

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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 as Speaker of the
North Carolina House of
Representatives, *et al.*,

Defendants.

**BRIEF OF THE DISTRICT OF
COLUMBIA, CALIFORNIA,
HAWAII, MASSACHUSETTS, AND
NEVADA AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS**

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INTRODUCTION AND INTEREST OF *AMICI* STATES

The District of Columbia and the States of California, Hawaii, Massachusetts, and Nevada (collectively, “Amici States”) file this brief as *amici curiae* in support of plaintiffs. *Amici* States are home to millions of Americans with past felony convictions who are now living and working in their communities. As of 2016, however, an estimated 6.1 million people across the United States could not vote because of state laws that disenfranchise citizens convicted of felony offenses. Christopher Uggen et al., The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* at 3 (Oct. 2016).¹ Seventy-seven percent of these individuals, or about 4.7 million Americans, have completed their terms of incarceration and are living in their communities but remain disenfranchised. *Id.* at 6, 14. The result is that approximately 1 in every 40 adults in the United States cannot vote because of a felony conviction. *Id.* at 3.

Felon disenfranchisement is the product of a patchwork of state laws, which vary widely. Two States, Maine and Vermont, do not restrict in any way the voting rights of convicted felons, including those currently in prison.² Jean Chung, The

¹ Available at <https://tinyurl.com/6-million-lost> (download PDF).

² The Council of the District of Columbia is currently considering a bill that would expand the franchise to residents currently incarcerated for felony convictions. B23-0324, 23rd Council (D.C. 2019).

Sentencing Project, *Felony Disenfranchisement: A Primer* 1 (updated Dec. 2019).³

The District of Columbia and seventeen States automatically restore a former felon's voting rights upon release from incarceration. *Id.*⁴ California, Connecticut, and New York⁵ allow people with felony convictions on probation to vote.⁶ *Id.* Seventeen States, including North Carolina, require former felons to complete the terms of their imprisonment, parole, and probation before they can regain the right to vote. *Id.*⁷ Eleven States disenfranchise some or all felons even after they have served their prison sentences and completed their terms of probation or parole. *Id.*⁸

According to recent survey data, “on the whole, Americans are unsure of the goals of disenfranchisement.” Bruce E. Cain & Brett Parker, *The Uncertain Future of Felon Disenfranchisement*, 84 Mo. L. Rev. 935, 949 (2019). “[R]estoration of voting rights,” by contrast, can “provide[] a clear marker of reintegration and

³ Available at <https://tinyurl.com/disenfranchisement-primer> (download PDF).

⁴ Those States include Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. Chung, *supra*, at 1.

⁵ Since 2018, New Yorkers on parole are also eligible for restoration of voting rights through the Governor's clemency power. *Id.* n.a.

⁶ As of 2018, Louisiana also allows felons on probation or parole to vote if they have not been in prison for the past five years. *Id.* n.b.

⁷ Those States include Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin. *Id.*

⁸ Those States include Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming. *Id.*

acceptance as a stakeholder in a community of law-abiding citizens.” Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 Am. Soc. Rev. 777, 794 (2002). To that end, States are actively grappling with their felon disenfranchisement laws. Since 1997, 23 States, including several *Amici*, “have moved towards restoring the voting rights of individuals who have been convicted of felonies.” Cain & Parker, *supra*, at 938. These initiatives to expand the franchise embrace the notion that allowing former felons to vote benefits both the returning citizens and the communities they rejoin.

Amici States have an interest in promoting civic participation and public safety by reintegrating former felons as full-fledged, productive members of their societies. Moreover, States’ experiences expanding the franchise have been positive and underscore the fact that there is no compelling interest in excluding citizens who have otherwise been reintegrated into their communities from voting. North Carolina’s felon disenfranchisement law, which conditions restoration of voting rights upon a former felon’s satisfaction of all terms of his probation, parole, and legal financial obligations, is out of step with these important interests.

ARGUMENT

I. States' Recent Experiences Have Shown That Expanding The Franchise Benefits Communities And Improves Public Safety.

States across the country have implemented a number of recent measures to restore the franchise earlier and more easily. These efforts include laws repealing lifetime disenfranchisement, allowing felons to vote while completing the terms of their probation or parole, eliminating requirements to pay all legal financial obligations before voting rights will be restored, and providing information to felons leaving correctional facilities about restoration of voting rights and voter registration. These efforts reflect States' understanding that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, thereby fostering civic participation and improving public safety. Put simply, it is in States' interest to broaden the franchise to former felons who have successfully rejoined their communities.

A. States have successfully expanded the franchise to former felons.

Over the past twenty years, States have restored the right to vote to more than one million citizens by reforming their felon disenfranchisement laws. Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform* 3 (Oct. 2018).⁹ For example, Delaware, Florida,

⁹ Available at <https://tinyurl.com/expanding-the-vote> (download PDF).

Maryland, Nebraska, Nevada, and New Mexico repealed laws that had permanently disenfranchised convicted felons for life. *See* H.B. 126, 140th Gen. Assemb. (Del. 2000) (amending the state constitution to repeal lifetime disenfranchisement); Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018) (same);¹⁰ Andrew A. Green, *Felons Gain Right to Vote*, Balt. Sun (Apr. 25, 2007)¹¹ (describing Maryland law replacing lifetime disenfranchisement with restoration upon completion of sentence); L.B. 53, 99th Leg., 1st Sess. (Neb. 2005) (repealing lifetime disenfranchisement and automatically restoring voting rights two years after completion of sentence); A.B. 431, 80th Sess. (Nev. 2019) (automatically restoring voting rights of all felons upon release from prison); S.B. 204, 2001 Reg. Sess. (N.M. 2001) (repealing lifetime disenfranchisement). Similarly, Virginia and Wyoming lifted restrictions on the ability of felons convicted of nonviolent offenses to regain the right to vote upon completion of their sentences. Va. Exec. Order No. 65 (July

¹⁰ In 2019, the Florida legislature passed a bill interpreting the language of the constitutional amendment to require former felons to pay all outstanding fines, fees, and restitution imposed as part of their sentence in order to regain their voting rights. S.B. 7066, 2019 Leg., Reg. Sess. (Fla. 2019). A group of former felons who are unable to pay their legal financial obligations filed a lawsuit challenging the constitutionality of this requirement. At the conclusion of a bench trial earlier this month, the district court ruled that this requirement “is unconstitutional as applied to individuals who are otherwise eligible to vote but are genuinely unable to pay” and permanently enjoined its enforcement. *Jones v. DeSantis*, No. 19-cv-300, 2020 WL 2618062, at *44 (N.D. Fla. May 24, 2020).

¹¹ Available at <https://tinyurl.com/felons-baltimore>.

15, 2013)¹² (directing corrections officials to share criminal history information of eligible nonviolent felons to facilitate automatic restoration of rights); H.B. 75, 64th Leg., 2017 Gen. Sess. (Wyo. 2017) (automatically restoring voting rights to all nonviolent felons).

Other States have restored the right to vote to individuals living in their communities who are still under the supervision of the criminal justice system. California, Colorado, Connecticut, Louisiana, Maryland, New Jersey, New York, and Rhode Island have variously restored the right to vote to citizens completing the terms of either their felony probation, parole, or post-release community supervision. *See* A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016) (providing that citizens subject to post-release community supervision and those serving felony sentences in county jail are eligible to vote);¹³ H.B. 19-1266, 71st Gen. Assemb., 2019 Reg. Sess. (Colo. 2019) (restoring voting rights to parolees); H.B. 5042, 2001 Gen. Assemb., Jan. Sess. (Conn. 2001) (restoring voting rights to probationers); H.B. 265, 2018 Reg. Sess. (La. 2018) (restoring voting rights to felons, including those on parole or probation, who have not been incarcerated in the past five years); H.B.

¹² Available at <https://tinyurl.com/va-exec-order-65> (open PDF).

¹³ The California Legislature is currently considering placing a proposed constitutional amendment on the November 2020 ballot that would allow parolees to vote. A.C.A. 6, 2019-2020 Reg. Sess. (Cal. 2019).

980, 2015 Reg. Sess. (Md. 2015) (permitting felons discharged from incarceration to register to vote); A.B. 5823, 2018-2019 Reg. Sess. (N.J. 2019) (re-enfranchising felons on parole or probation); N.Y. Exec. Order No. 181 (Apr. 18, 2018)¹⁴ (restoring voting rights to parolees upon release from prison);¹⁵ H.B. 7938, 2006 Gen. Assemb., Jan. Sess. (R.I. 2006) (restoring voting rights upon discharge from incarceration). Similarly, Delaware and Washington State eliminated the requirement of paying all fines, fees, costs, and restitution before regaining the right to vote. S.B. 242, 148th Gen. Assemb. (Del. 2016); H.B. 1517, 61st Leg., 2009 Reg. Sess. (Wash. 2009).

Finally, States including California, New Jersey, New Mexico, New York, and Washington have enacted laws requiring state agencies to notify felons of the process for seeking restoration of voting rights or provide information about their voting rights prior to or upon release from incarceration. *See* A.B. 1344, 2017-2018 Reg. Sess. (Cal. 2017) (requiring corrections officials to provide information about voting rights restoration online and in person to felons leaving prison); S.B. 2282, 2010-2011 Reg. Sess. (N.J. 2012) (requiring the State Commissioner of Corrections to provide general written information of a returning citizen's right to vote prior to

¹⁴ Available at <https://tinyurl.com/ny-exec-order>.

¹⁵ New York already permits felons on probation to vote. N.Y. Election Law § 5-106.

release); H.B. 64, 2005 Reg. Sess. (N.M. 2005) (requiring the corrections department to notify a former felon of his ability to register to vote upon completion of his sentence); A.B. 9706, 2010 Assemb., Reg. Sess. (N.Y. 2010) (requiring the corrections department to notify a former felon of his right to vote and provide a voter registration application upon release); S.B. 5207, 66th Leg., 2019 Reg. Sess. (Wash. 2019) (similar). These measures help to reduce confusion among returning citizens by advising them of the process for restoration of rights and providing the information needed to register to vote when eligible. They also encourage individuals returning from incarceration and reintegrating into their communities to exercise the franchise, when possible.

B. Expanding the franchise can promote civic participation and improve public safety.

States' efforts to restore voting rights to returning citizens embrace the idea that "restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety." Christina Beeler, Article, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotation marks omitted); *see, e.g.*, N.Y. Exec. Order No. 181, at 1 (reasoning that "research indicates a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves public safety for all New Yorkers"); Press Release, Cal. Secretary of State, *Secretary of State Alex Padilla Launches 'Restore Your Vote'*

Tool to Help Californians with Criminal Convictions Know Their Voting Rights (Oct. 17, 2018)¹⁶ (“Civic engagement can be a critical piece in reintegrating formerly incarcerated Californians into their communities and reducing recidivism.” (internal quotation marks omitted)). In expanding the franchise, States have cast doubt on the efficacy of post-release disenfranchisement. *See, e.g.*, N.J. A.B. 5823 § 1(f) (finding that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose”). Rather, the experience of many States confirms that “civic reintegration should be included in re-entry models because it can help transform one’s identity from deviant to law-abiding citizen.” Erika Wood, Brennan Ctr. for Justice, *Restoring the Right to Vote* 8 (May 2009).¹⁷

Empirical evidence “demonstrates that former criminal offenders who enter stable work and family relationships are most likely to desist from crime.” Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004) (citations omitted). These studies observe that “attachment to social institutions such as families and labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior.” *Id.* In much the same way, allowing felons to vote can foster prosocial behavior: “[W]hen citizens

¹⁶ Available at <https://tinyurl.com/ca-press-release>.

¹⁷ Available at <https://tinyurl.com/restoring-right> (download report).

convicted of crime vote, they are doing what all voters do: actively endorsing the political system.” Alec C. Ewald, *An “Agenda for Demolition”: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004) (emphasis omitted). Participating in the political process “produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system,” which, “in turn, fosters continued political participation.” *Voting and Subsequent Crime and Arrest*, *supra*, at 198. In this way, civic restoration “communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process.” VCU News, *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says* (Apr. 26, 2016).¹⁸

Several studies of former felons’ voting behavior support this conclusion. For example, a study by the Florida Parole Commission found that ex-felons whose voting rights were automatically restored upon release from prison were less likely to commit new crimes. James Call, *Study Shows Ex-Cons Benefit from Rights Restoration*, wfsu Pub. Media.¹⁹ In April 2007, then-Governor Crist had revised Florida’s rules of executive clemency to automatically restore the rights of most

¹⁸ Available at <https://tinyurl.com/VCU-expert>.

¹⁹ Available at <https://tinyurl.com/florida-study> (last visited May 20, 2020).

nonviolent felons upon completion of their sentences. Abby Goodnough, *In a Break from the Past, Florida Will Let Felons Vote*, N.Y. Times (Apr. 6, 2007).²⁰ In March 2011, however, then-Governor Scott issued new clemency rules requiring all felons to wait five years after completing their sentences to apply for restoration of rights. Erika Wood, *Turning Back the Clock in Florida*, Brennan Ctr. for Justice (Mar. 11, 2011).²¹ A study found that between April 2007 and March 2011, the period when Governor Crist's clemency rules automatically restored civil rights, about 11% of returning citizens re-offended, as compared with 33% of individuals released between 2001 and 2008. Call, *supra*. In other words, the rate of recidivism among the group whose voting rights were restored fell by about two-thirds. *Id.*

Another study found "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior." *Voting and Subsequent Crime and Arrest, supra*, at 213. This survey of 1000 former high school students analyzed "the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000." *Id.* at 200. The study found that "[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters." *Id.* at 205. These studies suggest that "[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor

²⁰ Available at <https://tinyurl.com/florida-felons-vote>.

²¹ Available at <https://tinyurl.com/turning-back-clock-florida>.

that turns felons' lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society." *Id.* at 213.

Law enforcement authorities have endorsed this view in support of several States' voting restoration laws. For example, a police officer testified before the Maryland Legislature that re-enfranchisement "promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods safer." *Restoring the Right to Vote, supra*, at 11 (quoting *Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Envtl. Affairs*, 2007 Leg., 423rd Sess. (Md. 2007) (written testimony of Ron Stalling, Nat'l Black Police Ass'n)). Similarly, a former city police chief in Rhode Island asserted that post-release disenfranchisement "disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation," whereas "[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community." Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, *The Providence Journal* (Sept. 25, 2006).²²

Moreover, in enacting laws to expand the franchise, state legislators have endorsed the finding that restoring voting rights encourages former felons to rejoin

²² Available at <https://tinyurl.com/without-a-vote>.

society as productive members of their communities. *See, e.g.*, Colo. H.B. 19-1266 § 1(c) (declaring that restoring voting rights to parolees “will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities”). States have also recognized that restoring the franchise benefits their communities more broadly by promoting civic participation. *See, e.g.*, R.I. H.B. 7938 § 1(1) (“Restoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society.”). Further, States note that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. *See, e.g.*, Wash. H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (2009) (crediting testimony that “restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism”).

In addition, States have recognized the importance of restoring voting rights to returning citizens given the disparate impact of felon disenfranchisement laws on minority communities. Unfortunately, the country’s mass incarceration problem “has disproportionately impacted people of color,” and “the disparities in incarceration rates by race ultimately become disparities in voting rights.” Beeler, *supra*, at 1085. Consequently, as of 2016, over 7.4% of the African American voting

age population in the United States could not vote, as compared with only 1.8% of the non-African American population. *6 Million Lost Voters, supra*, at 3. In addition to the disparate impact of felon disenfranchisement laws, there is evidence that misinformation about these laws is more likely to deter African Americans from voting than their white counterparts. Specifically, a 2009 study found that “eligible and registered” African American voters “were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies,” as compared with white voters, who were only 1 percent less likely to vote. Erin Kelley, Brennan Ctr. for Justice, *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017).²³

States implementing measures to expand the voting rights of returning citizens have specifically called out these harmful consequences of disenfranchisement on minority communities. *See, e.g.*, N.J. A.B. 5823 § 1(e) (finding that “[n]early half of those denied the right to vote because of a criminal conviction are Black, due to racial disparities in the criminal justice system”); N.Y. Exec. Order No. 181, at 1 (observing that “the disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of minority populations”); R.I. H.B. 7938 § 1(4) (“One in five (5) black men and one in eleven

²³ Available at <https://tinyurl.com/intertwined-history> (download report).

(11) Hispanic men are barred from voting in Rhode Island. By denying so many the right to vote, criminal disenfranchisement laws dilute the political power of entire minority communities.”). These important considerations underscore the substantial benefits of restoring the franchise to citizens upon return from incarceration.

II. N.C.G.S. § 13-1 Does Not Further Any Compelling Governmental Interests.

There is little evidence that extended disenfranchisement promotes any of the traditional goals of the criminal justice system or that it facilitates compliance with outstanding legal financial obligations. Moreover, the experience of States across the country illustrates that restoring the franchise upon release from prison results in fewer administrative problems and less confusion among both election officials and former felons about voter eligibility. These observations call into question the interest of States like North Carolina in continuing to disenfranchise felons once they have returned to their communities.

A. Felon disenfranchisement laws like N.C.G.S. § 13-1 do not promote any traditional criminal justice goals.

States like North Carolina contend that post-release disenfranchisement furthers certain goals of the criminal justice system. *Cf.* Jacobson Decl. Ex. I, at 5 (stating that the government has an interest in “[e]nsuring that all persons convicted of felony offenses fully satisfy their obligations” in criminal cases). Not so. Courts have recognized four familiar justifications that support criminal penalties:

incapacitation, deterrence, retribution, and rehabilitation. *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality opinion). There is a growing consensus, however, that once felons have completed their terms of incarceration and returned to their communities, the penalty of continued disenfranchisement does not further any of these traditional goals.

In the ordinary course, post-release disenfranchisement will not “incapacitate an ex-offender from committing future criminal offenses, except, perhaps, from committing an extraordinarily narrow subset of voting-related crimes such as vote selling.” Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 Stan. L. Rev. 1147, 1167 (2004). Moreover, there is no evidence that “people with felony convictions are prone to commit offenses affecting the integrity of elections,” or that “people on probation and parole have a greater propensity for voter fraud” in the states where they can vote. *Restoring the Right to Vote*, *supra*, at 10.

Nor does extended disenfranchisement deter criminal behavior. Several rationales support this finding: First, it is highly “unlikely that an individual who is not deterred by the prospect of imprisonment or fines or other restrictions on his liberty will be dissuaded by the threat of losing his right to vote.” Karlan, *supra*, at 1166; see *Restoring the Right to Vote*, *supra*, at 11. Second, “the years of early adulthood in which criminal behavior is most likely are precisely the years in which

political participation is at its lowest,” such that many individuals “are likely to be disenfranchised before they have actually exercised the right to vote.” Karlan, *supra*, at 1166.

It is also problematic to justify extended disenfranchisement based on retributive goals, as retribution typically involves an analysis of “the gravity of a defendant’s conduct” relative to the “harshness of the penalty imposed.” Karlan, *supra*, at 1167; *see Atkins v. Virginia*, 536 U.S. 304, 319 (2002). But “all felonies are not equally serious.” Karlan, *supra*, at 1167. Yet post-release disenfranchisement laws like North Carolina’s impose a uniformly severe punishment on all felons, despite “the assessment of the sentencing judge or jury and the corrections officials who, after careful review of each individual’s circumstances,” have deemed individuals “fit to re-enter society” once they have served their term of incarceration. *Restoring the Right to Vote*, *supra*, at 11.

Post-release disenfranchisement also “conflicts with the rehabilitative goals of the criminal justice system by discouraging civic participation.” Beeler, *supra*, at 1087-88. Voting serves an important function, as it “invests” convicted felons in “our democracy while reminding them of the reciprocal responsibilities that citizens share.” *Restoring the Right to Vote*, *supra*, at 11. Denying returning citizens the “ability to participate in the political process” only “further isolates and segregates ex-felons re-entering into society.” Guy Padraic Hamilton-Smith & Matt Vogel, *The*

Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism, 22 Berkeley La Raza L.J. 407, 408 (2012). This extended exclusion, in turn, conveys the message “that ex-offenders are beyond redemption.” Karlan, *supra*, at 1166.

Indeed, studies suggest that disenfranchisement may be positively correlated with recidivism. For example, a study of individuals released from prison in fifteen states in 1994 revealed that “individuals who are released in states that permanently disenfranchise are roughly nineteen percent more likely to be rearrested than those released in states that restore the franchise post-release.” Hamilton-Smith & Vogel, *supra*, at 426. Further, the same study found that “[i]ndividuals released in states that permanently disenfranchise are roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release.” *Id.* at 427.

Finally, there is no evidence that disenfranchisement facilitates compliance with outstanding legal financial obligations (“LFOs”). *Cf.* Jacobson Decl. Ex. J, at 4-5 (stating that North Carolina has an interest in “[r]equiring felons to pay full restitution to their victims”). For citizens who are willing but unable to pay, “[t]ying repayments to voting rights is unlikely to compel these individuals to pay their LFOs any more quickly than if the franchise was not so conditioned.” Ryan A. Partelow, *The Twenty-First Century Poll Tax*, 47 Hastings Const. L. Q. 425, 463 (2020); *see Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (reasoning that “[r]evoking the probation of someone who through no fault of his own is unable to make restitution

will not make restitution suddenly forthcoming”); *Jones v. Governor of Fla.*, 950 F.3d 795, 827 (11th Cir. 2020) (per curiam) (“If a felon is truly unable to pay, it makes no sense to assert that he will be incentivized to pay his LFOs with money that he does not have.”). States can ensure that former felons complete the terms of their sentences through courts’ alternative means of enforcing judgments, including by “extend[ing] the time for making payments, [] reduc[ing] the fine, or direct[ing] that the probationer perform some form of labor or public service in lieu of the fine.” *Bearden*, 461 U.S. at 672; *see Jones*, 950 F.3d at 827. There is no sound governmental interest, however, in distinguishing between former felons with the means to pay and those without in determining who regains the right to vote.

B. Systems that restore the franchise upon release from incarceration are less administratively burdensome and less confusing than systems like North Carolina’s.

North Carolina claims that N.C.G.S. § 13-1 serves the State’s interests in “[s]implifying the administration” of voting rights restoration and “[a]voiding confusion among North Carolinians convicted of felonies as to when their rights are restored.” Jacobson Decl. Ex. I, at 4-5; *see also id.* Ex. J, at 4. But studies show that post-release disenfranchisement systems are in fact more difficult to administer than systems restoring the right to vote upon release from incarceration. Moreover, systems like North Carolina’s create confusion among elections officials and voters about voter eligibility, rather than resolving it.

1. Systems that restore the franchise when felons leave prison are easier to administer than post-release disenfranchisement systems.

Post-release disenfranchisement systems often require returning citizens to apply for restoration of their civic rights, a process that can be complicated, time consuming, and resource intensive. But in states that allow their citizens to vote upon release from prison, “[t]here is no longer any need to coordinate complicated data matches, administer convoluted eligibility requirements, or sort through thousands of restoration applications.” *Restoring the Right to Vote, supra*, at 15. Indeed, Rhode Island recognized the benefit of shifting to a system of automatic restoration upon release when the State amended its felon disenfranchisement law in 2006. The Rhode Island General Assembly observed that “[e]xtending disenfranchisement beyond a person’s term of incarceration complicates the process of restoring the right to vote.” R.I. H.B. 7938 § 1(5). The State’s prior system of post-release disenfranchisement had “require[d] the involvement of many government agencies in the restoration process.” *Id.* The legislature explained that “[t]his bill would simplify restoration by making people eligible to vote once they have served their time in prison, thereby concentrating in the department of corrections the responsibility for initiating restoration of voting rights.” *Id.* Further, lawmakers observed, the change to a “streamlined restoration process” would not

only ease the administrative burden on state agencies but also “conserve[] government resources and save[] taxpayer dollars.” *Id.*

Other States’ experiences confirm that restoring the franchise automatically upon release from incarceration is a simple process. For example, in the District of Columbia, based on monthly reports from the local and federal trial courts of “each person incarcerated” for a felony conviction, the Board of Elections cancels the voter registration of incarcerated residents. D.C. Code § 1-1001.07(k). As soon as an individual leaves prison, all he must do to regain his voting rights is re-register with the Board of Elections. D.C. Board of Elections, *FAQs for Incarcerated Voters & Returning Citizens*.²⁴ Other States, including Colorado, Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, Oregon, and Utah, similarly require only that a person returning from incarceration register to vote in order to regain the franchise. Lawyers’ Comm. for Civil Rights, *50-State Report on Re-Enfranchisement – A Guide to Restoring Your Right to Vote* 28, 54, 61, 65, 95, 98, 112, 126, 152, 179 (Sept. 2004).²⁵ In these systems, the straightforward eligibility and registration requirements minimize the burden on corrections officers and elections officials while facilitating restoration of voting rights.

²⁴ Available at <https://tinyurl.com/dc-bd-elections> (last visited May 20, 2020).

²⁵ Available at <https://tinyurl.com/50-state-guide>.

Post-release disenfranchisement systems, in comparison, can involve significant administrative difficulties. For example, a study of Alabama's voter restoration process found that of the 4,226 applications for restoration of voting rights received between December 2003 and October 2005, the state Board of Pardons and Paroles processed only 8.5% within the statutory time limits and took more than a year to process 530 of the applications. Alabama Alliance to Restore the Vote & Brennan Center for Justice, *Voting Rights Denied in Alabama* 3 (Jan. 17, 2006).²⁶ These processing delays deprived a total of 599 eligible voters of the right to vote in state and national elections in November 2004. *Id.* Further, although state law requires the Board of Pardons and Paroles to respond to every application, Ala. Code § 15-22-36.1(e), (f), it closed 39 eligible applications and 59 ineligible applications without ever informing the applicants of their status. *Voting Rights Denied in Alabama, supra*, at 3. These delays in processing and failures to respond to applications for restoration of voting rights illustrate just a few of the administrative problems of a system that continues to disenfranchise felons post-incarceration. Thus, ease of administration is hardly a compelling interest furthered by laws like N.C.G.S. § 13-1.

²⁶ Available at <https://tinyurl.com/voting-rights-alabama>.

2. Restoring the franchise upon release from prison reduces confusion about how and when former felons become eligible to vote.

Post-release disenfranchisement systems like North Carolina's can create "needless confusion" among election officials and returning citizens alike about restoration of voting rights. *Restoring the Right to Vote, supra*, at 13. But streamlining these laws can reduce confusion for all parties involved. Indeed, Washington State understood the benefit of simplifying their restoration requirements when the State amended its felon disenfranchisement law in 2009. In the past, the State had required convicted felons to pay all legal financial obligations before they could regain the right to vote. An Act Relating to Voter Registration Procedures, ch. 246, § 15, Wash. Rev. Code § 29A.08.520(2) (repealed 2009). However, due to flaws in the state's system for tracking disenfranchised felons and confusion among felons about their loss of rights, over 100 felons voted illegally in the state's 2004 general election. *Scores of Felons Voted Illegally*, The Seattle Times (Jan. 23, 2005).²⁷ Then-Washington Secretary of State Reed suggested that "the simplest way to fix confusion over tracking felons would be to automatically restore voting rights when people are released from prison, regardless of whether they've paid all their court debts." *Id.* Washington State did just that when it amended its disenfranchisement law in 2009. Wash. H.B. 1517 (provisionally restoring the

²⁷ Available at <https://tinyurl.com/seattle-felons>.

franchise when a former felon is no longer under the authority of the Department of Corrections). In support of the bill, the Washington House Report credited testimony that “[b]y creating a bright-line for the restoration of voting rights, [it could] simplify a complicated, costly and ineffective system.” Report on H.B. 1517, *supra*, at 3.

Similarly, States that restore the franchise upon release from prison tend to have election officials who are “better informed on the law.” Erika Wood & Rachel Bloom, Am. Civil Liberties Union & Brennan Ctr. for Justice, *De Facto Disenfranchisement* 8 (2008).²⁸ In Oregon, for example, 100% of election officials correctly responded that individuals are eligible to vote as soon as they leave prison. *Id.* Similarly, in Ohio, nearly 82% of election officials correctly stated that citizens can vote while on parole, and nearly 75% correctly stated that citizens can vote while on probation. *Id.* This data suggests that when the disenfranchisement law is “straightforward,” there is significantly less room for confusion in its application. *Id.*

In post-release disenfranchisement systems, by contrast, lack of training about state felony disenfranchisement laws, insufficient “coordination or communication between election offices and the criminal justice system,” “complex laws,” and

²⁸ Available at <https://tinyurl.com/de-facto-disenfranchisement>.

“complicated registration procedures” can result in “persistent confusion among election officials” about voter eligibility. *Id.* at 1. One frequent source of confusion is which stages of the criminal justice system implicate loss of the franchise. *See, e.g.,* Brennan Center for Justice & Demos: A Network for Ideas & Action, *Boards of Elections Continue Illegally to Disenfranchise Voters with Felony Convictions* 1 (Mar. 2006)²⁹ (38% of New York’s local election boards surveyed in 2005 incorrectly reported that individuals on probation were not eligible to vote or responded that they did not know whether probationers were eligible to vote); Wood & Bloom, *supra*, at 2-3 (53% of Kentucky county clerks interviewed in a 2005 study incorrectly responded that citizens with misdemeanor convictions are ineligible to vote or stated that they were unsure how to answer this question). Problems can also arise due to confusion over which documents, if any, the State requires to restore a citizen’s voting rights. *See, e.g.,* *Boards of Elections Continue Illegally to Disenfranchise Voters with Felony Convictions, supra*, at 1 (32% of New York’s local election boards surveyed in 2005 continued to erroneously require convicted felons to produce documentation before they could register to vote); *Voting Rights Denied in Alabama, supra*, at 3-4 (Although residents convicted of felonies not involving “moral turpitude” never lost the right to vote, Alabama elections officials

²⁹ Available at <https://tinyurl.com/local-election-bds>.

refused to register new voters with such convictions without proof of restoration of rights, which the Board of Pardons and Paroles declined to issue.).

As these examples illustrate, confusion about returning citizens' voting rights, at minimum, chills many eligible, would-be voters from casting ballots. But misinformation can also have broader effects on former felons and their communities because one citizen who is told he cannot vote "may pass along that same inaccurate information to his peers, family members and neighbors, creating a lasting ripple of de facto disenfranchisement across his community." Wood & Bloom, *supra*, at 1. At worst, confusion over felon disenfranchisement laws can re-imprison individuals who did not know that they were ineligible to vote. *See, e.g.,* Rebecca Beitsch, *Felony Voting Laws Are Confusing; Activists Would Ditch Them Altogether*, Pew (Apr. 5, 2018) (Texas woman sentenced to five years in prison for voting while on felony probation);³⁰ *Woman Convicted of Voter Fraud No Longer Wants to Cast Ballot*, TwinCities.com (May 21, 2007) (Wisconsin woman sentenced to two years in prison for voting while on felony probation).³¹ Thus, the multiple sources of potential confusion in systems like North Carolina's counsel in favor of a less restrictive approach. Certainly, N.C.G.S. § 13-1 does not further any interest in preventing confusion among former felons or election officials.

³⁰ Available at <https://tinyurl.com/pew-felony-voting>.

³¹ Available at <https://tinyurl.com/wis-voter-fraud>.

CONCLUSION

The Court should grant plaintiffs' motion for summary judgment.

Respectfully submitted, this the 27th day of May, 2020.

Caroline P. Mackie

CAROLINE P. MACKIE
N.C. State Bar No. 41512
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602
(919) 783-1108
(919) 783-1075 (fax)
cmackie@poynerspruill.com

KARL A. RACINE
Attorney General for the
District of Columbia

LOREN L. ALIKHAN
Solicitor General

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE
Principal Deputy Solicitor General

CARL J. SCHIFFERLE
Deputy Solicitor General

JACQUELINE R. BECHARA
Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General 441
4th Street, NW, Suite 630 South
Washington, D.C. 20001
(202) 724-6609
(202) 741-0649 (fax)
caroline.vanzile@dc.gov

XAVIER BECERRA
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

CLARE E. CONNORS
Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

CERTIFICATE OF SERVICE

I certify that I caused the foregoing motion and the attached brief to be served on all counsel by email addressed to:

FORWARD JUSTICE

Daryl Atkinson
Whitley Carpenter
400 W Main St., Suite 203
Durham, NC 27701
daryl@forwardjustice.org
Counsel for Plaintiffs

ARNOLD & PORTER KAYE SCHOLE LLP

R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
Graham White
601 Massachusetts Ave. NW
Washington, DC 20001-3743
(202) 942-5000
stanton.jones@arnoldporter.com

PROTECT DEMOCRACY PROJECT

Farbod K. Faraji
77 Pearl Street
Middletown, CT 06459
(202) 579-4582
farbod.faraji@protectdemocracy.org
Aditi Juneja
115 Broadway, 5th Floor,
NY, NY 10006
(202) 308-0163
Aditi.juneja@protectdemocracy.org
Counsel for Plaintiffs

Brian D. Rabinovitz
114 W. Edenton St.
Raleigh, NC 27603
BRabinovitz@ncdoj.gov
Counsel for Legislative Defendants

Paul M. Cox
Olga Vysotskaya
114 W. Edenton St.
Raleigh, NC 27603
pcox@ncdoj.gov
OVysotskaya@ncdoj.gov
Counsel for State Board Defendants

This the 27th day of May, 2020.

Caroline P. Mackie
CAROLINE P. MACKIE