

No. 331PA21

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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COMMUNITY SUCCESS	)
INITIATIVE, et al.,	)
	Plaintiffs, )
	)
v.	)
	)
TIMOTHY K. MOORE, et al.,	)
	)
	Defendants. )
	)

From Wake County  
 19 CVS 15941  
From Court of Appeals  
 P22-153

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**AMICUS BRIEF OF THE DISTRICT OF COLUMBIA AND THE STATES OF CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, NEVADA, NEW JERSEY, NEW YORK, RHODE ISLAND, AND WASHINGTON IN SUPPORT OF PLAINTIFFS-APPELLEES**

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## INTRODUCTION AND INTEREST OF AMICI STATES

Pursuant to North Carolina Rule of Appellate Procedure 28(i), the District of Columbia and the States of California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Rhode Island, and Washington (“Amici States”) submit this brief as amici curiae in support of Plaintiffs-Appellees.<sup>1</sup>

An estimated 5.17 million people across the United States were barred from voting in 2020 and locked out of the democratic process because of state laws that disenfranchise individuals who were convicted of felony offenses. *See* Christopher Uggen, et al., The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 4 (Oct. 30, 2020), <https://tinyurl.com/locked-out-2020> (download PDF). By contrast, “restoration of voting rights provides a clear marker of reintegration and 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). Recognizing this, states have begun moving away from broadly disenfranchising former felons who have otherwise reintegrated into their

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<sup>1</sup> No counsel or party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

communities. Since 1997, 25 states and the District of Columbia, including several Amici States, have taken action to “expand[] voter eligibility and/or inform[] persons with felony convictions of their voting rights.” Jean Chung, The Sentencing Project, *Voting Rights in the Era of Mass Incarceration: A Primer* 4 (July 28, 2021), <https://tinyurl.com/voting-rights-primer> (download PDF). Sixteen states and the District implemented such reforms in just the past six years. *Id.* These initiatives to expand the franchise illustrate a growing consensus that allowing former felons to vote benefits both the returning citizens and the communities they rejoin.

Although Amici States have reached different conclusions on how best to realize the benefits of felon re-enfranchisement, we have experience in how various methods of re-enfranchisement have benefitted our jurisdictions and are providing that information to the Court. North Carolina’s felon disenfranchisement law, N.C.G.S. § 13-1, 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. Accordingly, Amici States urge this Court to affirm the ruling of the trial court.

## ARGUMENT

### I. N.C.G.S. § 13-1 Is Out Of Step With Recent Efforts By States To Expand The Franchise To Formerly Incarcerated Individuals.

Over the past 25 years, half of states, including several Amici States, “have changed their laws and practices to expand voting access to people with felony convictions.” Uggen, et al., *Locked-Out 2020*, *supra*, at 4. As a result, the right to vote has been restored to more than one million people. See Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform* 3 (Oct. 17, 2018), <https://tinyurl.com/expanding-the-vote> (download PDF) (“As a result of the reforms achieved during the period from 1997-2018, an estimated 1.4 million people have regained the right to vote.”); Zach Montellaro, *States Moving Fast After Congress Failed to Expand Felon Voting Rights*, Politico (Feb. 2, 2022), <https://tinyurl.com/3tdeay5s> (“[T]he number of states automatically restoring voting rights has increased by 50 percent since after the 2018 election . . . .”); Chung, *supra*, at 4 (“Recent state voter restoration reforms have led to a nearly 15% decline in the number of people disenfranchised since 2016 . . . .”). These reform efforts include laws repealing lifetime disenfranchisement, allowing felons to vote while completing the terms of their probation or parole, eliminating requirements that condition re-enfranchisement on pre-payment

of court fines and fees, and providing information to returning citizens about their voting rights. *See* McLeod, *supra*, at 3-4.

At one point, it was common for states to permanently disenfranchise all those convicted of felonies. Over time, however, those rules disappeared, reflecting the elimination of assumptions that past felony convictions render a person unfit to participate in democratic processes. The handful of states that had continued to apply such a blanket rule by the end of last century have largely eliminated it in this century—and especially over the last five years. *See* Del. Code Ann. tit. 15, §§ 6102-6103 (repealing lifetime disenfranchisement except as to those convicted of felonies enumerated in Del. Const. art. V, § 2); Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018) (amending the state constitution to repeal lifetime disenfranchisement); Iowa Exec. Order No. 7 (Aug. 5, 2020), <https://tinyurl.com/iowa-exec-order> (ending permanent disenfranchisement for felons not convicted of homicide); S.B. 488, 2007 Reg. Sess. (Md. 2007) (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, in the last five years, Kentucky and Wyoming lifted restrictions on

the ability of nonviolent felons to regain the right to vote after completing their sentences. Ky. Exec. Order No. 3 (Dec. 12, 2019), <https://tinyurl.com/ky-exec-order> (restoring voting rights for nonviolent felons upon completion of their sentences); 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 some or all individuals living in their communities who are still under the supervision of the criminal justice system after their release from incarceration. California, Colorado, Connecticut, Maryland, New Jersey, New York, Rhode Island, and Washington restored the right to vote to citizens upon release from incarceration, regardless of any post-incarceration restrictions or obligations. *See* Cal. Const. art. II, §§ 2, 4 (as amended by California Proposition 17 on Nov. 3, 2020); H.B. 19-1266, 71st Gen. Assemb., 2019 Reg. Sess. (Colo. 2019); S.B. 1202, 2021 Gen. Assemb., June Special Sess. (Conn. 2021); H.B. 980, 2015 Reg. Sess. (Md. 2015); A.B. 5823, 2018-2019 Reg. Sess. (N.J. 2019); S.B. 830, 2021-2022 Reg. Sess. (N.Y. 2021); H.B. 7938, 2006 Gen. Assemb., Jan. Sess. (R.I. 2006); H.B. 1078, 67th Leg., 2021 Reg. Sess. (Wash. 2021). Louisiana and Virginia re-enfranchised parolees and probationers under certain conditions. *See* 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); Off. of the Governor, Press Release, *Governor Northam Restores Civil*

*Rights to Over 69,000 Virginians, Reforms Restoration of Rights Process* (Mar. 16, 2021), <https://tinyurl.com/northam-press-release> (former Virginia governor announcing new eligibility criteria that would restore voting rights upon release from prison); Off. of the Governor, Press Release, *Governor Glenn Youngkin Announces the Restoration of Rights for Thousands of Virginians* (May 20, 2022), <https://tinyurl.com/youngkin-press-release> (current Virginia governor announcing that he will continue to restore voting rights to persons with felony convictions). Similarly, Arizona and Washington eliminated the requirement of paying all fines, fees, costs, and restitution before regaining the right to vote. H.B. 2080, 54th Leg., 1st Reg. Sess. (Ariz. 2019); H.B. 1517, 61st Leg., 2009 Reg. Sess. (Wash. 2009).

In fact, some jurisdictions have concluded that there is no reason to deny the vote to their incarcerated population. In 2020, the District became the first jurisdiction in the country to enfranchise incarcerated persons. See Comprehensive Policing and Justice Reform Second Emergency Act of 2020, 67 D.C. Reg. 9,148, 9,167-68 (July 31, 2020); Chung, *supra*, at 4. In doing so, the District joined Maine, Vermont, and Puerto Rico, which had never disenfranchised felons. Vann R. Newkirk II, *Polls for Prisons*, The Atlantic (Mar. 9, 2016), <https://tinyurl.com/polls-for-prisons>.

In addition, states like California, Illinois, 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); H.B. 2541, 101st Gen. Assemb. (Ill. 2019) (establishing civics program for soon-to-be released inmates to learn about, *inter alia*, voting rights); S.B. 2282, 2010-2011 Reg. Sess. (N.J. 2012) (requiring the commissioner of corrections to provide written information regarding a returning citizen's right to vote prior to 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 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. *See* Part III.B.2, *infra*.

In addition to legislative and executive action, courts have also required re-enfranchisement where state laws have run afoul of federal or state constitutional rights. *See, e.g., Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (holding that Alabama's felon disenfranchisement scheme violated the federal



Equal Protection Clause); *Williams v. Tyler*, 677 F.2d 510, 517 (5th Cir. 1982) (remanding for trial the question of whether Mississippi violated the federal Equal Protection Clause in selectively enforcing its felon disenfranchisement laws); *McLaughlin v. City of Canton*, 947 F. Supp. 954, 976 (S.D. Miss. 1995) (holding plaintiff's federal equal-protection rights were violated when he was disenfranchised on the basis of a misdemeanor conviction).

In total, nearly half of states restore voting rights to some or all parolees or probationers. And even many that do not have taken steps towards liberalizing the terms and conditions of their states' felon disenfranchisement systems. All told, these trends reflect a clear and growing consensus among states toward facilitating restoration and expanding the franchise, a consensus with which North Carolina's felon disenfranchisement system is out of step.

## **II. Expanding The Franchise Promotes Civic Participation And Improves Public Safety.**

It is well established that individuals who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 195-96 (2004). Indeed, 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.* at 196. So allowing former felons to vote can foster prosocial behavior; 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.” *Id.* at 198. When former felons 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). 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.” *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says*, VCU News (Apr. 26, 2016), <https://bit.ly/3pjGr6L>. When individuals are excluded from this process, by contrast, they “express a feeling of being an ‘outsider.’” Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1926 (2015).

The experience of Amici States confirms that when a returning citizen is fully reintegrated into his or her community, including by regaining the right to vote, he or she can better transition into a new role as a law-abiding citizen. Accordingly, efforts by Amici States to expand the franchise embrace the idea that “restoring voting rights to ex-felons may facilitate reintegration efforts

and perhaps even improve public safety.” Christina Beeler, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotation marks and citation omitted). For example, the New York Governor justified exercising his executive power to restore voting rights to parolees, in part, by recognizing that “research indicates a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves the public safety for all New Yorkers.” N.Y. Exec. Order No. 181, at 1 (2018). The California Secretary of State launched an online tool for returning citizens, also, in part, because “[c]ivic engagement can be a critical piece in reintegrating formerly incarcerated Californians into their communities and reducing recidivism.” Cal. Sec’y of State, Press Release, *Secretary of State Alex Padilla Launches ‘Restore Your Vote’ Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018) (internal quotation marks omitted), <https://bit.ly/3eNWFjL>.

These actions reflected conclusions drawn from studies of former felons’ voting behavior. Likewise, a report by the Florida Parole Commission noted a decrease in recidivism beginning in April 2007, when the Florida Executive Clemency Board amended its rules to automatically restore the voting rights of most nonviolent felons upon completion of their sentences. Fla. Parole Comm’n, *Status Update: Restoration of Civil Rights (RCR) Cases Granted 2009*

*and 2010*, at 6, 13 (2011), <https://bit.ly/3neef36>. The report found that between April 2007 and March 2011—the period during which the amended rules were in place—approximately 11% of former felons reoffended, as compared with 33% of individuals released before the new rules were adopted. *Id.* at 7, 13.

Another study found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*, *supra*, at 213. This survey of 1,000 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 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.

Many in the law enforcement community have endorsed this view by supporting states’ efforts to restore voting rights. 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.” Erika Wood, Brennan Ctr. for Just., *Restoring the Right to Vote* 11 (May 2009), <https://bit.ly/35l1E8b>

(quoting *Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Env't Affairs*, 2007 Leg., 423d Sess. (Md. 2007) (written testimony of Ron Stalling, Nat'l Black Police Ass'n)). Similarly, a former city police chief in Rhode Island wrote that 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 J.* (Sept. 25, 2006), <https://bit.ly/2IyxIMQ>.

These facts have led state legislatures to recognize that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared 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.” H.B. 19-1266 § 1(c), 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019). States have also recognized that restoring the franchise benefits their communities more broadly by promoting civic participation. According to the Rhode Island Legislature, “[r]estoring the right to vote strengthens our democracy by increasing voter

participation and helps people who have completed their incarceration to reintegrate into society.” R.I. Gen. Laws § 17-9.2-2(a)(1).

Policymakers have also observed that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. Washington State legislators thus credited 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.” H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (Wash. 2009). The assemblyman who authored the recently passed amendment to the California Constitution also described restoring parolees’ rights to vote as “good for democracy and good for public safety.” Patrick McGreevy, *Prop. 17, Which Will Let Parolees Vote in California, Is Approved by Voters*, L.A. Times (Nov. 4, 2020), <https://lat.ms/38A6O2s>. And the New Jersey Legislature found that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose.” N.J. Stat. Ann. § 19:4-1.1(f).

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. Incarceration disproportionately impacts people of color, and “the disparities in incarceration rates by race ultimately become disparities in voting rights.” Beeler, *supra*, at

1085. Consequently, as of 2020, over 6.2% of the Black voting age population in the United States could not vote, as compared with only 1.7% of the non-Black population. Uggen, et al., *Locked Out 2020*, *supra*, at 4. This racial disparity affects North Carolina. The trial court here found that “African Americans comprise 21% of North Carolina’s voting-age population, but over 42% of those denied the franchise due to felony probation, parole, or post-release supervision from a North Carolina state court conviction alone.” Record (“R.”) 1093.

There is also evidence that felon disenfranchisement laws deter people of color from voting generally, including non-felons. As the trial court found, “a high level of communal denial of the franchise,” like what occurs when a large portion of the Black community is disenfranchised due to N.C.G.S. § 13-1, “can discourage other young people from voting, because voting is a social phenomenon,” i.e., people vote when they see others in their community voting. R. 1114. “A 2009 study found that eligible and registered black voters”—that is, those with a legal *right* to vote—“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% less likely to vote. Erin Kelley, Brennan Ctr. for Just., *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017), <https://tinyurl.com/intertwined-history> (download PDF). Recent research also demonstrates that neighborhoods with higher proportions

of disenfranchised individuals can have lower voter turnout rates as compared to similar neighborhoods. See Kevin Morris, *Neighborhoods and Felony Disenfranchisement: The Case of New York City*, Urban Affs. Forum (Dec. 21, 2020), <https://tinyurl.com/3jtmnzn2>. Indeed, the trial court found here that “turnout among eligible voters is lower in communities with higher rates of denial of the franchise among people living in those communities.” R. 1114. This indirect effect of felon disenfranchisement has greater impact on minority—and specifically Black—neighborhoods, diminishing the political power of these communities. Morris, *supra*.

States implementing measures to expand the voting rights of returning citizens have specifically referenced these harmful consequences of disenfranchisement on minority communities. See, e.g., N.J. Stat. Ann. § 19:4-1.1(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. Gen. Laws § 17-9.2-2(a)(4) (“One in five (5) black men and one in eleven (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.”). Dismantling these laws is a step towards



fixing their damage to minority political power and representation. For example, an analysis of the impact of Florida's Amendment 4, which ended permanent disenfranchisement in the state, found that more than 44% of the formerly incarcerated individuals who registered to vote between January and March of 2019 identified as Black, while Black voters make up 13% of the overall voter population in Florida. Kevin Morris, Brennan Ctr. for Just., *Thwarting Amendment 4*, at 1 (May 9, 2019), <https://tinyurl.com/thwarting-amendment-4> (download PDF). Current and historical evidence therefore underscores the substantial benefits of restoring the franchise to citizens upon return from incarceration.

### **III. N.C.G.S. 13-1 Does Not Further Criminal Justice Goals And Is Administratively Burdensome.**

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. Because felon disenfranchisement bans lack evidentiary

support, as other states' experiences show, North Carolina's law should not survive this Court's review. *See Dep't of Transp. v. Rowe*, 549 S.E.2d 203, 207 (N.C. 2001) (explaining that, under heightened scrutiny, the state must "prove" that a law has a sufficiently close nexus to a government interest).

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

North Carolina contends that post-release disenfranchisement furthers certain goals of the criminal justice system. R. 1109 (identifying a proffered government interest in "requiring felons to complete all conditions of probation, parole, and post-trial supervision"). But, consistent with the trial court's findings here, the notion that felon disenfranchisement serves criminal justice goals lacks support. *See* R. 1109 (stating that the defendants "did not introduce facts or empirical evidence at trial supporting any assertion that section 13-1's denial of the franchise to people on felony supervision serves *any* legitimate governmental interest"). Courts have recognized four traditional goals of the criminal justice system: "incapacitation, deterrence, retribution, and rehabilitation." *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality op.). 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.

*First*, post-release disenfranchisement will not ordinarily “incapacitate an ex-offender from committing future criminal offenses.” 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. Wood, *supra*, at 10.

*Second*, extended disenfranchisement does not deter criminal behavior. For one thing, 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. Indeed, as the trial court found, North Carolina’s law “denies the franchise to people on felony supervision *regardless* of whether they are complying with court orders and the conditions of their supervision.” R. 1110. For another, “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.

Indeed, studies suggest that disenfranchisement may be *positively* correlated with recidivism. For example, a study of individuals released from

prison in fifteen states 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.” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 426 (2012). 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.

*Third*, disenfranchisement does not further 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. “[A]ll felonies are not equally serious.” *Id.* 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. Wood, *supra*, at 11.

*Fourth*, 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.” Wood, *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.” Hamilton-Smith & Vogel, *supra*, at 408. This extended exclusion, in turn, conveys the message “that ex-offenders are beyond redemption,” Karlan, *supra*, at 1166, and can “cause[] many people to lose hope,” R. 1118.

Finally, there is no evidence that disenfranchisement facilitates compliance with outstanding legal financial obligations (“LFOs”). *See* R. 1109 (finding no evidence that “withholding the franchise encourages completion of post-release and probationary conditions”), 1110 (finding no evidence that “the prospect of disenfranchisement results in higher rates of compliance with court orders”). 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.*, 975 F.3d 1016, 1088 (11th Cir. 2020) (en banc) (Jordan, J., dissenting) (“If Florida’s interest is in felons repaying their full debts to society, requiring

indigent felons to pay LFOs before regaining the right to vote does not actually aid in collections.”). States can ensure that former felons complete the terms of their sentences through courts’ alternative means of enforcing judgments. 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, less confusing, and less error-prone than systems like North Carolina’s.**

At times in this case, North Carolina claimed that N.C.G.S. § 13-1 serves 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.” R. 1108. 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—rather than resolve—confusion among elections officials and voters about voter eligibility.

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 for states. 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.” Wood, *supra*, at 15.

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. Gen. Laws § 17-9.2-2(a)(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 California, as soon as an individual leaves prison, all he or she must do to regain his voting rights is re-register with the Secretary of State. Cal. Sec'y of State, *Voting Rights: Persons with a Criminal History*, <https://tinyurl.com/cal-voting-rights> (last visited Aug. 15, 2022). Other states similarly require only that a person returning from incarceration register to vote to regain the franchise. *See, e.g.*, Conn. Sec'y of State, *Voting Fact Sheet for Restoring Voting Rights*, <https://tinyurl.com/ct-fact-sheet> (last visited Aug. 15, 2022); Md. Bd. of Elections, *Restoration of Voting Rights in Maryland*, <https://tinyurl.com/md-voting-rights> (last visited Aug. 15, 2022); Nev. Sec'y of State, *Restoration of Voting Rights in Nevada*, <https://tinyurl.com/nev-voting-rights> (last visited Aug. 15, 2022). In these systems, the straightforward eligibility and registration requirements minimize the burden on corrections officers and elections officials while facilitating restoration of voting rights.

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 Board of Pardons and Paroles processed only 8.5% of applications within the statutory time limits and took more than a year to process 530 of the applications. Ala. All. to Restore the Vote & Brennan Ctr. for Just., *Voting Rights Denied in Alabama* 3 (Jan. 17, 2006), <https://tinyurl.com/voting-rights-alabama>. 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 to respond to every application, it closed 39 eligible applications and 59 ineligible applications without ever informing the applicants of their status. *Id.* 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.

These administrative problems characterize North Carolina's voting rights restoration process as well. Following testimony from the Department of Public Safety and the State Board of Elections, the trial court found that confusion and error plague the process of re-enfranchisement. R. 1114-16. The Department of Public Safety, for example, provides informational documents about voting rights restoration to persons under felony supervision that "are not simple or clear" and "do not speak in plain English about the basic question of whether the person is permitted to vote." R. 1114-15. Similarly, the Executive Director of the State Board of Elections "made it clear that . . . denial of the franchise is very difficult to administer and leads to material errors and problems." R. 1116. For example, a 2016 audit found that the State Board misidentified individuals as ineligible voters at a rate of nearly 20%. R. 1116.

Thus, ease of administration is hardly a compelling interest furthered by laws like North Carolina's.

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 also create "needless confusion" among election officials and returning citizens alike about restoration of voting rights. Wood, *supra*, at 13. In North Carolina, "[t]here is rampant confusion among persons on felony supervision about their voting rights," causing them to abstain from voting for fear of being rearrested. R. 1118-20. Streamlining these laws can reduce confusion for all parties involved.

For example, Washington State understood the benefit of simplifying 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. 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 improperly in the state's 2004 general election. *Scores of Felons Voted Illegally*, The Seattle Times (Jan. 23, 2005), <https://tinyurl.com/seattle-felons>. The secretary of state 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 did just that when it amended its disenfranchisement law in 2009. *See* Wash. H.B. 1517 (provisionally restoring the 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, ACLU & Brennan Ctr. for Just., *De Facto Disenfranchisement* 8 (2008), <https://tinyurl.com/de-facto-disenfranchisement>. In Oregon, for example, 100% of election officials correctly responded that individuals are eligible to vote as soon as they leave prison. *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 “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., id.* 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., 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 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 prevents many eligible, would-be voters from casting ballots. But misinformation can also have broader effects on former felons and their communities. 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., Mason v. State*, --- S. W.3d, ----, ----, No. PD-0881-20, 2022 WL 1499513, at \*2 (Tex. Crim. App. May 11, 2022) (Texas woman sentenced to five

years in prison for voting while on felony probation when she did not know she was ineligible to vote, notices about her ineligibility never reached her, and no one from the probation office told her she was ineligible to vote). Thus, the multiple sources of potential confusion in systems like North Carolina's counsel in favor of a less restrictive approach. Certainly, North Carolina's law, as the trial court found, does not further any interest in preventing confusion among former felons or election officials. R. 1114-17.

### CONCLUSION

This Court should affirm.

Respectfully Submitted, this the 17th day of August, 2022.

### POYNER SPRUILL LLP

By: s/ Caroline P. Mackie  
Caroline P. Mackie  
N.C. State Bar No. 41512  
cmackie@poynerspruill.com  
P.O. Box 1801  
Raleigh, NC 27602-1801  
Telephone: 919.783.2881  
Facsimile: 919.783.1075

*Attorneys for Amici States*

*N.C. R. App. P. 33(b) Certification:  
I certify that all of the attorneys  
listed below have authorized me to  
list their names on this document  
as if they had personally signed it.*

KARL A. RACINE  
Attorney General for the District of  
Columbia

By: s/ Caroline S. Van Zile  
Caroline S. Van Zile\*  
caroline.vanzile@dc.gov  
Solicitor General

Ashwin P. Phatak  
Principal Deputy Solicitor General

Adam J. Tuetken  
Assistant Attorney General  
Office of the Solicitor General

Office of the Attorney General  
400 6th Street, NW, Suite 8100  
Washington, D.C. 20001  
(202) 724-6609  
(202) 741-0649 (fax)

*Attorneys for Amici States*

*\*pro hac vice motion forthcoming*

On behalf of:

ROB BONTA  
*Attorney General*  
State of California

WILLIAM TONG  
*Attorney General*  
State of Connecticut

KATHLEEN JENNINGS  
*Attorney General*  
State of Delaware

HOLLY T. SHIKADA  
*Attorney General*  
State of Hawaii

KWAME RAOUL  
*Attorney General*  
State of Illinois

AARON M. FREY  
*Attorney General*  
State of Maine

BRIAN E. FROSH  
*Attorney General*  
State of Maryland

MAURA HEALEY  
*Attorney General*  
Commonwealth of Massachusetts

DANA NESSEL  
*Attorney General*  
State of Michigan

AARON D. FORD  
*Attorney General*  
State of Nevada

MATTHEW J. PLATKIN  
*Acting Attorney General*  
State of New Jersey

LETITIA JAMES  
*Attorney General*  
State of New York

PETER NERONHA  
*Attorney General*  
State of Rhode Island

ROBERT F. FERGUSON  
*Attorney General*  
State of Washington

## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by e-mail and U.S. Mail, addressed to the following:

Daryl V. Atkinson  
Caitlin Swain  
Whitley J. Carpenter  
Kathleen F. Roblez  
Ashley Mitchell  
FORWARD JUSTICE  
400 Main Street, Suite 203  
Durham, NC 27701  
daryl@forwardjustice.org  
cswain@forwardjustice.org  
wcarpenter@forwardjustice.org  
kroblez@forwardjustice.org  
amitchell@forwardjustice.org

Farbod K. Faraji  
PROTECT DEMOCRACY  
PROJECT  
2120 University Avenue  
Berkeley, CA 94704  
farbod.faraji@protectdemocracy.org

### *Counsel for Plaintiffs-Appellees*

Terence Steed  
Paul Mason Cox  
Mary Carla Babb  
N.C. DEPARTMENT OF JUSTICE  
114 W. Edenton St.  
Raleigh, NC 27603  
tsteed@ncdoj.gov  
pcox@ncdoj.gov mcbabb@ncdoj.gov

### *Counsel for State Board Defendants-Appellees*

Elisabeth Theodore  
R. Stanton Jones  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001  
elisabeth.theodore@arnoldporter.com  
stanton.jones@arnoldporter.com

Stephen D. Feldman  
Matthew W. Sawchak  
Adam K. Doerr  
ROBINSON, BRADSHAW &  
HINSON, P.A.  
434 Fayetteville St., Suite 1600  
Raleigh, NC 27601  
sfeldman@robinsonbradshaw.com  
msawchak@rbh.com  
adoerr@rbh.com



Nicole Moss  
David H. Thompson  
Peter A. Patterson  
Joseph O. Masterman  
William V. Bergstrom  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave NW  
Washington, D.C. 20036  
nmoss@cooperkirk.com  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
jmasterman@cooperkirk.com  
wbergstrom@cooperkirk.com

Nathan A. Huff  
K&L GATES  
430 Davis Drive, Suite 400  
Morrisville, NC 27560  
nate.huff@klgates.com

Jared M. Butner  
PHELPS DUNBAR LLP  
4140 Park Lake Avenue,  
Suite 100  
Raleigh, NC 27612  
jared.butner@phelps.com

*Counsel for Legislative Defendants-Appellants*

This 17th day of August, 2022.

/s/ Caroline P. Mackie  
Caroline P. Mackie