No. 331PA21 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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

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LEGISLATIVE DEFENDANTS-APPELLANTS' OPENING BRIEF

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INDEX

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TABLE OF CASES AND AUTHORITIES

Cases:

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

Statutes:

RETRIEVED FROM DEMOCRACYDOCKET.COM

Other Authorities:

RETRIEVED FROM DEMOCRACYDOCKET.COM

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ISSUE PRESENTED

1. Whether N.C.G.S. § 13-1 violates the North Carolina Constitution's Equal Protection, Free Elections, and Property Qualifications Clauses.

INTRODUCTION

Plaintiffs' claims suffer from a fundamental defect: the statute they challenge, N.C.G.S. § 13-1, does not disenfranchise anyone. Rather, consistent with the North Carolina Constitution, Section 13-1 provides convicted felons a pathway for *re*-enfranchisement. It is the North Carolina Constitution, not Section 13-1, that disenfranchises convicted felons. And the Constitution provides that convicted felons are disenfranchised unless and until they are "restored to the rights of citizenship *in the manner prescribed by law*." N.C. CONST. art. VI, § 2, pt. 3 (emphasis added). Therefore, even if Section 13-1's restoration provisions that Plaintiffs challenge were unconstitutional (they are not), any such ruling would be a Pyrrhic victory for Plaintiffs, because the only proper judicial remedy would be to enjoin those provisions and *eliminate* any possibility of re-enfranchisement. This fundamental defect not only dooms Plaintiffs' claims on the merits but also rids them of standing to assert them.

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Even apart from this infirmity, Plaintiffs' claims fail. For well over a century, North Carolina has disenfranchised felons by operation of its Constitution and provided a statutory pathway for felons to be restored to the franchise after completing all terms of their sentences. The restoration statute has gone through several iterations over the years with one unifying theme—each subsequent version has been designed to make it easier for felons to regain the right to vote after completing all terms of their sentence. The modern restoration statute, N.C.G.S. § 13-1, dates to the early 1970s, and this Court has already noted that it followed this historic trend: "It is obvious that the 1971 General Assembly … intended to

substantially relax the requirements necessary for a convicted felon to have his citizenship restored," and "[t]hese requirements were further relaxed in 1973." *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974). Both the 1971 and 1973 statutes were sponsored by the legislature's African American members as ameliorative measures easing the path to restoration of voting rights. And yet the Superior Court held that this restoration statute, the most relaxed North Carolina has ever had, which does not disenfranchise anyone, violates several provisions of the North Carolina Constitution.

The Superior Court was mistaken. Section 13-1 does not violate the Equal Protection Clause by discriminating on the basis of race. Not only is this law, championed by civil-rights stalwarts, the most generous re-enfranchisement law in State history, no evidence shows that it has any disparate impact and it does nothing to deprive African Americans of equal voting power. Section 13-1 does not violate the Equal Protection Clause by depriving felons on supervision of their fundamental right to vote or by creating a wealth-based restriction on exercising that right. Felons do not have a fundamental right to vote in North Carolina. Section 13-1 does not violate the Free Elections Clause because convicted felons are not part of the voting population that clause exists to protect, and Section 13-1 does not violate the Property Qualifications Clause because it does not impose a property qualification. The Superior Court's judgments must be reversed.

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STATEMENT OF THE CASE

Plaintiff-Appellees are four organizations and six convicted felons who either are or were on probation or post-release supervision. Their lawsuit challenges

Section 13-1 and its application to convicted felons serving terms of "post-release supervision" under N.C.G.S. § 15A-1368 *et seq*. or "probation" under N.C.G.S. § 15A-1341 *et seq*. On September 4, 2020, the Superior Court granted summary judgment for Defendants on the claims that Section 13-1 violates the Freedom of Speech and Assembly Clauses, N.C. CONST. art. I, §§ 12, 14, and for Plaintiffs on their claims that Section 13-1 creates a wealth-based classification in violation of North Carolina's Equal Protection Clause, N.C. CONST. art. I, § 19, and imposes a property qualification on voting in violation of N.C. CONST. art. I, § 11. Judge Dunlow dissented in part and would have granted summary judgment in favor of Defendants on all counts. (R p 975–76).

On March 28, 2022, following trial, the Superior Court entered final judgment for Plaintiffs. The majority of a divided three-judge panel concluded that Section 13-1 violates North Carolina's Equal Protection Clause and Free Elections Clause, N.C. CONST. art. I, § 10. Judge Dunlow again dissented and would have found in Defendants' favor on all claims. (R p 1136–37). The Final Order permanently enjoins Defendants "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (R p 1132–33).

The Court of Appeals issued a partial writ of supersedeas, staying the permanent injunction "for the upcoming elections on 17 May 2022 and 26 July 2022," Panel Order at 2, No. P22-153 (Apr. 26, 2022), but ordering the State Board "to take actions to implement the [permanent injunction] for subsequent elections." *Id*. This

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Court subsequently granted Plaintiffs' petition for discretionary review prior to determination by the North Carolina Court of Appeals and transferred the case.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

This appeal is before this Court based on the Court's grant of discretionary review under N.C.G.S. § 7A-31.

STATEMENT OF THE FACTS

I. NORTH CAROLINA'S PROVISIONS FOR FELON DISENFRANCHISEMENT AND FELON RE-ENFRANCHISEMENT.

The North Carolina Constitution provides that:

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

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N.C. CONST. art. VI, § 2, pt. 3. "[E]xcluding those who commit serious crimes from voting" is a "common practice," and the U.S. Supreme Court has held that the federal "Equal Protection Clause permits States to disenfranchise all felons for life, even after they have completed their sentences." *Jones v. Gov. of Fla.*, 975 F.3d 1016, 1025, 1029 (11th Cir. 2020) (en banc); *see Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). Indeed, the Court has specifically held that North Carolina's disenfranchisement provision does not violate equal protection. *See Fincher v. Scott*, 352 F. Supp. 117, 119 (M.D.N.C. 1972), *summarily aff'd* 411 U.S. 961 (1973).

Although North Carolina's Constitution would permit it, North Carolina does not disenfranchise all felons for life. Through Section 13-1, it "automatically restore[s]" voting rights to convicted felons "upon the occurrence of any one of" several

conditions, including "[t]he unconditional discharge of ... a probationer[ ] or of a parolee by the agency of the State having jurisdiction of that person" (or by the United States or another state as the case may be). § 13-1(1), (4)–(5).

II. SECTION 13-1 EMBODIES THE EFFORTS OF AFRICAN AMERICAN REFORMERS TO LIBERALIZE NORTH CAROLINA'S RE-ENFRANCHISEMENT LAWS.

North Carolina has disenfranchised felons since at least 1835. (R p 1077). Restoration for these felons was onerous and involved securing private legislation to restore an individual's rights. By at least 1840, North Carolina disenfranchised those convicted of "infamous" crimes, which were defined, in part, to include crimes for which whipping was a suitable punishment. *Id.* An "infamous" criminal in 1840 had a standardized, but still difficult, path to re-enfranchisement which required waiting at least four years after conviction, petitioning a court, and presenting five witnesses who would attest to his character based on at least three years' acquaintance. (R p 1081).

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In 1868, North Carolina ratified a new state constitution that did not restrict the rights of felons to vote. However, an 1876 constitutional amendment again disenfranchised felons until their rights were restored as prescribed by law. At that time, the 1840 restoration statute remained in place. In 1899, that law was amended to provide a path to restoration for felons who never received prison sentences. *See, e.g.*, 1899 N.C. Sess. Laws, ch. 44., App. 4. The law was updated many times over the next century to gradually liberalize the re-enfranchisement process. Despite this, the law in 1970 still required a waiting period before a felon could regain the franchise.

That felon still had to petition a court and convince a judge he was deserving of the franchise. (R p 447).

In 1971, with the support of the NAACP, the two lone black members of the General Assembly—Reps. Joy Johnson and Henry Frye—spearheaded an effort to simplify Section 13-1. (R p 504). Their original version of the bill, H.B. 285, stated: "Restoration of Citizenship – Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored to him upon the full completion of his sentence or upon receiving an unconditional pardon." (R p 518). Prior to enactment, the law was amended to remove "automatically" from the text and to clarify that "full completion of his sentence" included "probation or parole." (R p 582). In lieu of automatic restoration, the enacted 1971 law required a felon to secure a recommendation from the State Department of Correction and to take an oath of allegiance to have his rights restored immediately. Otherwise, he had to wait two years after his sentence had been served to receive the right to vote. (R p 447).

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In 1973, Reps. Johnson and Frye, now joined by a third black legislator, Sen. Henry Michaux, successfully passed a bill that granted automatic, immediate restoration of rights to all felons as soon as they completed their sentences. (R p 523–24). Senator Michaux called the result a "victory." (R p 291).

STANDARD OF REVIEW

Permanent injunctions are reviewed for an abuse of discretion. *Mid-Am. Apartments, L.P. v. Block at Church St. Owners Ass'n, Inc.*, 257 N.C. App. 83, 89, 809 S.E.2d 22, 27 (2017). But constitutional questions and grants of summary judgment

are reviewed *de novo*. *Cooper v. Berger*, 376 N.C. 22, 33, 852 S.E.2d 46, 56 (2020); *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007). And a court "by definition abuses its discretion when it makes an error of law." *State v. Rhodes*, 366 N.C. 532, 536, 743 S.E.2d 37, 39 (2013) (cleaned up). Under *de novo* review, this Court "will not declare a law invalid unless [the Court] determine[s] that it is unconstitutional beyond a reasonable doubt." *State v. Berger*, 368 N.C. 633, 639, 781 S.E.2d 248 (2016).

ARGUMENT

I. PLAINTIFFS LACK STANDING TO CHALLENGE SECTION 13-1, AND THE SUPERIOR COURT LACKED POWER TO REWRITE THE LAW.

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The Superior Court's summary judgment and final orders should be reversed because Plaintiffs challenged the wrong law. The law that the Superior Court has permanently enjoined does not disenfranchise individuals convicted of felonies in North Carolina. The North Carolina Constitution does. Article 6, Section 2 of the North Carolina Constitution says that no felon "shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." Section 13-1 is that "manner prescribed by law."

Plaintiffs lack standing to challenge the statute that *re-enfranchises* felons. "As a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Mangum v. Raleigh Bd. of Adjust.*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). That harm must be traceable to the challenged statute. "The rationale of the standing rule is that only one with a genuine grievance, one personally injured by a statute, can be trusted to battle the issue." *Willowmere Cmty. Ass'n, Inc. v. City*

of Charlotte, 370 N.C. 553, 557, 809 S.E.2d 558, 561 (2018) (cleaned up); *see also Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 599–600, 853 S.E.2d 698, 728 (2021) ("[W]e have required a plaintiff to allege 'direct injury' to invoke the judicial power to pass on the constitutionality of a legislative or executive act." (internal citation omitted)).

Here, Plaintiffs have not been injured by Section 13-1. Rather, they have targeted the very avenue by which they may *regain* their right to vote. Although at summary judgment the trial court found that Section 13-1 creates "an impermissible and unconstitutional wealth-based restoration of citizenship rights," (R p 967), and after trial ruled that it "interferes with the fundamental right to vote on equal terms as it prohibits people with felony convictions from regaining the right to vote even while they are living in communities in North Carolina," (R p 1125), Section 13-1 does not have either effect. In both cases, the loss of the right to vote is exclusively the work of the North Carolina Constitution. Thus, Section 13-1 does not deny the right to vote based on any characteristic. Plaintiffs have picked the wrong target with their lawsuit—a statute that has never "injuriously affected" them—and as a result they lack standing.

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Plaintiffs likewise lack standing because their injury cannot be "redressed by a favorable decision" within the power of the courts. *Marriott v. Chatham Cnty.*, 187 N.C. App. 491, 495, 654 S.E.2d 13, 16 (2007). Ordinarily, when a court finds a statute unconstitutional, that finding and an accompanying injunction are "the most assured and effective remedy available." *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876,

882 (2006) (cleaned up). Not so here—a declaratory judgment that Section 13-1 is unconstitutional actually *hurts* the people who Plaintiffs seek to represent. That declaration closes off the sole avenue by which a felon may regain the franchise while leaving in place the constitutional provision that strips it away in the first place. It also has no impact on the statute imposing criminal penalties on felons who vote before "having been restored to the right of citizenship in due course and by the method provided by law." N.C.G.S. § 163-275(5). Indeed, this declaration *invites* lawbreaking by felons who mistakenly believe that a court declaring Section 13-1 unconstitutional has any impact on the validity of § 163-275(5), which it did not consider, or that an injunction against the State Board Defendants somehow applies against local law enforcement officials, who were not a party to the case.

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The Superior Court's order thus results in all felons with incomplete sentences remaining disenfranchised under the North Carolina Constitution. By declaring unconstitutional only the "manner prescribed by law" for felon re-enfranchisement, N.C. CONST. art. VI, § 2, pt. 3, the effect of the court's order can only be to induce violations of § 163-275(5) and to subject violators to prosecution.

Of course, that is not what the Superior Court *attempted* to do. The panel stated: "[U]nder this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina." (R p 1133). Evidently, the Superior Court viewed itself as removing *any* North Carolina law, be it statute or Constitution, before the court or not, standing in the way of felons on supervised release who might seek to vote. This it could not do. North

Carolina reserves for the legislature, not the courts, the authority to create new laws. "When a court, in effect, constitutes itself a superlegislative body, and attempts to rewrite the law according to its predilections and notions of enlightened legislation, it destroys the separation of powers and thereby upsets the delicate system of checks and balances which has heretofore formed the keystone of our constitutional government." *State v. Cobb*, 262 N.C. 262, 266, 136 S.E.2d 674, 677 (1964); *see also C Invs. 2, LLC v. Auger*, 277 N.C. App. 420, 430, 860 S.E.2d 295, 302 (2021); *Davis v. Craven Cnty. ABC Bd.*, 259 N.C. App. 45, 48, 814 S.E.2d 602, 605 (2018).

By attempting to prescribe the manner for felon re-enfranchisement itself, the Superior Court improperly exercised the lawmaking power reserved for the General Assembly. Indeed, the Constitution expressly states that re-enfranchisement shall be "in the manner prescribed *by law*." N.C. CONST. art. VI, § 2, pt. 3 (emphasis added). The Superior Court had no authority to rewrite Section 13-1 and make new law to restore voting rights upon "release from prison" rather than "unconditional discharge" from a criminal sentence. The court certainly had no authority to invalidate the Constitution's disenfranchisement provision as applied to felons serving sentences outside of prison, which the court's injunction effectively does. The State's Constitution is not at war with itself: one provision cannot invalidate another. By exceeding its authority when crafting the injunction, the trial court necessarily abused its discretion. *See South Carolina v. United States*, 907 F.3d 742, 753 (4th Cir. 2018).

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In defending the Superior Court's decision, Plaintiffs have argued that Section 13-1 is "implementing legislation" for the Constitution's disenfranchisement provision. In this view, the North Carolina Constitution does not accomplish the disenfranchisement alone, so Section 13-1 is the proper target of their challenge. To determine whether language is "self-executing" or requires "implementing legislation," courts focus on the text itself. *See Medellín v. Texas*, 552 U.S. 491, 505 (2008) (asking whether text "operates of itself without the aid of any legislative provision" (internal quotation marks omitted)). Here, the text of the Constitution—"[n]o person adjudged guilty of a felony ... shall be permitted to vote." N.C. CONST. art. VI, § 2, pt. 3—operates without the aid of any legislative enactment. Contrast this provision with the voter-ID amendment, which expressly calls for implementing legislation and thus demonstrates that the legislature and the voters know how indicate that implementing legislation is required. *See* N.C. CONST. art. VI, § 2, pt. 4.

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It is only the final portion of the disenfranchisement provision—allowing reinstatement "to the rights of citizenship *in the manner prescribed by law*," N.C. CONST. art. VI, § 2, pt. 3 (emphasis added)—that calls for implementing legislation. *Cf. ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 387 (4th Cir. 2012) ("It is well-established that a treaty may contain both self-executing and non-self-executing provisions." (cleaned up)). The text of Section 13-1 reinforces that legislation is required only for re-enfranchisement, not disenfranchisement. The statute's opening sentence—"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 ..."—takes as a given that the revocation of voting rights has already occurred by operation of the Constitution. It says nothing about removing the right to vote and only addresses "the manner prescribed by law" for *restoring* that right. N.C.G.S. § 13-1.

The Superior Court entered an injunction that purports to rewrite North Carolina law because Plaintiffs challenged a law that never caused them any injury. Whether considered as a lack of standing for Plaintiffs or authority for the Superior Court, the result is the same: the injunction cannot stand.

II. SECTION 13-1 DOES NOT VIOLATE ANY PROVISION OF THE NORTH CAROLINA CONSTITUTION.

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Plaintiffs challenge Section 13-1 on its face and bear a heavy burden. A "facial challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 485 (2005) (internal quotation marks omitted). And regardless of the nature of the challenge, North Carolina courts presume that "any act passed by the legislature is constitutional." *Ramsey v. N.C. Veterans Comm'n*, 261 N.C. 645, 647, 135 S.E.2d 659, 661 (1964). As such, the courts "will not strike [a law] down if [it] can be upheld on any reasonable grounds." *Bryant*, 359 N.C. at 564, 614 S.E.2d at 486.

The Superior Court found several facial deficiencies in Section 13-1. These conclusions were fundamentally flawed.

a. Section 13-1 Does Not Violate the Equal Protection Clause.

When analyzing whether a legislative act meets the State's equal-protection guarantee, the Court "must first determine which of several tiers of scrutiny should

be utilized." *Department of Transp. v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001). In making this determination, this Court "generally follows the analysis of the Supreme Court of the United States in interpreting the corresponding federal clause." *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). The State's Equal Protection Clause is "functionally equivalent to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States." *White v. Pate*, 308 N.C. 759, 765, 3204 S.E.2d 199, 203 (1983). Strict scrutiny is only appropriate where a "a regulation classifies persons on the basis of certain designated suspect characteristics or when it infringes on the ability of some persons to exercise a fundamental right." *Rowe*, 353 N.C. at 675, 549 S.E.2d at 207. Otherwise, only "the lower tier, or "rational basis" test applies. *White*, 308 N.C. at 766, 304 S.E.2d at 204. Under rational-basis review, a law will be upheld if the "distinctions which are drawn by a challenged statute ... bear *some* rational relationship to a conceivable legitimate governmental interest." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 180, 594 S.E.2d 1, 15 (2004).

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Plaintiffs purported to assert four equal-protection theories, and the Superior Court applied strict scrutiny to them all. This was error. Under the proper standards, Plaintiffs' claims fail to establish any equal-protection violation because Section 13-1 fulfills a valid government interest in offering felons a method by which to regain their rights, and in fact significantly relaxes the process from previous versions of the law. *See Currie*, 284 N.C. at 565, 202 S.E.2d at 155. In doing so, it reasonably draws a line between the rights of felons who have paid their debt to society and those who

have not. Indeed, this is perhaps the most reasonable place to draw the line. If committing a felony causes a person to be disenfranchised, completing the sentence for that felony is a natural requirement for regaining the vote. *See, e.g.*, *Jones*, 975 F.3d at 1034 (finding re-enfranchisement statute advanced the state's "interest in *restoring* felons to the electorate after justice has been done and after they have been fully rehabilitated by the criminal justice system"). This is a sensible, race-neutral policy choice that the General Assembly was well within its authority to make, *see Jones*, 975 F.3d at 1029–30, and which is solely within the province of the General Assembly, not the courts, to change. *See Davis*, 259 N.C. App. at 48, 814 S.E.2d at 605. Section 13-1 therefore easily satisfies rational basis review (the standard applicable to the claims discussed in Parts II.a.ii–iv) and the *Arlington Heights* standard as discussed in the next Part.

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i. Section 13-1 Does Not Discriminate on the Basis of Race.

Plaintiffs primarily alleged racial discrimination. For such claims, this Court has applied not the tiers of scrutiny, but the burden-shifting framework that the U.S. Supreme Court established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). *See Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 & n.5 (2020); *see also Libertarian Party of N.C. v. State*, 365 N.C. 41, 42, 707 S.E.2d 199, 200–01 (2011). Under that framework, the plaintiff has the initial burden to show that discriminatory intent was a motivating factor in the passage of the law at issue with either direct evidence of racial animus—of which Plaintiffs have none—or circumstantial evidence drawn from the law's impact,

legislative process and history, and historical background. *See Arlington Heights*, 429 U.S. at 266–268. That evidence must support "an inference [of discriminatory intent] that is strong enough to overcome the presumption of legislative good faith" that attaches to all legislative acts. *Abbott v. Perez*, 138 S. Ct. 2305, 2329 (2018). If Plaintiffs had made this showing (which they did not), the burden would have shifted to Defendants to show that the General Assembly would have enacted Section 13-1 even without the allegedly discriminatory motivation. If Defendants had not made that showing (which they did), then Section 13-1 would be unconstitutional.

The Superior Court purported to follow this framework, but even if its conclusions under *Arlington Heights* were correct, they could not support the application of strict scrutiny. *See* (R p 1073–74). In any event, strict scrutiny is also inappropriate because Section 13-1 does not operate to disadvantage a suspect class of people. On its face, Section 13-1 makes no distinction between felons based on race, sex, or any other suspect or quasi-suspect class. The *only* distinction it draws is between felons who have completed their sentences and felons who have not—and that "reasonable distinction" does not offend equal protection. *See State v. Stafford*, 274 N.C. 519, 535, 164 S.E.2d 371, 382–83 (1968). Section 13-1 thus draws no arbitrary lines. And as shown below, it has no discriminatory effect.

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Under *Arlington Heights*, properly applied, Plaintiffs have failed to establish intentional discrimination.

1. The Evidence Does Not Establish Discriminatory Intent

The Superior Court was required to begin with the presumption that the General Assembly enacted Section 13-1 in good faith. *See Abbott*, 138 S. Ct. at 2324.

The court did not. In fact, the words "good faith" appear nowhere in its final order. As a result, the court failed to make any factual findings under the correct standard. "[F]acts found under misapprehension of the law are not binding ... and will be set aside," and legal conclusions based on those facts are necessarily erroneous as well. *Van Hanford v. McSwain*, 230 N.C. 229, 233, 53 S.E.2d 84, 87 (1949). In any event, legal conclusions are reviewed *de novo*. *See In re C.H.M.*, 371 N.C. 22, 28–29, 812 S.E.2d 804, 809 (2018). And the Superior Court committed legal error by concluding that Section 13-1 was passed with discriminatory intent based on any of the facts before it.

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a. Impact

Plaintiffs have not challenged North Carolina's felon-disenfranchisement provision or any state action that might result in African Americans' disproportionate conviction for felonies. They have only challenged the restoration law. There is no evidence that Section 13-1 re-enfranchises African American felons at different rates than other felons, and the provision is more favorable to African Americans than prior versions of Section 13-1. An intentional-discrimination claim requires proof of *both* disparate impact and discriminatory intent, *see Irby v. Virginia State Board of Elections*, 889 F.2d 1352, 1355 (4th Cir. 1989), and Plaintiffs have wholly failed to make the former showing.

Because the ultimate question is the intent of the 1973 General Assembly, the Superior Court should have compared the impact of the 1973 law to the impact of the prior version of the law: the 1971 version. To determine whether the 1973 law had a discriminatory impact as compared to the 1971 law—in other words, restricted

relatively more black than white voters than the prior law—one must assess the percentage of black and white voters that were *re*-enfranchised under the 1971 and 1973 laws. Because African Americans make up a larger percentage of the felon population, one would expect an initial difference between black and white voters disenfranchised by the Constitution's felon-disenfranchisement provision. By the same token, because African Americans make up a *lower* percentage of the State voting population as a whole, re-enfranchising black and white felons at similar rates would actually *increase* the relative voting strength of the African American voting population. That is the logical result of the 1973 law, which made felon re-enfranchisement easier than under the 1971 law—and which did not in any way restrict felons from re-enfranchisement based on race. Neither Plaintiffs nor the Superior Court offered anything close to this kind of analysis. Plaintiffs therefore have no proof of disparate impact because they lack proof that the 1973 law somehow re-enfranchises black voters at a lower rate than white voters compared to the pre-existing regime.

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In fact, all signs point the conclusion that amended law functioned (and functions) entirely race neutrally. There is no evidence that the United States Department of Justice objected to the law, despite the fact that North Carolina was required to submit statewide changes for preclearance at this time because many of its counties were covered (and the Department had, in fact, objected to several laws in 1971). *Shaw v. Reno*, 509 U.S. 630, 634 (1993) ("Because the [North Carolina] General Assembly's reapportionment plan affected the covered counties, the parties

agree that § 5 applied."); *see also Section 5 Objection Determinations: North Carolina*, DEP'T OF JUST. (last updated Aug. 7, 2015), *available at* https://bit.ly/3c2AOHO; *see also Lopez v. Monterey Cnty.*, 525 U.S. 266, 280 (1999) (noting that North Carolina was one of seven noncovered states that had collectively submitted 1,300 submissions for preclearance). Given that the preclearance system "switch[ed] the burden of proof to the supplicant jurisdiction" to show a law did *not* have discriminatory impact, the lack of an objection is strong evidence no such impact existed. *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 545 (2013) (quotations omitted).

Nevertheless, the Superior Court stated without explanation that Section 13-1 "has a demonstrably disproportionate and discriminatory impact." (R p 1125). Though unexplained, this statement must be the result of two errors: first, the Superior Court necessarily conflated Section 13-1 with other elements of North Carolina's felon disenfranchisement regime which cause the loss of voting rights. Again, because Section 13-1 does not disenfranchise anyone, relative rates of disenfranchisement by race are irrelevant.

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Second, it credited testimony from Plaintiffs' experts who testified, for example, that "The African American population is . . . denied the franchise at a rate 2.76 times as high as the rate of the White population." (R p 1094). But as the U.S. Supreme Court has explained, dividing one percentage by another (as Plaintiffs' expert did to derive this figure) can create "[a] distorted picture," *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2345 (2021), and indeed it does here. In fact, 1.24% of African Americans of voting age in North Carolina are

disenfranchised by reason of a felony conviction, which is just 0.79% greater than the 0.45% of the white electorate that is similarly disenfranchised. (R p 1094). Claiming that African Americans are disenfranchised 2.76 times more than white voters "mask[s] the fact that the populations [are] effectively identical." *Brnovich*, 141 S. Ct. at 2345.

b. Legislative Process and Legislative History

The Superior Court erred again when it concluded that Section 13-1, which in its current form was championed by the NAACP and the only three black members of the General Assembly in 1973, was motivated by racially discriminatory intent. (R p 1124). As noted, the court failed to presume that the legislature operated in good faith. *See Abbott*, 138 S. Ct. at 2324. In fact, in crediting circumstantial evidence of the popularity of the "Law and Order" movement, the court appeared to presume exactly the opposite. *See, e.g.*, (R p 1090).

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The court also misread legislative history, which demonstrates that the 1971 and 1973 changes to the law accomplished the primary goals of the reforming legislators by "substantially relax[ing] the requirements necessary for a convicted felon to have his citizenship restored." *Currie*, 284 N.C. at 565, 202 S.E.2d at 155. Based on the text of the bills they introduced and the statutes they helped pass, it was not, as the court incorrectly concluded, "the goal of these African American legislators and the NC NAACP ... to eliminate section 13-1's denial of the franchise

to persons released from incarceration," (R p 1087), but to make the process automatic *upon completion of a felon's sentence*, (R p 78).[1]

Even assuming, contrary to the evidence, that the Superior Court was right about the intent of the sponsors of the bill, that would not mean that a committee was "independently motivated by racism" when it added language to clarify that full completion of a sentence included periods of probation or parole. (R p 1124). The Superior Court's reliance on highly attenuated circumstantial evidence of racism, (*see, e.g.*, R p 1090 ("The Ku Klux Klan was active, arch-segregationist George Wallace won North Carolina's presidential primary in 1972, and Jesse Helms was elected to the U.S. Senate.")), is incompatible with the presumption of good faith, *Abbott*, 138 S. Ct. at 2329. It cannot be the case that a civil rights reform is racially discriminatory simply because the reformers did not accomplish everything they may have wanted to accomplish without exception.

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c. Historical Background

Section 13-1's historical background demonstrates definitively that the law as it currently stands was not motivated by racial discrimination. *See Abbott*, 138 S. Ct. at 2324–25. "No one disputes that North Carolina has a long history of race discrimination generally and race-based vote suppression in particular." *N.C. State*

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

Conf. of the NAACP v. Cooper, 430 F. Supp. 3d 15, 25 (M.D.N.C. 2019) (quotation marks omitted). But the Superior Court's own finding that the 1973 law was championed by the NAACP and the only three black members of the General Assembly strongly undercuts any argument that Section 13-1 itself was the product of that history. Indeed, Plaintiffs' expert on this subject "did not present any evidence that this version of 13-1 was crafted, amended, or authored by any particular legislator ... with any racial animus." 8/19/21 Tr. 844:11–14, App. 17. Indeed, there is no evidence that *any* North Carolina felon voting restoration law has been marred by racial animus because the first restoration law was enacted in 1840, before African Americans could vote, and "no revision to the 1840 statute ... contain[s] any indication ... that the changes were made with any racial animus." *Id.* at 845:22–846:3. When the North Carolina constitution was amended to reinstate felon disenfranchisement in 1876, no change was made to the existing re-enfranchisement statute that had been in place since 1840. That statute was not amended until 1899, and it was amended in a way favorable to felons. Every amendment to the statute since then has also favored felons. Plaintiffs are thus bereft of evidence that *any* iteration of the re-enfranchisement statute was the product of racial animus.

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In finding otherwise, the Superior Court improperly imputed to people in 1973 the motivations of the individuals who amended North Carolina's constitution in the 1870s to disenfranchise felons in the first place. (*See* R p 1089). Reference back to this period is particularly inappropriate for two reasons. First, Plaintiffs have not challenged the constitutional amendment that disenfranchised felons. Only racial

discrimination *independent from* the constitutional baseline could impugn § 13-1. *Cf. Arlington Heights*, 429 U.S. at 264–65. Second, shortly before the new Section 13-1 was enacted, North Carolina replaced its constitution of 1868 with a new constitution, known as the 1971 Constitution. *See Stephenson v. Bartlett*, 355 N.C. 354, 367, 562 S.E.2d 377, 387 (2002). The 1971 Constitution, which is still in place today, independently required the disenfranchisement of all felons and was an intervening event that severed the link with any discriminatory intent reflected in the 1868 constitution.

The Eleventh Circuit rejected a similar argument in *Johnson v. Governor of State of Florida*, 405 F.3d 1214 (11th Cir. 2005) (en banc). In that case, the court rejected the plaintiffs' argument that "racial animus motivated the adoption of Florida's [felon] disenfranchisement law in 1868 and this animus remains legally operative today despite the re-enactment in 1968," noting that the "re-enactment eliminated any taint from the allegedly discriminatory 1868 provision, particularly in light of the passage of time and the fact that, at the time of the 1968 enactment, no one had ever alleged that the 1868 provision was motivated by racial animus." 405 F.3d at 1223–24. Here, if anything, the case for finding a break with the past is even stronger than in *Johnson*. For here we not only have the re-enactment of a constitutional disenfranchisement provision, but that re-enactment is paired with an NAACP-backed amendment to the re-enfranchisement law with the explicit goal of broadening the restoration of citizenship rights compared to the old regime.

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2. Section 13-1 Is Fully Justified by Race-Neutral Motivations

The above evidence is strong enough that, even if the burden shifted to Defendants, it would demonstrate that Section 13-1 was supported by valid motivations. One need not search for hints of secret racism to explain why an amendment clarifying that no felon could vote until he had completed all elements of his sentence was passed by the General Assembly. Not only is such a line easily administrable by the State and easily understood by the felons it impacts, but it also affirmatively advances the State's "interest in *restoring* felons to the electorate after justice has been done and they have been fully rehabilitated by the criminal justice system." *Jones*, 975 F.3d at 1034. The record clearly establishes that Section 13-1, which was championed by the only African American legislators serving at the time, would have been enacted even absent any allegedly discriminatory motives.

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ii. Section 13-1 Does Not Violate Any Guarantee of Equal Voting Power.

Plaintiffs also alleged that Section 13-1 "deprives the African American community of 'substantially equal voting power.'" (R p 35). This principle comes from "one person, one vote" cases. *See Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394. But Plaintiffs have no claim under this principle: convicted felons are not constitutionally entitled to vote *at all* until their voting rights are restored in the manner that the General Assembly provides. As *Stephenson* itself recognizes, constitutional provisions—such as the felon-disenfranchisement provision and the Equal Protection

Clause—must be read "in conjunction." *Id.* at 378, 562 S.E.2d at 394. This principle thus provides no basis for relief here, let alone for applying strict scrutiny.

In any event, the Superior Court conflated the intentional discrimination and one-person-one-vote theories in its judgment. *See* (R p 1124–25). Ultimately, therefore, this holding depends on the holding regarding racial discrimination and fails for the reasons above.

iii. Section 13-1 Does Not Deprive Individuals on Supervised Release the Fundamental Right to Vote.

The Superior Court held that Section 13-1 interferes with "[a] fundamental right to vote" and applied strict scrutiny on that basis. (R p 965, 1125). But again, convicted felons—whether incarcerated, on supervised release, or no longer serving a sentence— do not have such a right. Under the North Carolina Constitution, a felon is barred from voting "unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. CONST. art. VI, § 2, pt. 3. Felons for whom the General Assembly provides no path to re-enfranchisement are disenfranchised for life. And when the General Assembly does provide a path to re-enfranchisement, the right to vote is restored only when the conditions for restoration have been met. Similarly, the United States Constitution follows its own Equal Protection Clause immediately with "an affirmative sanction" of "the exclusion of felons from the vote." *Richardson*, 418 U.S. 24, 54 (1974); *see also* U.S. CONST. amend. 14, § 2. As a result, federal courts of appeals have uniformly concluded felons do not have a fundamental right to vote. *See, e.g.*, *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.).

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In holding otherwise, the Superior Court did not confront these authorities, but merely asserted that felons who are not currently in prison are "similarly situated" to "North Carolina residents who have not been convicted of a felony" because they "feel an interest in [the State's] welfare." (R p 1125 (quoting *Roberts v. Cannon*, 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260–61 (1839))). That felons and non-felons alike may "feel" an interest in how they are governed does not make them similarly situated for these purposes when both the North Carolina and United States Constitutions expressly treat them differently. *See State v. Grady*, 372 N.C. at 567, 831 S.E.2d at 582 ("[F]elons do not enjoy the same measure of constitutional protections ... as do citizens who have not been convicted of a felony.").

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

At summary judgment, the Superior Court relied on the same mistaken premise that felons have a fundamental right to vote to apply strict scrutiny to Plaintiffs' claim that Section 13-1 creates an impermissible wealth classification. Although the court correctly noted that wealth is *not* a suspect classification "that calls for heightened scrutiny," it held that "when a wealth classification is used to restrict the right to vote or in the administration of justice, it is subject to heightened scrutiny." (R p 966). It then found that Section 13-1 creates such a classification insofar as it requires felons to pay all fines and other monetary obligations of their convictions (that is, obtain an "unconditional discharge," N.C.G.S. § 13-1(1)) before regaining the right to vote. According to the court, this means "that individuals, otherwise similarly situated, may have their punishment alleviated or extended

solely based on wealth." (R p 966). The court preliminarily enjoined Defendants from enforcing Section 13-1 against any hypothetical felons who might still be serving sentences outside of prison due solely to their inability to pay their fines, and it has now permanently enjoined Defendants from enforcing Section 13-1 against any felons serving sentences outside of prison. Plaintiffs' wealth-classification theory does not justify the relief that the court initially granted and certainly does not justify the facial relief that Plaintiffs sought and ultimately obtained.

In addition to its mistaken premise, the Superior Court's conclusion was incorrect for two reasons. First, Section 13-1 does not create a wealth classification. "The only classification at issue is between felons who have completed all terms of their sentences, including financial terms, and those who have not," *Jones*, 975 F.3d at 1030, and that is a line North Carolina is permitted to draw. *See id.* ("Every other Circuit to consider th[is] question has reached the same conclusion."). Like the statute in *Jones*, Section 13-1 "does not single out the failure to complete financial terms [of a sentence] for special treatment," but treats all felons still on some form of supervised release for *any* reason the same, and so it does not draw an impermissible wealth-based classification. *Id.*

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Second, even if Section 13-1 did create such a distinction, the Superior Court was wrong to hold this is a case where that distinction deserves any more than rational-basis review. *Id.* at 1033 ("The [U.S.] Supreme Court has made clear that heightened scrutiny for claims of wealth discrimination is the exception, not the rule."). The Superior Court relied on *M.L.B. v. S.L.J*, in which the U.S. Supreme

Court held that heightened scrutiny was appropriate in the narrow context of statutes that make "access to judicial processes in cases criminal or 'quasi criminal' in nature turn on the ability to pay." 519 U.S. 102, 124 (1996) (citation omitted). But where the plaintiff in *M.L.B.* had fundamental rights to make "[c]hoices about marriage, family life, and the upbringing of [her] children," that were impaired by her inability to access the courts, 519 U.S. at 564, the Plaintiffs in this case have no similar right to vote. Given that the Supreme Court has "felt compelled to justify even … slight extension[s] of the right of access to the courts," *Lewis v. Casey*, 518 U.S. 343, 354 (1996), the Superior Court was wrong to apply *M.L.B.* in such a wildly different context without even an attempt to justify its extension.

To be sure, the *M.L.B.* Court relied on a case from the voting context, *Harper v. Virginia State Board of Elections*, where the U.S. Supreme Court invalidated a $1.50 poll tax and held that a State violates equal protection by making "the affluence of the voter or payment of any fee an electoral standard." 383 U.S. 663, 666 (1966). A poll tax, however, is nothing like a requirement that a felon complete all provisions of his sentence before having his voting rights restored. The poll tax, unlike Section 13-1,applied to voters who had not forfeited their right to vote by committing a felony. Furthermore, it bore "no relation" to voter qualifications; it "introduce[d] a capricious or irrelevant factor" into voting requirements. *Id.* at 667–68. North Carolina's requirement to complete all terms of a felony conviction is not such a "capricious or irrelevant factor," but a lawful regulation within "the state's power to fix core voter qualifications." *Gonzalez v. Arizona*, 677 F.3d 383, 409 (9th Cir. 2012), *aff'd sub nom.*

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Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013); *see Jones*, 975 F.3d at 1031 ("Unlike the poll tax in *Harper*, [the requirement to complete all terms of a criminal sentence] is highly relevant to voter qualifications.").

b. Section 13-1 Does Not Violate the North Carolina Constitution's Free Elections Clause.

The Superior Court also erred in applying strict scrutiny to Plaintiffs' claim under the Free Elections Clause. (*See* R p 1128). That clause provides simply that "[a]ll elections shall be free," N.C. CONST. art. I, § 10, and requires that voters be free to choose how they cast their ballots without coercion, intimidation, or undue influence. Again, Section 13-1 does not deprive anyone of the right to vote—a felony conviction and the North Carolina Constitution do that. And "a constitution cannot be in violation of itself." *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 394. It therefore cannot be, as the Superior Court held, that North Carolina's elections are not free within the meaning of its Constitution merely because some people are *constitutionally* precluded from participating in them. (*See* R p 1127). Moreover, Section 13-1 *extends* the right to vote to felons who otherwise would be disenfranchised. Thus, "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights ... is inapplicable," because the distinction being challenged is only "a limitation on a reform measure aimed at eliminating an existing

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

As shown above, Section 13-1 easily satisfies rational-basis review. *See supra* Part II.a. For three additional reasons, Section 13-1 does not violate the Free Elections Clause.

First, because the North Carolina Constitution deprives convicted felons of the franchise until their rights are restored in the manner prescribed by law, N.C. CONST. art. VI, § 2, pt. 3, a convicted felon has no right to vote—and thus no claim under the Free Elections Clause—until his rights are restored in the manner that the General Assembly prescribes. And because the Constitution's felon-disenfranchisement provision does not require the General Assembly to pass any law restoring felons' voting rights, it follows that the General Assembly cannot have violated the Free Elections Clause by passing one.

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Second, the Free Elections Clause must be construed according to the re-enfranchisement baseline against which it was adopted. *Cf. Brnovich*, 141 S. Ct. at 2338–39 (interpreting Section 2 of the Voting Rights Act, as amended in 1982, according to the "standard practice" of voting regulation at that time, "a circumstance that must be taken into account"). The citizens of North Carolina voted in 1970 to ratify the operative Free Elections Clause. At that time, as the evidence clearly shows, the State's re-enfranchisement regime was more restrictive than it is today. *See, e.g.* (R p 444). With the passage of the current version of Section 13-1 in 1973, the State's re-enfranchisement regime is more lenient than ever. As the people of

North Carolina were satisfied that, even with the more restrictive regime, the State's elections would be "free," N.C. CONST. art. I, § 10, it cannot be the case that a less restrictive re-enfranchisement regime violates this Clause.

Third, Plaintiffs have failed to prove that Section 13-1 constrains any voter's choice in voting for particular candidates. Instead, they attempt to locate such a constraint in the fact that disenfranchised felons cannot vote at all until their voting rights are restored. This is not the sort of constraint on a voter's "conscience" that violates the Free Elections Clause. *Clark v. Meyland*, 261 N.C. 140, 143, 134 S.E.2d 168, 170 (1964); *accord Comm. to Elect Dan Forest*, 376 N.C. at 610, 853 S.E.2d at 735. Regardless, felons' disenfranchisement does not result from Section 13-1. It results from the North Carolina Constitution. Plaintiffs therefore could *never* show that Section 13-1 interferes with a voter's choice. Without Section 13-1, no felon would be re-enfranchised.

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c. Section 13-1 Does Not Violate the North Carolina Constitution's Ban on Property Qualifications for Voting.

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." The Superior Court found Section 13-1 violates this provision too, by requiring that felons pay all fines and fees resulting from their convictions before having their voting rights restored. (R p 967–68 (quoting N.C. CONST. art. I, § 11)). In doing so, the Court did not purport to apply any tier of scrutiny and did not cite a single case interpreting this provision. Nevertheless, the court construed the provision to mean that, "when legislation is

enacted that restores the right to vote, thereby establishing qualifications which certain persons must meet to exercise the right to vote, such legislation must not do so in a way that makes the ability to vote dependent on a property qualification." (R p 968). This conflation of a restoration requirement with a "property qualification" was, again, erroneous.

The requirement that felons complete their sentences, including financial aspects of their sentences, is a predicate for felons having their rights *restored*, not a qualification for *exercising* their rights. *See Johnson v. Bredesen*, 624 F.3d 742, 751 (6th Cir. 2010) ("The re-enfranchisement law does not condition the right to vote on payment of restitution or child support, but instead conditions the restoration of a felon's right to vote on such payment."); *see also Harvey v. Brewer*, 605 F.3d 1067, 1080 (9th Cir. 2010) ("Plaintiffs' right to vote was not abridged because they failed to pay a poll tax; it was abridged because they were convicted of felonies."). The Constitution's demand that "political rights and privileges" not be made "dependent upon or modified by property" is inapplicable to felons who have no political right to vote until reinstated by Section 13-1.

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The lower court's interpretation of "property qualification" is also belied by the context in which the clause arose. The State adopted the current ban on property qualifications for voting at the 1868 Constitutional Convention, replacing language which had long required both voters and officeholders to own real estate. *See* John V. Orth, *Fundamental Principles in North Carolina Constitutional History*, 69 N.C. L. REV. 1357, 1361 n.33 (1991); Stanley L. Engerman and Kenneth L. Sokoloff, *The*

Evolution of Suffrage Institutions in the New World, 64 THE J. OF ECON. HIST. 4 891, 898 (2005). North Carolina courts have interpreted "qualification" to mean "[t]he possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function." *Royal v. State*, 153 N.C. App. 495, 499, 570 S.E.2d 738, 740 (2002) (quoting BLACK'S LAW DICTIONARY 1253 (7th ed. 1999)). Meaning, what the Property Qualification Clause forbids is requiring an individual to possess certain property, not to pay a given fee. Indeed, notwithstanding the prohibition on property qualifications, North Carolina continued to impose a poll tax. *Moose v. Bd. of Com'rs of Alexander Cnty.*, 172 N.C. 419, 451, 90 S.E. 441 (1916). For felons with monetary sentence conditions, discharge does entail a monetary cost. But nothing in Section 13-1 requires a felon to possess any property.

Finally, as the U.S. Supreme Court has recognized, many of the "usual burdens of voting" entail monetary costs. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality op.). Invalidating Section 13-1 on that basis would yield the untenable result that all those "usual burdens" violate the Property Qualifications Clause. It is implausible that the prohibition on property qualifications encompasses all voting regulations with even an attenuated connection to a financial obligation. This Court should reverse the grant of summary judgment as to this claim as well.

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CONCLUSION

For the foregoing reasons, this Court should reverse the grants of summary and final judgment in the Plaintiffs favor and grant judgment in favor of the Defendants.

Respectfully submitted this 18th day of July, 2022.

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CONTENTS OF APPENDIX

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West s North Carolina General Statutes Annotated
Constitution of North Carolina
Article I. Declaration of Rights

N.C.G.S.A. Art. I, § 10

§ 10. Free elections

Currentness

All elections shall be free.

<Article I, §§ 1 to 22, appears in this volume>

<Adoption of the Constitution of 1970>

<A complete revision to the North Carolina Constitution of 1868 was proposed in Laws 1969, c. 1258 for submission to the voters at the general election of 1970. The revision was adopted by the electorate at the election of November 3, 1970 to take effect on July 1, 1971. In addition to this revision, amendments separately submitted at the November, 1970, were also adopted and are incorporated in the 1970 Constitution.>

<Sections 1 to 22 appear in this volume>

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Notes of Decisions (28)

N.C.G.S.A. Art. I, § 10, NC CONST Art. I, § 10
The statutes and Constitution are current through S.L. 2022-10 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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West s North Carolina General Statutes Annotated
Constitution of North Carolina
Article I. Declaration of Rights

N.C.G.S.A. Art. I, § 11

§ 11. Property qualifications

Currentness

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

<Article I, §§ 1 to 22, appears in this volume>

<Adoption of the Constitution of 1970>

<A complete revision to the North Carolina Constitution of 1868 was proposed in Laws 1969, c. 1258 for submission to the voters at the general election of 1970. The revision was adopted by the electorate at the election of November 3, 1970 to take effect on July 1, 1971. In addition to this revision, amendments separately submitted at the November, 1970, were also adopted and are incorporated in the 1970 Constitution.>

<Sections 1 to 22 appear in this volume>

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Notes of Decisions (2)

N.C.G.S.A. Art. I, § 11, NC CONST Art. I, § 11
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West s North Carolina General Statutes Annotated
Constitution of North Carolina
Article I. Declaration of Rights

N.C.G.S.A. Art. I, § 19

§ 19. Law of the land; equal protection of the laws

Currentness

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No 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.

<Article I, §§ 1 to 22, appears in this volume>

<Adoption of the Constitution of 1970>

> <A complete revision to the North Carolina Constitution of 1868 was proposed in Laws 1969, c. 1258 for submission to the voters at the general election of 1970. The revision was adopted by the electorate at the election of November 3, 1970 to take effect on July 1, 1971. In addition to this revision, amendments separately submitted at the November, 1970, were also adopted and are incorporated in the 1970 Constitution.>

<Sections 1 to 22 appear in this volume>

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Notes of Decisions (2923)

N.C.G.S.A. Art. I, § 19, NC CONST Art. I, § 19
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App. 4

CHAPTER 43.

An act to amend chapter sixty-five (65) of the public laws of eighteen hundred and ninety-five.

The General Assembly of North Carolina do enact:

SECTION 1. That chapter sixty-five (65) of the public laws of (1895), one thousand eight hundred and ninety-five be and the same is hereby amended, by striking out the words "Alamance," "Bladen" and "Granville" in section three of said act, so that said act shall not apply to the counties of Alamance, Bladen and Granville. Chapter 65, laws 1895, relating to protection of travellers. Amended.

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

Ratified the 1st day of February, A. D. 1899.

CHAPTER 44.

An act to amend section two thousand nine hundred and forty-one of The Code, and to facilitate the restoration to the rights of citizenship in certain cases.

The General Assembly of North Carolina do enact:

SECTION 1. That section two thousand nine hundred and forty-one of The Code be amended by adding thereto the following: *Provided*, that any person who may have been heretofore, or shall hereafter be convicted of any crime whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. Code, section 2941, relating to restoration to citizenship. Amended. Proviso.

SEC. 2. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also, that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. Petition what to set forth. Verified by oath of applicant.

SEC. 3. That no notice of the petition in such case shall be nec-

LDX 44, Page 1 of 2

Notice and advertisement not necessary. Heard by judge in term time. Decree—clerk shall spread on minute docket.

essary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied [as] to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the last rights of citizenship, and the clerk shall spread the decree upon his minute docket of the proceedings of the term.

SEC. 4. That this act shall be in force from and after its ratification.

Ratified the 3d day of February, A. D. 1899.

CHAPTER 45.

An act relating to the department of agriculture, and taking from the board of commissioners of said department the power to contract for buildings.

The General Assembly of North Carolina do enact:

Commissioners of agriculture, etc., to contract for the erection of buildings or for repair to same.

SECTION 1. That all authority or power heretofore conferred upon the department of agriculture, or upon the commissioners of the board of agriculture, or upon the executive committee of said board, or upon any person acting for and in behalf of said board to contract for the erection of buildings, or for the repair of the same, or for any additions thereto, be and the same is hereby withdrawn and repealed, and all contracts made with them after the passage of this act shall be void.

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

Ratified the 8th day of February, A. D. 1899.

CHAPTER 46.

An act to prohibit hunting on any lands in Gaston and Catawba counties except by consent of owner.

The General Assembly of North Carolina do enact:

Hunting forbidden—Gaston and Catawba counties.

SECTION 1. That it shall be unlawful for any person to hunt upon the lands of another in Gaston and Catawba counties, with or without gun or dogs, except by consent of the owner.

Misdemeanor.

SEC. 2. That any person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than ten dollars for each and every offense.

SEC. 3. That this act shall be in force from and after April the first, eighteen hundred and ninety-nine.

Ratified the 8th day of February, A. D. 1899.

THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through the Legislative Session of 1969

Prepared under the Supervision of the Department of Justice of the State of North Carolina

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Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of

D. W. Parrish, Jr., S. G. Alrich and W. M. Willson

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Volume 1B

1969 Replacement Volume

The Michie Company, Law Publishers
Charlottesville, Va.
1969

Chapter 13.

Citizenship Restored.

§ 13-1. Petition filed.—Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights, and that he has not before been restored to the lost rights of citizenship. (1840, c. 36, s. 4; R. C., c. 58, ss. 1, 3; Code, ss. 2938, 2940; Rev., s. 2675; C. S., s. 385.)

Cross References. — As to infamous crimes generally, see §§ 14-1, 14-2, 14-3. See also N.C. Const., Art. II, § 11; Art. VI, § 8.

Loss of citizenship does not form a part of the judgment of the court, but follows as a consequence of such judgment. State v. Jones, 82 N.C. 685 (1880).

Cited in Young v. Southern Mica Co., 237 N.C. 644, 75 S.E.2d 795 (1953).

§ 13-2. When and where petition filed.—At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county at term, where the indictment was found upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in the superior court of that county where the last indictment was found. (1840, c. 36, s. 3; R. C., c. 58, ss. 3, 4; Code, ss. 2940, 2941; 1897, c. 110; Rev., s. 2676; C. S., s. 386; 1933, c. 243.)

§ 13-3. Notice given.—Upon filing the petition the clerk of the court shall advertise the substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard. (1840, c. 36; R. C., c. 58, s. 1; Code, s. 2938; Rev., s. 2677; C. S., s. 387.)

§ 13-4. Hearing and evidence.—The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition or by anyone who may oppose the grant of his prayer. The petitioner shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this State for three years next preceding the filing of the petition. (1840, c. 36; R. C., c. 58, ss. 1, 2; Code, ss. 2938, 2939; 1897, c. 110; 1901, c. 533; Rev., s. 2678; C. S., s. 388.)

§ 13-5. Decree.—At the hearing the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved that the character of

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the applicant for truth and honesty is good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto. (1840, c. 36; R. C., c. 58, s. 1; Code, s. 2938; Rev., s. 2679; C. S., s. 389.)

§ 13-6. Procedure in case of pardon or suspension of judgment.—Any person convicted of any crime, whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the Governor, or the court suspended judgment on payment of the costs, and the costs have been paid, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the Governor, and also that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. No notice of the petition in such case shall be necessary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied as to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his minute docket: Provided, that in all cases where the court suspended judgment it shall not be necessary to allege or prove that pardon has been granted by the Governor, and in such cases the petition may be made and the forfeited rights of citizenship restored at any time after conviction. (1899, cc. 44, 249; 1905, c. 547; Rev., s. 2680; C. S., s. 390.)

Application.—This section is not applicable where one has been convicted of an infamous crime, imprisoned, and pardoned by the Governor. In re Petition of Jones, 160 N.C. 15, 75 S.E. 1007 (1912).

§ 13-7. Restoration of rights of citizenship to persons committed to certain training schools.—Any person convicted of any crime whereby any rights of citizenship are forfeited, and the judgment of the court pronounced provides a sentence, and such sentence is suspended upon the condition that such person be admitted to and remain at one of the following schools: Eastern Carolina Industrial Training School for Boys, the Stonewall Jackson Manual Training and Industrial School, the Morrison Training School for Negro Boys, or the Samarkand Manor, until lawfully discharged, and upon payment of costs, such person may be restored to such forfeited rights of citizenship upon application and petition to the judge presiding at any term of the superior court held in the county in which the conviction was had, at any time after one year from the date of the lawful discharge from any such school. (1937, c. 384; s. 1; 1969, c. 837, s. 4.)

Editor's Note. — The 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls."

The Eastern Carolina Industrial Training School for Boys is now known as the Richard T. Fountain School. See § 134-67.

The Stonewall Jackson Manual Training and Industrial School is now known as the Stonewall Jackson School. See 1969 Session Laws, c. 901.

The Morrison Training School for Negro Boys is now known as the Cameron Morrison School. See 1969 Session Laws, c. 901.

§ 13-8. Contents of petition; affidavits of reputable citizens; hearing; decree of restoration.—The petition provided for in § 13-7 shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and shall recite that the costs of suit have been paid, the lawful discharge of the applicant from the school to which he or she was admitted, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten

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reputable citizens of the county in which said conviction took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1937, c. 384, s. 2.)

§ 13-9. Restoration of citizenship to persons convicted, etc., of involuntary manslaughter.—Any person who has been convicted of, or confessed guilt to, the crime of involuntary manslaughter and is not actually serving a term in the State prison or on the roads of the State may, at any subsequent term of the superior court of the county in which the conviction was had, or the confession of guilt made, make application and petition the court for a restoration of all forfeited rights of citizenship. (1941, c. 184, s. 1.)

Cross Reference.—As to punishment for involuntary manslaughter, see § 14-18.

§ 13-10. Contents of petition; supporting affidavits; hearing and decree.—The petition provided for in § 13-9 shall set out the nature of the crime committed, the time of conviction or confession of guilt, the judgment of the court, and shall recite that the costs of suit have been paid, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten reputable citizens of the county in which said conviction or confession of guilt took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall have the authority to decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1941, c. 184, s. 2.)

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NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 902
HOUSE BILL 285

AN ACT TO AMEND CHAPTER 13 OF THE GENERAL STATUTES TO REQUIRE THE AUTOMATIC RESTORATION OF CITIZENSHIP TO ANY PERSON WHO HAS FORFEITED SUCH CITIZENSHIP DUE TO COMMITTING A CRIME AND HAS EITHER BEEN PARDONED OR COMPLETED HIS SENTENCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 13 of the General Statutes of North Carolina is hereby repealed in its entirety and a new Chapter 13 is hereby enacted to read as follows:

"**Chapter 13**

"**Citizenship Restored**

"**§ 13-1. Restoration of Citizenship. —** Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored upon compliance with one of the following conditions:

(a) the Department of Correction at the time of release recommends restoration of citizenship;

(b) two years have elapsed since release by the Department of Correction, including probation or parole, during which time the individual has not been convicted of a criminal offense of any state or of the Federal Government;

(c) or upon receiving an unconditional pardon.

"**§ 13-2. Procedure for Restoration. —** The restoration procedure shall consist of the taking of an oath by such person before any judge of the General Court of Justice in Wake County or in the county where he resides or in which he was last convicted, to the effect that said person has complied with the provisions of G.S. 13-1, and that he will support and abide by the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith.

"**§ 13-3. Assistance by Appropriate State Personnel. —** The Department of Correction, the Department of Juvenile Correction, the Probation Commission, the Board of Paroles and other appropriate State and county officials shall cooperate with and assist such person in securing any information required by any judge prior to administering the oath required by this section."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of July, 1971.

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NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 251
HOUSE BILL 33

AN ACT TO PROVIDE FOR THE AUTOMATIC RESTORATION OF CITIZENSHIP.

The General Assembly of North Carolina enacts:

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

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

(1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Board of Juvenile Correction, of a probationer by the State Probation Commission, or of a parolee by the Board of Paroles; or of a defendant under a suspended sentence by the Court.
(2) The unconditional pardon of the offender.
(3) The satisfaction by the offender of all conditions of a conditional pardon.

"**§ 13-2. Issuance and filing of certificate or order of restoration. —** The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

The original of such certificate or order shall be promptly transmitted to the Clerk of the General Court of Justice in the county where the official record of the case from which the conviction arose is filed. The Clerk shall then file the certificate or order without charge with the official record of the case.

"**§ 13-3. Issuance, service and filing of warrant of unconditional pardon. —** In the event the rights of citizenship are restored by an unconditional pardon as specified in G.S. 13-1(2), the Governor, under the provisions of G.S. 147-23, shall issue his warrant therefor specifying the restoration of rights of citizenship to the offender; and the officer to whom the Governor issues his warrant to effect the release of the offender shall deliver a copy of the warrant to the offender under the provisions of G.S. 147-25. The original warrant bearing the officer's return as specified in G.S. 147-25 shall be filed by the Clerk of the General Court of Justice without charge in the county where the official record of the case from which the conviction arose is filed.

"**§ 13-4. Endorsement of warrant, service and filing of conditional pardon. —** When the offender has satisfied all of the conditions of a conditional pardon, and his rights of citizenship have been restored under the provisions of G.S. 13-1(3), the Governor shall issue an endorsement to the original warrant which specified the conditions of the pardon. Such endorsement shall acknowledge that the offender has satisfied all of the conditions of the pardon.

The Governor shall then deliver the endorsement to the officer specified in G.S. 147-25 for service and delivery to the Clerk. Service and delivery to the Clerk and filing by the Clerk shall be done in accordance with the provisions of G.S. 13-3 so that the endorsement reflecting

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satisfaction of all conditions of the pardon will be served and recorded as if it were a warrant of unconditional pardon."

Sec. 2. All laws and clauses of laws in conflict with the provisions of this act shall be null and void.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 20th day of April, 1973.

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IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMMY LOCKLEAR; SUSAN MARION; HENRY HARRISON; and SHAKITA NORMAN, Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; KENNETH RAYMOND, in his official capacity as member of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as member of the North Carolina State Board of Elections, Defendants.	WAKE COUNTY 19 CVS 15941

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TRANSCRIPT - THREE-JUDGE PANEL TRIAL
Thursday, August 19, 2021
Volume 4 of 4

Transcript of proceedings in the General Court of Justice, Superior Court Division, Wake County, North Carolina at the August 16, 2021, Civil Session, before the Honorables Lisa C. Bell, John M. Dunlow, and Keith O. Gregory, Judges Presiding.

Tammy L. Johnson, CVR-CM-M
Official Court Reporter
Tenth Judicial Circuit
Wake County, North Carolina

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Diana Powell
Corey Purdie
Rev. Dr. T. Anthony Spearman
Troy Strunkey

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So in that regard, with -- I had my own little timer there.

JUDGE GREGORY: He has a minute -- what I do, every time you ask a question, to be fair to the defense, I stopped it and then restarted it when he started his answer, but I am going to say he has about a minute and 36 seconds before I give him the five minutes. At that point, Judge, just for our court reporter --

THE COURT REPORTER: I'm fine to push through, but please slow it down just a tad.

MR. RODRIGUEZ: My speed, okay. Thank you.

THE COURT REPORTER: I'm okay. Thank you.

JUDGE GREGORY: Okay. So I'll restart it once he starts talking.

MR. RODRIGUEZ: Therefore, on this issue regarding the governmental interests that are served by the -- by the classification, the only classification that 13-1 makes, which is completing your sentence, restored; not completing your sentence, not restored; the evidence, we think, does not support a claim that that distinction violates the Equal Protection Clause.

So now I'm going to turn to the second -- the second claim -- the second claim of plaintiffs that 13-1 has this impermissible intent and purpose of discriminating against Black voters. The plaintiffs here presented a lot

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of evidence, much of it, if not all of it, all of it, troubling and irrefutable. You can't -- I can't say anything about a newspaper report that says what it says. I can't say anything about the history that is in the -- in the archives. What I can say is that the evidence that Dr. Burton presented certainly demonstrates a shameful history of our state's use of laws, and with regard to voting in particular, to suppress the Black population. That I can't -- I can't contest that. We never tried to contest that.

However, Dr. Burton did not present any evidence that this version of 13-1 was crafted, amended, or authored by any particular legislator for any -- with any racial animus. Certainly he presented evidence of the culture and the climate that existed, not just in the 1800s, but sadly, in the not-that-distant past. Again, not refuting any of that. I can't refute what the *Charlotte Observer* writes about what the citizens of our state believed. I can't refute other comments that legislators were quoted making in various newspaper articles in the '60s and the '70s. I can't refute Richard Nixon's policies on being tough on crime and the war on drugs. Those things matter. The effects of that matter.

This case, however, is just not about that, and I want to stress that I do not say that with any disrespect or

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to minimize the importance of those matters. I simply am trying to do my job in keeping focused on the things that do matter, and there is case law that indicates that even where, even where, which I'll get back to in a second, even where the particular statute at issue has a racial animus in its origin, that that can -- that -- a revision to that law, a subsequent revision to that law can be valid if the law is substantially changed and the change in that law is not motivated by any racial bias.

Now, before I talk about that text, I want to talk about the actual law and the -- the history behind the actual law. 1840 was the first codification, if I'm not mistaken, of the restoration statute, so the immediate predecessor. If you draw a line from 13-1 as it's on the books all the way back to the first time such a bill was on the books, it was 1840, before African-Americans could vote, and so it could not have been intentionally enacted to discriminate against African-Americans.

After 1840 and perhaps before 1840, but after 1840, the historical record is clear there were many laws passed that appear to be, based on Dr. Burton's testimony, motivated by this racial animus, but no revision to the 1840 statute running through, which is -- this is all in evidence -- each revision from 1877 to '97 to 1905 to 1933 to the 1973 revisions, no revisions of those statutes contain any

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indication, nor did Dr. Burton testify to any legislative history from any of those revisions, contain any indication that the changes were made with any racial animus. In fact, the restoration law was at its strictest in 1840 and only improved in time. Now, it is a fair statement that when it was at its strictest, it didn't apply to African-Americans, and for a long period of time as it was improving, it still didn't apply to African-Americans. Absolutely correct.

However, the most immediate substantive change to this law came in the 1970s when Representative Johnson introduced a bill, and the bill that was introduced was aimed at automatically restoring rights upon full completion of a person's sentence, not upon release from prison. The bill as introduced by Representative Johnson does not contain a phrase, "upon release from prison." It does not contain a phrase, "upon re-entering society." Dr. Burton was asked on cross-examination whether during his research he uncovered any such drafts of bills, and he testified he did not.

Plaintiffs' theory of this case, regarding the intentional discrimination piece, appears to me to rest on this notion that Representative Johnson's intent when he introduced the bill in 1971 was thwarted at every turn throughout the process and then again in 1973 and, therefore, whatever changes were made to that statute don't

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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the August 16, 2021, Civil Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 6th day of November, 2021.

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Tammy Johnson, CVR-CM-M
Official Court Reporter
Tenth Judicial Circuit
Wake County, North Carolina