental importance of the franchise, it is hard to conceive of a "compelling" justification for disenfranchising large numbers of people who live in communities across the State. The North Carolina Supreme Court has held that "[t]he right to vote is the right to participate in the decision-making process of government" among all those in the "body politic" who "shar[e] an identity" and "humane, economic, ideological, and political concerns." *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980). This right of all members of the community to participate in deciding who will set policy in government, and for the will of the majority of members of the community to prevail, "is at the foundation of a constitutional republic." *Id.*; *see also Roberts v. Cannon,* 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260-61 (1839) (explaining that the North Carolina Constitution embodies the principle that "all classes of the community should be represented, and that every man should be entitled

to a vote who . . . ha[s] participated in the public burthens and have had a residence in the State long enough to learn its true policy, and to feel an interest in its welfare").

Defendants have offered no "compelling" interest for removing persons on probation, parole, or other supervision from the community of persons that has the right to choose its elected leaders in government. They do not assert that people on probation, parole, or post-release supervision are somehow not part of the same community as their neighbors who are eligible to vote. They do not dispute that persons on probation, parole, or post-release supervision "shar[e] . . . economic, ideological, and political concerns" with other members of the community. *Texfi Indus*., 301 N.C. at 13, 269 S.E.2d at 150. And Defendants do not deny that the identity of elected officials profoundly affects the lives of disenfranchised persons in exactly the same ways it affects their neighbors.

Defendants instead offer a scattershot of other interests purportedly justifying the disenfranchisement scheme, none of which are sufficiently compelling or narrowly tailored to justify stripping the right to vote from tens of thousands of North Carolinians who live and work in the community subject to its laws.

Legislative Defendants and State Board Defendants both assert that the challenged scheme serves the interest of "implementing" the "constitutional mandate" in Article VI, § 2, cl. 3. *See* Ex. I, State Bd. Defs.' Am. Interrog. Resp. at 4; Ex. J., Legislative Defs.' First Supp. Interrogatory Responses at 4. But as described, *Holmes* squarely rejected the proposition that a constitutional "mandate" to enact implementing legislation on a particular subject alone is a sufficient interest to uphold that legislation. Just like in *Holmes*, "[a]lthough the General Assembly certainly had a duty, and thus a proper justification, to enact some form of" felony disenfranchisement laws, "this mandate alone cannot justify the legislature's choices when it

drafted and enacted [N.C.G.S. § 13-1]." *Holmes*, 840 S.E.2d at 265 (internal quotation marks omitted). Were it otherwise—if the existence of Article VI, § 2, cl. 3 allowed the General Assembly to enact any disenfranchisement scheme it pleased—the General Assembly could tie rights restoration to an individual's race, wealth, sex, religion, or even height. Put bluntly, "[a]n official who adopts a constitutional theory that would approve such a statute needs a new constitutional theory." *Jones*, 410 F. Supp. 3d at 1302.

Defendants also assert that N.C.G.S. § 13-1's scheme "[s]implif[ies] the administrative process for the restoration of rights of citizenship of felons who have served their full sentences." Ex. I at 4; Ex. J at 4. State Board Defendants similarly assert that the law "avoid[s] confusion among North Carolinians convicted of felonies as to when their rights are restored." Ex. I at 5. But a desire to simplify the administrative process is not, by itself, a compelling interest that can justify the denial of a fundamental right. "[A] statute will not be upheld merely because it serves the purpose of administrative convenience." *Smith v. Keator*, 21 N.C. App. 102, 108, 203 S.E.2d 411, 417 (1974) (citing *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973) ("[W]hen we enter the realm of strict judicial scrutiny, there can be no doubt that 'administrative convenience' is not a shibboleth, the mere recitation of which dictates constitutionality."). And in any event, tying rights restoration to the "unconditional discharge" of an individual's probation, parole, or post-release supervision creates rather than avoids confusion. As Diana Powell, CEO and Executive Director of Plaintiff Justice Served explains in her affidavit, she "regularly speak[s] with people who are confused as to whether or not they are eligible to vote after having been convicted of a crime." Ex. F ¶ 20. Some individuals "are unsure of whether or not they are on misdemeanor probation or felony probation," and others "are unsure if their probation has been extended due to an inability to pay court costs, fees, fines or restitution." *Id.*; *accord* Ex. G ¶ 23 (Purdie aff.)

A simple rule to avoid any confusion would be that if a person lives in the community, he or she can vote just like his or her neighbors. *See* Burch Report at 37-39.

Defendants contend that disenfranchising individuals until they complete their probation, parole, or post-release supervision helps "promot[e]" the "voter registration and electoral participation" of such individuals. Ex. I at 4-5; Ex. J at 4. That is nonsensical. Prohibiting people from voting—in many cases for years—directly *prevents* voter registration and electoral participation for the duration of the disenfranchisement. And the confusion caused by the disenfranchisement of non-incarcerated persons, coupled with the criminal penalties that exist for voting before one's rights are restored, causes many people to "remain incredibly fearful of casting a ballot even *after* their voting rights have been restored." Ex. F ¶ 21 (Powell aff.) (emphasis added); *see id*. ("Many of our clients have expressed to me that they are afraid to be prosecuted for inadvertently voting before they have completed their full probation or post-release sentence, including paying all of the associated fines and fees."); Ex. G ¶ 23 (Purdie aff.) ("Some participants have expressed to me that they have a fear of voting and getting arrested for doing so."); Jack Healy, *Arrested, Jailed and Charged With a Felony. For Voting.*, N.Y. Times, Aug. 2, 2018.

Legislative Defendants further claim that N.C.G.S. § 13-1's scheme serves an interest in "withholding the restoration of voting rights from felons who have not completed their entire sentence," and in "requiring felons to complete all conditions of probation, parole, and post-trial supervision." Ex. J at 5. State Board Defendants assert a similar interest. Ex. I at 5. But this is tautological: Defendants assert that requiring people to complete the terms of their probation, parole, or post-release supervision before they can vote serves an interest in requiring those people to complete the terms of their probation, parole, or post-release supervision before they

can vote. Moreover, any abstract interest in making people wait until they have "completed their entire sentence" is not sufficiently compelling to justify denying the fundamental right to vote to tens of thousands of North Carolinians who live in communities across this State. That is especially so when "completing" probation can be tied to wealth, rather than to conditions that the individual can control. And to the extent Defendants are arguing that withholding the franchise encourages completion of post-release and probationary terms, they have offered no evidence whatsoever to substantiate such a claim, and there is no empirical evidence to support such a claim in any of the scholarly literature. Burch Report at 22-34. Nor would such an interest be compelling.

In a similar vein, Defendants contend that the challenged scheme serves to "withhold[] the restoration of voting rights from felons who do not abide by court orders." Ex. J at 5; *see* Ex. I at 5 (similarly stating that the law "encourag[es] compliance with court orders"). Defendants have set forth no empirical or other evidence that the prospect of disenfranchisement results in high rates of compliance with court orders, and there is no such evidence in the scholarly literature. *See* Burch Report at 32. Moreover, the statute "withhold[s]" the right to vote from every individual on probation, parole, and post-release supervision, regardless of whether they have violated a court order.

Legislative Defendants contend that N.C.G.S. § 13-1 promotes an interest in "requiring felons to pay full restitution to their victims so that their victims are made as whole as possible." Ex. J at 4-5. This does not salvage the law for several reasons. First, the law indiscriminately disenfranchises all persons on probation, parole, or post-release supervision, and not just persons who owe restitution. Roughly 68% of probationers currently disenfranchised under N.C.G.S. § 13-1 did *not* owe any restitution as part of their sentence. Baumgartner Report at 23-24.

Second, even for those individuals who owe restitution, the requirement to pay it before regaining their voting rights does not serve any interest for the large percentage of these individuals who simply cannot afford to pay the amount owed. *See id*. at 22; Burch Report at 22-34. For the many disenfranchised persons "who genuinely cannot pay, and who offer no immediate prospects of being able to do so," disenfranchisement "erects a barrier without delivering any money at all." *Jones v. Governor of Fla.*, 950 F.3d 795, 811 (11th Cir. 2020) (internal quotation marks omitted). "The State cannot draw blood from a stone." *Id*. at 827. Even if N.C.G.S. § 13-1 were narrowly tailored to disenfranchise only those who could pay but refuse, speculation about incentivizing people to pay restitution is not sufficiently compelling to justify denying the fundamental right to vote.

Finally, State Board Defendants assert that the revisions to N.C.G.S. § 13-1 in the 1970s, which made rights restoration automatic upon the completion of probation, parole, and other supervision, served to "[e]liminat[e] or lessen[] the effect of the prior law's discretionary determinations as to whether a North Carolinian convicted of felonies deserves to have his or her rights restored." Ex. I at 4. To be sure, removing the requirement that individuals had to petition a court to have their rights restored was a worthy and important measure accomplished by civil rights leaders of the time. But improving some parts of a discriminatory, unconstitutional policy does not supply cover to other unconstitutional parts of the policy that remain in place. Indeed, as Rep. Michaux confirms, despite the best efforts of the civil rights leaders, the 1970s revisions were a compromise that did not fully cure the discriminatory intent and effects of the prior law. Ex. K ¶¶ 14-20 (Michaux Aff.). Prior disenfranchisement laws may have been worse than today's, but that is not a compelling interest for the *continued* requirement that individuals complete probation, parole, or post-release supervision before regaining their voting rights.

2. The State's Compelling Interest Is in Restoring Voting Rights

Not only does the challenged disenfranchisement scheme fail to advance any compelling government interest, it causes extensive harms beyond the disenfranchisement of people living in the community. The government's real interest is in re-enfranchising people, not disenfranchising them. The General Assembly itself has declared by statute that one of the primary purposes of sentencing a person convicted of a crime is "to assist the offender toward rehabilitation and restoration to the community as a lawful citizen." N.C.G.S. § 15A-1340.12.

Collateral consequences of felony convictions, such as disenfranchisement of persons living under community supervision, ensure that while these individuals must still uphold the duties of citizenship, "their conviction status effectively denies their rights to participate in social life." Burch Report at 40 (citation omitted). "The stigmas attached to their legal standing … impacts their standing as citizens, their political participation, and their community involvement." *Id*. at 41 (citation omitted). Because the ability to vote is an important marker of community standing and belonging, the deprivation of voting rights through felony disenfranchisement hinders the reintegration of people with felony convictions. *Id*. Such disenfranchisement deprives the individual "of his civic personality and social dignity," demonstrating society's "indifference to his interests" and sending messages of political and social exclusion that undermine efforts to reintegrate. *Id*. at 41-42; *see* Ex. E ¶ 6 (Gaddy aff.) ("The inability to participate in the democratic process made me feel as if I was not a citizen.").

Studies also show that "felony disenfranchisement increases recidivism." Burch Report at 42. One study found, based on analysis of data from the Bureau of Justice Statistics, that people convicted of felonies in states that permanently disenfranchise people with such convictions are ten percent more likely to reoffend in three years than people with felony

convictions in states that do not permanently disenfranchise such persons, even after accounting for individual criminal background and other characteristics. *Id.*

Disenfranchising citizens who are not incarcerated (or who were never incarcerated) harms not only the individuals who are disenfranchised themselves, but also their families and communities. Burch Report at 42-45. In North Carolina (and elsewhere), individuals with felony convictions are tightly concentrated geographically: state prisoners are removed from a small number of block groups (a census category corresponding to roughly 1,000 people, on average) in the state, and the community supervised population also lives in a disproportionately small number of block groups in the state. *Id.* at 43. This geographic concentration has dramatic effects on neighborhood-level disenfranchisement. *Id.* In 2008, within the largest five North Carolina block groups for young adult community supervision, roughly 1 of every 5 people aged 18-34 was living under community supervision and disenfranchised due to N.C.G.S. § 13-1. *Id.*

Living in high-conviction, high-disenfranchisement neighborhoods affects individuals in many ways, even if they are not convicted and disenfranchised themselves. Burch Report at 43. Voter turnout may decrease through several mechanisms. First, because "children and newcomers learn the community's participatory values as they observe ample instances of engagement among their family members and peers," neighborhoods that have fewer voters as role models fail to transmit norms of participation effectively even to enfranchised residents and future voters. *Id.* at 43-44. Second, spouses of people convicted of felonies also lose the participatory effects of having a partner that votes. *Id.* at 44. Disenfranchisement ripples throughout households and across generations.

There are other political ripple effects as well. In communities with disenfranchisement laws, convictions reduce the number of voters, which reduces the political power of a

community. This reduction happens not just by removing the disenfranchised individuals from the voter rolls, but through other mechanisms as well. Concentrated disenfranchisement also damages the formal and informal mechanisms of voter mobilization. Burch Report at 44. Political parties tend to concentrate their efforts in places where mobilization is more effective and often fail to mobilize communities with low socioeconomic status members. *Id*. They tend to contact people who have voted before, especially those who have voted in primaries. *Id*. Going door-to-door may yield contact with fewer voters in high-conviction, high-disenfranchisement neighborhoods, even though this technique is most effective for mobilization. *Id*. at 44-45. There are fewer voters available to serve as discussion partners in such neighborhoods, a factor that also reduces turnout. *Id*. at 45.

In short, Defendants have not advanced and cannot advance any compelling government interest to which N.C.G.S. § 13-1 is narrowly tailored that justifies removing all persons on probation, parole, or post-release supervision from the body politic that can vote for this State's elected leaders. Because the statute unduly and without justification subverts the will of the people, it violates the Free Elections Clause.

III. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Violates North Carolina's Equal Protection Clause

N.C.G.S. § 13-1's disenfranchisement of persons living in North Carolina communities also violates North Carolina's Equal Protection Clause, which provides broader protection for voting rights than its federal counterpart. Strict scrutiny applies under Article I, § 19 because, in multiple different ways, N.C.G.S. § 13-1 denies a class of North Carolinians of "substantially equal voting power." The law denies equal voting power (or any voting power) to all persons on probation, parole, or post-release supervision, treating them differently from all other persons living in the community, and from the subset of the community convicted of a felony but who

have completed their period of supervision. The law independently triggers strict scrutiny under Article I, § 19 because it has the intent and effect of depriving substantially equal voting power to African Americans. The statute dates back to a post-Civil War effort to deny political power to African Americans, and it continues to work as intended. Statewide, African Americans are disenfranchised at 2.7 times the rate as whites, and in a number of counties, the disenfranchisement rate of African Americans is over six times that of whites. Finally, the law's requirement that people on probation pay financial obligations to ensure they regain access to the franchise is an impermissible wealth-based classification for the many people who simply cannot afford to pay these enormous debts. As with the Free Elections Clause, Defendants cannot meet their burden to show that these classifications satisfy strict scrutiny.

A. North Carolina's Equal Protection Clause Provides Greater Protection for Voting Rights Than its Federal Counterpart

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. It is well-established that "North Carolina's Equal Protection Clause provides greater protection for voting rights than federal equal protection provisions." *Common Cause*, 2019 WL 4569584, at *113 (citing *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)). In particular, North Carolina's Equal Protection Clause expansively protects "the fundamental right of each North Carolinian to *substantially equal voting power*." *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394 (emphasis added). "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).

North Carolina courts have repeatedly applied this broader protection for voting rights to strike down election laws under Article I, § 19 regardless of whether they violated federal equal protection. In *Stephenson*, the Supreme Court held that the use of single-member and multi-member districts in a redistricting plan violated Article I, § 19—even though such a scheme did not violate the U.S. Constitution. 355 N.C. at 377-81 & n.6, 562 S.E.2d at 393-95 & n.6. The Court held that, because the "classification of voters" between single- and multi-member districts created a "distinction among similarly situated citizens" with respect to voting rights, it "necessarily implicate[d]" the "fundamental right under the State Constitution" to "substantially equal voting power and substantially equal legislative representation," triggering strict scrutiny. *Id*. at 377-78, 382, 562 S.E.2d at 393-94, 396. Addressing contrary federal precedent, the Court explained that it is "beyond dispute that [the North Carolina Supreme Court] has the authority to construe the State Constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision." *Id*. at 381 n.6, 562 S.E.2d at 395 n.6 (alterations and internal quotation marks omitted).

In *Blankenship*, the Supreme Court held that Article I, § 19 mandates one-person, one-vote in judicial elections, even though "the federal courts have articulated that the 'one-person, one-vote' standard is inapplicable to state judicial elections" under the U.S. Constitution. 363 N.C. at 522-24, 681 S.E.2d at 762-64. The Court stressed that "[t]he right to vote on equal terms in representative elections . . . is a fundamental right" under the North Carolina Constitution and thus "triggers heightened scrutiny." *Id*. And in *Common Cause*, the three-judge Superior Court panel held that extreme partisan gerrymandering violates Article I, § 19 by "denying equal voting power" to "similarly situated citizens," even though the U.S. Supreme Court has declined

to hold that partisan gerrymandering violates federal equal protection guarantees. 2019 WL 4569584, at *113-18.

B. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Triggers Strict Scrutiny Under Article I, § 19

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.*, 326 N.C. at 746, 392 S.E.2d at 355. Thus, if a statute interferes with the exercise of a fundamental right—such as the right to "substantially equal voting power"—for an identifiable group of people, 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; *accord Northampton County*, 326 N.C. at 747, 392 S.E.2d at 356.

N.C.G.S. § 13-1 deprives a group of North Carolinians of substantially equal voting power, and thus triggers strict scrutiny under Article I, § 19, in four independent ways. First, the statute creates a class of people living in North Carolina communities who, unlike all of their neighbors, have no voting power. Second, the law provides for differential treatment within the set of persons who have a felony conviction and live in North Carolina communities, allowing those who have completed their probation, parole, or other supervision to vote but denying the right to vote to those who have not. Third, the statute has the intent and effect of discriminating against African Americans, depriving the African American community of substantially equal voting power. In this respect, the statute also triggers strict scrutiny because it "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). Fourth, in conditioning the right to vote on the ability to pay fines, fees, and restitution, the statute creates an impermissible wealth-based classification.

1. The Law Denies Substantially Equal Voting Power to Individuals Living in North Carolina Communities on Probation, Parole, or Post-Release Supervision

On its face, N.C.G.S. § 13-1 creates a class of persons living in North Carolina communities who are treated differently from virtually everyone else with respect to their right to vote. Voting-age persons who are on probation, parole, or post-release supervision following a felony conviction are denied the right to vote, unlike their neighbors not on probation, parole, or post-release supervision. These two groups send their kids to the same schools, work in the same offices, pay the same taxes, and can attend the same political rallies and demonstrations, but only one group can vote.

N.C.G.S. § 13-1 deprives this class of people of substantially equal voting power. They have no "voting power" at all, even though they are "affected [by] and directly interested in" who wins office the same as "those who are permitted to vote." *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969) (striking down statute that "contain[ed] a classification which excludes otherwise qualified voters who [were] substantially and directly interested in the [election outcome]"). Because N.C.G.S. § 13-1 facially creates a distinction among citizens that "implicates" the "fundamental right under the State Constitution" to "substantially equal voting power," it triggers strict scrutiny under Art. I, § 19. *Stephenson*, 355 N.C. at 377-78, 382, 562 S.E.2d at 393-94, 396; *see also Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 627 (1969) ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.").

2. The Law Provides for Unequal Voting Power Among Individuals with Felony Convictions Living in North Carolina Communities

N.C.G.S. § 13-1 also discriminates within the subset of persons living in North Carolina communities who have prior felony convictions. People with felony convictions who have completed their probation, parole, or post-release supervision can vote, but those who have not are denied any voting power. These two groups are "similarly situated." *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393-94. The people in both groups have felony convictions, have been deemed by the State safe to return to society, and live and work amongst their communities. The denial of substantially equal voting power to one of these two similarly situated groups of North Carolinians triggers strict scrutiny under *Stephenson*. *See id*.

3. The Law Deprives African Americans Living in North Carolina Communities of Substantially Equal Voting Power

N.C.G.S. § 13-1 independently is subject to strict scrutiny because the statute has the intent and effect of discriminating against African Americans. A plaintiff bringing a race discrimination claim under Art. I, § 19 "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*, 840 S.E.2d at 254-55 (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).

As detailed in the export report of Dr. Vernon Burton, one of the nation's foremost historians on southern voting rights, North Carolina's felony disenfranchisement scheme was designed largely to target African Americans, and that intent carries through to this day. *See supra* at pp. 4-12 (recounting history). The 1875 and 1877 provisions allowing broad-based felony disenfranchisement were adopted as part of an explicitly racist campaign to reverse the

gains of Reconstruction and to deny the franchise to African Americans. Burton Report at 24-45; *supra* at pp. 5-8. The effort was "a calculated and deliberate attempt to disenfranchise black voters in the face of the Fifteenth Amendment." Burton Report at 35. That intent was well-recognized at the time. *Id*. at 24-45. And while in the 1970s the efforts of North Carolina's first African American representatives since Reconstruction led to procedural reforms to facilitate the re-enfranchisement process for eligible persons, those representatives were unable to obtain changes to the law that would fully purge it of its racist origins and effect. Ex. K ¶¶ 14-20 (Michaux Aff.). Those racist origins and effects were well known at the time. *Id*. The civil rights leaders thus sought to provide for automatic restoration upon release from incarceration as opposed to completion of probation, parole, and post-release supervision and payment of all fines and fees. But those efforts were stymied, including by the same politicians who opposed integration and who opposed the Voting Rights Act. *Id*.; *see* Burton Report at 49-51.

To this day, the scheme to suppress the political power of African Americans through felony disenfranchisement laws has worked as intended. There is no genuine dispute that the continued disenfranchisement of individuals following their release from incarceration has a "disproportionate impact" on African Americans in North Carolina. *Holmes*, 840 S.E.2d at 255 (internal quotation marks omitted). As the below chart demonstrates, African Americans comprise 21.51% of the voting-age population in North Carolina, but 42.43% of those who are disenfranchised while on probation, parole, or post-release supervision.

This grossly disparate impact exists not just statewide, but in virtually every county across the state. As mentioned, in every county across the state for which there is sufficient data to perform comparisons, N.C.G.S § 13-1's disenfranchisement of non-incarcerated persons strips the right to vote from a greater percentage of the African American voting-age population than the white voting-age population. Baumgartner Report at 14-15. In 44 counties, the disenfranchisement rate of African Americans is over three times greater than it is for whites. *Id.* at 16. In Durham County, the disenfranchisement rate of African Americans is 5.82 times that of whites, in Wake County it is 6.21, in Buncombe County it is 6.93, in Mecklenburg County it is an astonishing 7.26, and topping the list is Orange County, where the disenfranchisement rate for African Americans is 7.82 times greater than for whites. *Id.*

These startling disparities have serious consequences for the political representation of African Americans and their communities. African American communities do not have

"substantially equal voting power" and the "the same representational influence or 'clout'" when so many members of their community cannot vote. *Stephenson*, 355 N.C. at 377-79, 562 S.E.2d at 393-94.

4. The Law Denies Substantially Equal Voting Power Based on Wealth

Strict scrutiny independently applies because the law creates a wealth-based classification for voting. As "conditions of probation," a defendant must "[p]ay the costs of court, any fine ordered by the court, and make restitution." N.C.G.S. § 15A-1343(b)(9). Failing to pay authorizes a multi-year extension of the term of probation—and thus a multi-year extension of the denial of the right to vote. *Id*. § 15A-1342(a), 1344(a), (d). N.C.G.S. § 13-1 thus denies the right to vote to people who have otherwise completed the terms of their probation, parole, or post-release supervision but cannot afford to pay their court fines, fees, or restitution, while similarly situated people who *can* afford to pay regain their right to vote.

It is well-settled that equal protection precludes a state from denying a person the right to vote "on account of his economic status." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966). That principle "bars a system which excludes" from the franchise "those unable to pay a fee." *Id*. As the Eleventh Circuit recently explained in enjoining a Florida statute that disenfranchised people with felony convictions until they repaid fines and fees, "the basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license." *Jones*, 950 F.3d at 817. A state denies equal protection "whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Harper*, 383 U.S. at 666.

That is exactly what N.C.G.S. § 13-1 does. "[S]imilarly situated felons who have otherwise completed their sentences except for the payment of [fines, fees, and restitution] … are treated differently on account of their inability to pay." *Jones*, 950 F.3d at 820. Two North

Carolinians could be convicted of the same crime, receive the same sentence, and each complete all other terms of their probation, but the person "with money in the bank will be re-enfranchised," and the person "who can't [pay] will continue to be barred." *Id*. Accordingly, the law denies "substantially equal voting power" to similarly situated persons based only on their financial means, triggering strict scrutiny. *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393-94.

Strict scrutiny separately applies because "disenfranchisement is a continuing form of punishment," and "heightened scrutiny is triggered when the State alleviates punishment for some, but mandates that it continue for others, based solely on account of wealth." *Jones*, 950 F.3d at 819-20. "[T]he state may not treat criminal defendants more harshly on account of their poverty." *Id*. at 818. And "[c]ontinued disenfranchisement is indisputably punitive in nature." *Id*. at 819. North Carolina thus "has implemented a wealth classification that punishes those genuinely unable to pay fees, fines, and restitution more harshly than those able to pay—that is, it punishes more harshly solely on account of wealth—and it does so by withholding access to the franchise." *Id*. 817. "Felons who are unable to pay (and who have no reasoned prospect of being able to pay) will remain barred from voting, repeatedly and indefinitely, while for those who can pay, the punishment will immediately come to an end." *Id*. at 820.

The wealth classification imposed under N.C.G.S. § 13-1 is no small matter. Across all probationers, the median total amount owed in fees, court costs, restitution, and supervision fees is $2,441. Baumgartner Report at 22. These financial obligations are prohibitive for a substantial percentage of disenfranchised persons. Only about half of people released from North Carolina prisons are employed a year after their release. Burch Report at 32.

N.C.G.S. § 13-1's disparate effects based on wealth are irrefutable, and Plaintiffs need not show discriminatory intent to succeed on this equal protection claim. "The Supreme Court

has squarely held that [the] intent requirement" applicable to race discrimination claims "is not applicable in wealth discrimination cases." *Jones*, 950 F.3d at 828 (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 126 (1996)). But in any event, N.C.G.S. § 13-1 traces its roots in part to a deliberate attempt to prevent poor persons from voting. Burton Report at 3, 34.

C. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Cannot Pass Strict Scrutiny Under Article I, § 19

For the same reasons described in relation to the Free Election Clause, N.C.G.S. § 13-1's disenfranchisement of individuals living in North Carolina communities cannot pass strict scrutiny for purposes of Plaintiffs' equal protection claims. Defendants have not identified any compelling government interest to which the statute is narrowly tailored that justifies categorically denying voting power to all persons living in North Carolina communities while on probation, parole, or post-release supervision. *See supra* at pp. 29-34. There is never a compelling state interest (or any interest) in intentionally discriminating against citizens on the basis of race, particularly in the realm of voting rights. *See* N.C. Const. art. I, § 19 ("[no] person be subjected to discrimination by the State because of race"). Nor could there be any compelling state interest (or any interest) in discriminating against citizens on the basis of wealth in the realm of punishment or voting rights. *Harper*, 383 U.S. at 668; *Jones*, 950 F.3d at 810-11.

IV. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Violates North Carolina's Freedom of Speech and Assembly Clauses

N.C.G.S. § 13-1 independently must be struck down because it violates North Carolina Freedom of Speech and Association Clauses. Article I, §§ 12, 14. Voting is a form of core political speech protected under the North Carolina Constitution, and N.C.G.S. § 13-1 constitutes a direct ban on such speech by persons on probation, parole, or post-release supervision. N.C.G.S. § 13-1 likewise precludes such persons from associating with a political party. The

statute is no different from a law that banned persons on probation, parole, or post-release supervision from leafleting, donating money to a political campaign, or giving a speech about policy issues in the public park. Such laws unquestionably would be stuck down, and N.C.G.S. § 13-1 must be as well.

A. Irrespective of Federal Law, Voting Is a Form of Protected Speech and Association Under the North Carolina Constitution

"North Carolina Constitution's Free Speech Clause provides broader rights than does federal law." *Common Cause*, 2019 WL 4569584, at *118 (citing *Corum v. Univ. of N..C through Bd. of Governors*, 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992); *Evans v. Cowan*, 122 N.C. App. 181, 183-84, 468 S.E.2d 575, 577-78, *aff'd*, 477 S.E.2d 926 (N.C. 1996)). "The words 'shall never be restrained' are a direct personal guarantee of each citizen's right of freedom of speech." *Corum*, 330 N.C. at 781, 413 S.E.2d at 289. Thus, while "both the North Carolina Constitution and the United States Constitution contain similar provisions," this State's courts "are not bound by the opinions of the federal courts" on matters concerning free speech and association. *Evans*, 122 N.C. App. at 183-84, 468 S.E.2d at 577.

Of relevance here, "[v]oting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses." *Common Cause*, 2019 WL 4569584, at *119. "Voting provides citizens a direct means of expressing support for a candidate and his views." *Id.* As the North Carolina Supreme Court explained in *Van Bokkelen*, the people "express[]" their will "by the ballot." 73 N.C. at 220.

"[T]he Freedom of Assembly Clause independently protects [individuals'] voting and their association with [a political party]." *Common Cause*, 2019 WL 4569584, at *120. "Just as voting is a form of protected expression, banding together with likeminded citizens in a political

party is a form of protected association." *Id*. And like North Carolina's Free Speech Clause, the Freedom of Assembly Clause differs from the First Amendment and provides the people with the explicit power to "instruct their representatives." N.C. Const. Art. I, § 12. "[F]or elections to express the popular will, the right to assemble and consult for the common good must be guaranteed." John V. Orth, The North Carolina State Constitution 48 (1995).

B. N.C.G.S. § 13-1's Disenfranchisement of Individuals Living in North Carolina Communities Violates Article I, §§ 12 and 14

People living in North Carolina communities while on probation, parole, or post-release supervision have the same free speech rights under Article I, § 14 as all other North Carolinians. They have the right to attend a protest, to hand out fliers on issues of public importance, or to phone bank on behalf of their preferred candidates. But N.C.G.S. § 13-1 bans these individuals from expressing their views at the ballot box, denying them the right to engage in core protected speech. *Common Cause*, 2019 WL 4569584, at *119. Such disenfranchisement directly censors core political speech, which occupies "such a high status" that it deserves "the fullest and most urgent" protection. *Winborne*, 136 N.C. App. at 198, 523 S.E.2d at 153 (internal quotation marks omitted); *see also Lewis v. Rapp*, 220 N.C. App. 299, 305, 725 S.E.2d 597, 602 (2012) ("Political speech regarding a public election lies at the core of matters of public concern" entitled to constitutional protection (internal quotation marks omitted)).

Because voting is a form of core political expression, N.C.G.S. § 13-1 is no different from a statute banning persons on probation, parole, or post-release supervision from speaking their views in the town square. Nobody would seriously dispute that such a statute is unconstitutional. *See Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) (invalidating statute barring sex offenders from all social media as violating the First Amendment). Nor is there any doubt that a statute banning persons on probation, parole, or post-release supervision

from making political donations would be struck down on free speech grounds. And if such a statute would trigger strict scrutiny, *a fortiori* N.C.G.S. § 13-1 must as well. Donating money to a candidate cannot receive greater free speech protections than voting for that same candidate.

N.C.G.S. § 13-1 also severely burdens the right of political association of persons on probation, parole, or post-release supervision. On the most basic level, such persons are precluded from registering to vote, and are thereby inhibited from becoming members of the North Carolina Democratic Party or North Carolina Republican Party. *See Common Cause*, 2019 WL 4569584, at *76 (explaining that "[t]he NCDP]s members include every registered Democratic voter in North Carolina"). "[B]anding together with likeminded citizens in a political party is a form of protected association," *id*. at *120, and inhibiting persons from registering with a political party interferes with the right to association. Moreover, in preventing people living in North Carolina communities from voting, N.C.G.S. § 13-1 burdens the ability of such persons to *effectively* associate with others who share the same political and policy views. *See id*. at *122. It hampers the ability of all such persons to elect public officials who share their policy preferences and will translate those preferences into legislation.

Because N.C.G.S. § 13-1 burdens—or outright bans—tens of thousands of people living in North Carolina communities from engaging in core political speech and association protected under Article I, §§ 12 14, the statute is subject to strict scrutiny. *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993) (restrictions on political speech are subject to strict scrutiny); *accord Hest Techs., Inc. v. State ex rel. Perdue*, 366 N.C. 289, 298, 749 S.E.2d 429, 436 (2012). For the reasons explained above, Defendants cannot satisfy strict scrutiny.

V. N.C.G.S. § 13-1's Conditioning the Right to Vote on Financial Payments Violates the North Carolina Constitution's Ban on Property Qualifications

Article I, § 11 of the North Carolina Constitution provides that, "[a]s political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office." This clause establishes that, "[u]nder North Carolina law, property interests alone cannot establish voting rights." *Texfi Indus., Inc. v. City of Fayetteville*, 44 N.C. App. 268, 273, 261 S.E.2d 21, 25 (1979), *aff'd*, 301 N.C. 1, 269 S.E.2d 142 (1980).

The framers of North Carolina's Constitution deemed the ban on property qualifications for voting "essential in the establishment of a more democratic form of government." *Roberts*, 20 N.C. 398, 4 Dev. & Bat. (Orig.Ed.) at 260-61. It ensures that "all classes of the community should be represented, and that every man should be entitled to a vote who should possess a sufficient degree of independence and legal discretion, and who should have participated in the public burthens and have had a residence in the State long enough to learn its true policy, and to feel an interest in its welfare." *Id*.

"Money, of course, is a form of property." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338 (1979); *see also McCullen v. Daughtry*, 190 N.C. 215, 129 S.E. 611, 613 (1925) (similar). Across various constitutional provisions, money and other financial assets are treated as "property." *See, e.g., DeBruhl v. Mecklenburg Cty. Sheriff's Office*, 259 N.C. App. 50, 56, 815 S.E.2d 1, 5 (2018) (due process clause); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 613-14 (2013) (takings clause). There is no basis for defining "property" under North Carolina's ban on property qualifications any differently. The plain text of the provision encompasses all forms of "property," and applying the provision to include money accords with its original intent as well. Financial qualifications exclude "classes of the community" from the

franchise, the precise evil that the ban on property qualifications sought to prevent. *Roberts*, 20 N.C. 398, 4 Dev. & Bat. (Orig.Ed.) at 260-61.

By disenfranchising people based on failure to pay court costs, fees, and restitution, N.C.G.S. § 13-1 violates the constitutional ban on property qualifications. A person may have otherwise completed all terms of their probation, but the probation and accompanying disenfranchisement may be extended solely because the person does not have enough money to pay all of their obligations. In other words, the statute's requirement that a person receive an "unconditional discharge" from probation effectively requires that a person own a particular amount of money—equal to the total amount they owe in costs, fees, and restitution—in order to ensure they will regain their voting rights. The statute thus directly makes "political rights and privileges . . . dependent upon . . . property," in violation of Article I, § 11.

A property qualification of any degree is unconstitutional, but the onerous and frequently prohibitive nature of the property qualifications under N.C.G.S. § 13-1 bears emphasis. As described, the median total amount of financial obligations that probationers owe is $2,441. Baumgartner Report at 22. There can be no genuine dispute that numerous North Carolinians simply do not have enough money to pay their court costs, fees, and restitution, and thus do not have enough money to ensure that they can regain their right to vote.

VI. If Necessary, the Equities Strongly Favor a Preliminary Injunction

While Plaintiffs have established that they are entitled to summary judgment as a matter of law, this Court alternatively should issue a preliminary injunction. Plaintiffs are, at a minimum, likely to succeed on the merits, and the equities strongly support an injunction to ensure that tens of thousands of North Carolinians are not wrongly disenfranchised in November.

A. Plaintiffs Are Likely to Succeed on the Merits

For the reasons explained above, plaintiffs are likely to succeed on their challenge to N.C.G.S. § 13-1's disenfranchisement of persons living in North Carolina communities.

B. Plaintiffs Will Suffer Irreparable Harm Absent an Injunction

Absent a preliminary injunction, Plaintiffs are "likely to sustain irreparable loss." *Triangle Leasing*, 327 N.C. at 227, 393 S.E.2d at 856. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." *Holmes*, 840 S.E.2d at 266 (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)). "[D]iscriminatory voting procedures in particular are the kind of serious violation of the Constitution for which courts have granted immediate relief." *Id.* (quoting *League of Women Voters of N.C.*, 769 F.3d at 247) (alterations omitted). "The need for immediate relief is especially important" in the context of voting rights because "once the election occurs, there can be no do-over and no redress." *Id.* (quoting *League of Women Voters of N.C.*, 769 F.3d at 247). "The injury to these voters is real and completely irreparable if nothing is done to enjoin the law." *Id.* (quoting *League of Women Voters of N.C.*, 769 F.3d at 247) (alterations omitted).

In recent years, numerous courts in North Carolina have applied this principle to preliminarily enjoin laws that restricted access to the franchise or otherwise threatened to impede free and fair elections. *See, e.g.*, *Holmes*, 840 S.E.2d 244 (entering preliminary injunction against voter ID law); *N.C. State Conf. of NAACP v. Cooper*, 2019 WL 7372980 (M.D.N.C. Dec. 31, 2019) (same); *Harper*, 19 CVS 12667, Order on Inj. Relief (entering preliminary injunction against use of gerrymandered congressional districts); *Action NC v. Strach*, 216 F. Supp. 3d 597 (M.D.N.C. 2016) (granting preliminary injunction regarding voter registration procedures); *Poindexter v. Strach*, 324 F. Supp. 3d 625 (E.D.N.C. 2018) (preliminarily enjoining North

Carolina statute removing third party candidates from ballot); *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, 2016 WL 6581284 (M.D.N.C. Nov. 4, 2016) (granting preliminary injunction against purging of voters from voter registration lists); *City of Greensboro v. Guilford Cty. Bd. of Elections*, 120 F. Supp. 3d 479 (M.D.N.C. 2015) (issuing preliminary injunction against law restructuring Greensboro city elections).

Failing to enjoin N.C.G.S. § 13-1 will cause irreparable harm just like the laws in all of the above cases. Unless enjoined, N.C.G.S. § 13-1 will prevent more than 56,500 individuals living in North Carolina communities from voting in the November 2020 general election, which will feature contests for President, U.S. Senate, and the entire Council of State. "The injury to these voters is real and completely irreparable if nothing is done to enjoin the law." *Holmes*, 840 S.E.2d at 266 (internal quotation marks omitted). These voters will have forever lost the opportunity—and their right—to vote on the elected leaders who will decide life-and-death matters over the next few years, such as access to healthcare, school funding, environmental regulations, and countless other critically important issues.

Indeed, Plaintiffs in this case have articulated the acute harms they and other members of the community will suffer absent an injunction. For instance, Plaintiff Shakita Norman is a single mother who "would like to be able to effect change in the community," and particularly to improve its public schools for her children, but N.C.G.S. § 13-1 "prevents [her] voice from being heard." Ex. D ¶ 11. Plaintiff Susan Marion, who was convicted of a drug offense after losing her home and car in Hurricane Florence, explains that if she were able to vote, she would "feel that [she] would be able to voice [her] opinion instead of feeling strangled." Ex. B ¶ 13. Corey Purdie from Plaintiff Wash Away Unemployment similarly attests that the individuals he serves "feel silenced, voiceless, and powerless by their inability to vote." Ex. G ¶ 18.

"Disenfranchisement prevents justice-involved individuals from advocating for themselves, their families, and their communities in the most direct way possible: participation in the democratic process." *Id.* ¶ 16.

The harms that will be incurred without an injunction are not limited to the individuals who are disenfranchised, but extend to their surrounding communities. African American communities in particular will suffer harms from the continued enforcement of N.C.G.S. § 13-1 given the grossly disproportionate impact of the law on African Americans in North Carolina. As Rev. Dr. T. Anthony Spearman of the North Carolina State Conference of the NAACP explains in the attached affidavit, "[w]hile voting is a personal, individual right, its collective impact is of course far greater." Ex. H ¶ 29. "[H]arsh and unfair probation and post-release felony disenfranchisement laws . . . are responsible for racial disparities in democratic participation and representation in [North Carolina]." *Id.* ¶ 12. A preliminary or permanent injunction is necessary to prevent the harms that North Carolina's African American communities have suffered for far too long from felony disenfranchisement.

C. The Balance of Equities Strongly Favors a Preliminary Injunction

Finally, "a careful balancing of the equities," *A.E.P. Indus.*, 308 N.C. at 400, 302 S.E.2d at 759, weighs decidedly in favor of a preliminary injunction. "[T]he public interest . . . favors permitting as many qualified voters to vote as possible." *Holmes*, 840 S.E.2d at 266 (internal quotation marks omitted). "[F]avoring enfranchisement . . . is always in the public interest." *Action NC*, 216 F. Supp. 3d at 648 (internal quotation marks omitted). That maxim follows from the bedrock principle that "[f]air and honest elections are to prevail in this state." *McDonald*, 119 N.C. at 673, 26 S.E. at 134. Plaintiffs seek to vindicate not only their own interest, but the paramount public interest in ensuring that North Carolina's 2020 elections reveal, "fairly and

truthfully, the will of the people." *Common Cause*, 2019 WL 4569584, at 2. An injunction prohibiting the enforcement of N.C.G.S. § 13-1 against persons on probation, parole, or post-release supervision is necessary to fulfill that mandate.

Corey Purdie of Wash Away Unemployment best explains the import of striking down N.C.G.S. § 13-1: "give people hope and they will want to contribute; give people a voice and they will speak; give people their rights and they will exercise them." Ex. G ¶ 24.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court enter summary judgment declaring N.C.G.S. § 13-1 unconstitutional to the extent it prevents persons on probation, parole, or post-release supervision from voting in North Carolina elections, and enjoin enforcement of N.C.G.S. § 13-1 against persons on probation, parole, or post-release supervision for the November 2020 and all future elections.

Respectfully submitted this the 8th day of May, 2020.

FORWARD JUSTICE

/s/ Daryl Atkinson
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Counsel for Plaintiffs

* Admitted pro hac vice

** Pro hac vice forthcoming

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants via *e-mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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Counsel for Legislative Defendants

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Counsel for State Board Defendants

This the 8th day of May, 2020.

/s/Daryl Atkinson
Daryl Atkinson (NC Bar # 39030)

Exhibit J

Arnold & Porter

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November 20, 2019

VIA HAND DELIVERY

The Honorable Paul C. Ridgeway
Senior Resident Judge
Wake County Justice Center
300 S. Salisbury Street
Raleigh, NC 27602

Re: *Community Success Initiative, et al., v. Timothy K. Moore, in His Official Capacity as Speaker of the North Carolina House of Representatives, et al.*, 19 CV 15941, Wake County Superior Court

Dear Judge Ridgeway:

We represent the plaintiffs in the above-referenced action, which was filed on November 15, 2019. The lawsuit involves a facial challenge to the validity of an act of the General Assembly; namely, the lawsuit involves a facial challenge to the North Carolina statute providing for the disenfranchisement of individuals previously convicted of felonies, N.C.G.S.A. § 13-1. This action therefore must be heard and determined by a three-judge panel under N.C. Gen. Stat. § 1-267.1(b1) & (b2). Pursuant to N.C. Gen. Stat. § 1-267.1, I have enclosed a copy of the complaint. I previously sent an electronic copy of the complaint to Ms. Myers.

Please notify the Chief Justice to ensure the expeditious appointment of a three-judge panel to hear this case.

If you have any questions or if there is any additional information I can provide, please do not hesitate to let me know.

Very truly yours,

R. Stanton Jones

Enclosure

cc: Daryl Atkinson (via email)
Elisabeth Theodore (via email)
Daniel Jacobson (via email)
Benjamin Berwick (via email)
Farbod Faraji (via email)
Paul Cox (via email)
Phillip Strach (via email)

Exhibit K

FORWARD JUSTICE

March 6, 2020

VIA HAND DELIVERY

The Honorable Cheri Beasley
Chief Justice
North Carolina Supreme Court
2 E Morgan St
Raleigh, NC 27601

The Honorable Paul C. Ridgeway
Senior Resident Judge
Wake County Justice Center
300 S. Salisbury Street
Raleigh, NC 27602

Re: *Community Success Initiative, et al., v. Timothy K. Moore, in His Official Capacity as Speaker of the North Carolina House of Representatives, et al.*, 19 CVS 15941, Wake County Superior Court

Dear Chief Justice Beasley and Judge Ridgeway:

We represent Plaintiffs in the above-referenced action and send this letter to respectfully request that a three-judge panel be appointed in this case as soon as is practicable. This lawsuit, originally filed by Plaintiffs on November 20, 2019, is a facial challenge to provisions of N.C.G.S.A. § 13-1, the North Carolina statute providing for the disenfranchisement of individuals previously convicted of felonies. The lawsuit alleges that the disenfranchisement of individuals who are no longer incarcerated (or were never incarcerated) violates multiple provisions of the North Carolina Constitution. I have enclosed a copy of the Amended Complaint with this letter.

Plaintiffs filed this action four and a half months ago, and filed a motion to set an expedited case schedule that same day. On December 3, 2019, Plaintiffs filed an Amended Complaint, and the State Board Defendants and the Legislative Defendants filed Answers to the Amended Complaint on January 16, 2020 and January 21, 2020, respectively. Although both sets of Defendants initially filed motions to dismiss the Amended Complaint, both sets of Defendants subsequently withdrew those motions to dismiss on January 29, 2020. Upon withdrawing those motions, Defendants all agreed that this case was ripe and fit for appointment of a three-judge panel. In turn, Plaintiffs agreed to a continuance of a hearing that Plaintiffs had calendared for February 4 on their motion to set an expedited case schedule (which has been

pending since November 20, 2019), as the parties agreed that any expedited case schedule should be set by the three-judge panel that will hear this case.

Thus, all parties agree that a three-judge panel should be appointed to preside over this matter pursuant to N.C. Gen. Stat. § 1-267.1(b1) & (b2). Plaintiffs respectfully request that a panel be appointed promptly to ensure that, if Plaintiffs prevail in this case, they may obtain relief before the November 2020 elections. Based on recent estimates, approximately 70,000 North Carolinians who are currently disenfranchised would regain their right to vote if Plaintiffs were to prevail. Many of these individuals have been disenfranchised for years following their release from incarceration, even though they are law-abiding members of their communities and their lives are governed by the laws passed by elected officials. "The right to vote is one of the most cherished rights in our system of government." *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Id.* (internal quotation marks omitted). Prompt appointment of a three-judge panel is necessary to ensure that Plaintiffs and tens of thousands of other North Carolinians are not denied their fundamental right to vote in another election because of a delay in adjudicating this case.

If you have any questions or if there is any additional information I can provide, please do not hesitate to let me know. Thank you for your consideration of this matter.

Very truly yours,

Daryl V. Atkinson

cc: Whitley Carpenter (via email)
R. Stanton Jones (via email)
Elisabeth Theodore (via email)
Daniel Jacobson (via email)
Benjamin Berwick (via email)
Farbod Faraji (via email)
Paul Cox (via email)
Olga Vysotskaya (via email)
Brian Rabinovitz (via email)

Exhibit L

FORWARD JUSTICE

May 11, 2020

VIA U.S. MAIL

The Honorable Cheri Beasley
Chief Justice
North Carolina Supreme Court
2 E Morgan St
Raleigh, NC 27601

The Honorable Paul C. Ridgeway
Senior Resident Judge
Wake County Justice Center
300 S. Salisbury Street
Raleigh, NC 27602

Re: *Community Success Initiative, et al., v. Timothy K. Moore, in His Official Capacity as Speaker of the North Carolina House of Representatives, et al.*, 19 CVS 15941, Wake County Superior Court

Dear Chief Justice Beasley and Judge Ridgeway:

Further to our previous letter dated March 6, 2020, we write on behalf of Plaintiffs concerning appointment of a three-judge panel in the above-referenced action. As previously explained, this action was commenced on November 20, 2019 and Defendants have filed answers with no motions to dismiss. All parties have agreed since January that a three-judge panel should be appointed pursuant to N.C. Gen. Stat. § 1-267.1(b1) & (b2).

Today, Plaintiffs filed a Motion for Summary Judgment or in the Alternative a Preliminary Injunction. The motion seeks an injunction, either permanent or preliminary, barring enforcement of N.C.G.S. § 13-1's disenfranchisement provisions with respect to individuals living in North Carolina communities on probation, parole, or post-release supervision. The motion is time-sensitive: Plaintiffs seek an injunction in time to restore the right to vote for such disenfranchised persons before the November 2020 general election.

In light of these developments, we respectfully reiterate our request for prompt appointment of a three-judge panel, which is necessary to ensure that Plaintiffs and tens of thousands of other North Carolinians are not denied their fundamental right to vote in another election because of a delay in adjudicating this case.

If you have any questions or if there is any additional information I can provide, please do not hesitate to let me know. Thank you for your consideration of this matter.

Very truly yours,

Daryl Atkinson
Counsel for Plaintiffs

cc:
Whitley Carpenter (via email)
Farbod Faraji (via email)
R. Stanton Jones (via email)
Elisabeth Theodore (via email)
Daniel Jacobson (via email)
Paul Cox (via email)
Olga Vysotskaya (via email)
Brian Rabinovitz (via email)

Enclosures