

CERTIFICATE OF SERVICE

I certify that today, I caused the attached MOTION FOR LEAVE TO FILE AMICUS BRIEF BY INSTITUTE FOR INNOVATION IN PROSECUTION AT JOHN JAY COLLEGE to be served on all counsel by email and U.S. mail, addressed to:

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

R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
Graham White
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001
stanton.jones@arnoldporter.com
elisabeth.theodore@arnoldporter.com
daniel.jacobson@arnoldporter.com
graham.white@arnoldporter.com
Counsel for Plaintiffs

Farbod K. Faraji
Protect Democracy
2120 University Avenue
Berkeley, CA 94704
farbod.faraji@protectdemocracy.org
Counsel for Plaintiffs

**ATTACHMENT:
PROPOSED AMICUS BRIEF**

STATE OF NORTH CAROLINA
WAKE COUNTY

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

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

v.)

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

**AMICUS BRIEF OF
INSTITUTE FOR
INNOVATION IN
PROSECUTION AT
JOHN JAY COLLEGE**

INTRODUCTION

North Carolina’s disenfranchisement statutes—the statutes challenged in this case—have an unstated but important premise: that withholding the right to vote from persons with criminal records facilitates their rehabilitation.

This premise is false. As research shows, disenfranchisement impedes a person’s rehabilitation and engagement with her community. Studies also show that disenfranchisement creates conditions for recidivism and for less-safe communities.

The Institute for Innovation in Prosecution is a research center at John Jay College, one of the nation's premier criminal-justice institutions. The Institute brings together prosecutors, policy experts, and communities to promote data-driven strategies, cutting-edge scholarship, and innovative thinking. The Institute submits this amicus brief to present critical evidence on the relationship between disenfranchisement and public safety.

The evidence discussed in this brief shows that disenfranchisement does not advance law-enforcement goals. Disenfranchisement destabilizes communities, hinders rehabilitation, and endangers the public.

ARGUMENT

A person's re-entry into society after incarceration requires an effective rehabilitation process. Successful re-entry should also enhance a community's safety. The General Assembly has singled out rehabilitation and public safety as priorities of the State's sentencing regime. *See* N.C. Gen. Stat. § 15A-1340.12 (2019).

The disenfranchisement statutes at issue here undermine these objectives. The Institute urges the Court, when it assesses the statutes'

constitutionality, to weigh the real-world harm that disenfranchisement poses for communities and public safety.

I. Disenfranchisement disrupts a person’s post-release integration into the community.

To re-enter society from incarceration successfully, a person must establish meaningful ties with her community. Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 *Punishment & Soc’y* 402, 408 (2012).

Studies confirm this point. They show that when a person has meaningful ties with her community, she views herself as having a stake in her community. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 *Colum. Hum. Rts. L. Rev.* 193, 196 (2004). When a person embraces her community obligations, she will be more likely to conform her behavior to the community’s standards. *Id.* at 196-97.

Such a person is also more likely to approve of and have faith in the community’s institutions, norms, and values. Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon*

Disenfranchisement Penalties Increases Both Trust and Cooperation with Government, U. Pittsburgh 4–5 (Oct. 25, 2018), <https://ssrn.com/abstract=3272694>. The result is reciprocal: As the community shapes the person, so the person is more likely to contribute to her community. Uggen & Manza, *supra*, at 197.

No person can feel like a member of a community, however, when she cannot participate in electing the community’s leaders. See Note, Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 415 (2012). Instead, a person who cannot vote will always feel like a political outsider, because she is. Erika Wood, Brennan Ctr. for Just., *Restoring the Right to Vote* 9 (2009).

For these reasons, disenfranchisement undermines re-integration. Hamilton-Smith & Vogel, *supra*, at 414. Persons disenfranchised after incarceration report feeling “different from everyone else,” “not accepted,” “like [I] don’t matter,” “alienated,” and “like I’m still a criminal.” Bryan Lee Miller & Lauren E. Agnich, *Unpaid Debt to Society: Exploring How Ex-Felons View Restrictions on Voting Rights After the Completion of Their Sentence*, 19 Contemp. Just. Rev. 69, 80,

83 (2016). Those emotions fuel anger and defiance—the opposite of the pro-social behaviors that are critical to rehabilitation. *See id.* at 73.

Disenfranchisement colors not only the perceptions of the person who cannot vote, but also the perceptions of her fellow community members. Being disenfranchised imposes a stigma: When the law treats someone as unworthy of casting a vote—unworthy of having a say in how society is governed—her community will treat her as something less than a true member. Regina Austin, *“The Shame of it All”: Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons*, 36 Colum. Hum. Rts. L. Rev. 173, 174, 177 (2004). In the eyes of her community, she is morally deficient, unredeemable, or worse. *Id.* at 177. Those perceptions foment distrust and, in the end, weaken the very ties between the person and the community that effective re-entry requires. *Id.* at 174, 176.

Re-enfranchisement does the opposite. It strengthens the ties between a person and her community. The right to vote invites participation in civic life and reinforces the obligation to follow community norms. Wood, *supra*, at 9, 11. If a person can exercise the same right to vote that every other community member enjoys, she

perceives herself as a member of that community, not as an outsider.

See Uggen & Manza, *supra*, at 195.

In sum, disenfranchisement statutes undermine rehabilitation. Disenfranchisement stifles a person’s community participation, turning the community and the person against one another.

II. Disenfranchisement harms public safety.

The disenfranchisement statutes inflict further harm on society. Specifically, disenfranchisement increases the chance that a person—alienated from and stigmatized by his community—will commit another crime. *See* Hamilton-Smith & Vogel, *supra*, at 428; *see also* Cyrus R. Vance Jr. et al., *Prosecutors, Reentry, and Public Safety 2* (2019).

Disenfranchisement creates “a permanent criminal underclass of outcasts.” Hamilton-Smith & Vogel, *supra*, at 428. This outcasting occurs when society and disenfranchised persons come to believe that rehabilitation is impossible. *Id.* at 413. The members of the resulting underclass express their hopelessness through anti-social behavior. *See* Miller & Agnich, *supra*, at 72. Indeed, research shows that a person whom society labels as deviant and an outsider will live out those labels by violating the law. *Id.* at 72-73.

One study, in particular, found a positive correlation between disenfranchisement and increased recidivism rates. Hamilton-Smith & Vogel, *supra*, at 426. The study compared the recidivism rates of ex-offenders in states that restore voting rights post-release with recidivism rates of ex-offenders in states that permanently disenfranchise. *Id.* at 426-27. After controlling for factors such as demographics and criminal history, the study concluded that ex-offenders released in states that permanently disenfranchise are at least ten percent more likely to commit another crime. *Id.* at 427.

This research is consistent with other studies about the relationship between voting patterns and criminal activity. *See* Hamilton-Smith & Vogel, *supra*, at 416. One study found that in the time after an election, persons who did not vote in that election had higher rates of arrest and incarceration than persons who did vote had. Uggen & Manza, *supra*, at 208. Sixteen percent of non-voters were arrested within three years of the election, whereas only about five percent of voters were. *Id.* at 204–05. Similarly, twelve percent of non-voters were incarcerated within three years, but only five percent of voters were incarcerated in the same period. *Id.* at 205.

The same study also found a negative relationship between voting patterns and desistance, the process by which ex-offenders become law-abiding. The study found that forty-two percent of non-voters reported committing acts of violence or threatening violent acts after the election, whereas only twenty-seven percent of voters reported the same in that period. *Id.* at 207. Eighteen percent of non-voters reported committing property crimes after the election, but only eleven percent of voters reported those crimes. *Id.* The study's authors interpreted this data to conclude that disenfranchisement has a positive correlation with increased rates of recidivism. *Id.* at 213-15.

Interviews with disenfranchised persons support this conclusion. In one study, thirty-nine percent of respondents reported a connection between their inability to vote and their inability to stay out of trouble. Miller & Spillane, *supra*, at 422. Specifically, they reported that, because they had no voice in electing their leaders, they felt at direct risk of returning to criminal activity. *Id.* at 415. As one disenfranchised person explained it, "people who don't feel like they're a part of the community do other things: they either go back to selling drugs, smoking drugs, or doing crime." *Id.*

Some might argue that disenfranchisement achieves incapacitation or deterrence, but the facts show otherwise. Wood, *supra*, at 10-11. The threat of disenfranchisement has a low deterrence value because that consequence of crime is not widely known to the public. Miller & Agnich, *supra*, at 72. As proof, consider the case of Lanisha Bratcher, a 32-year-old Hoke County resident who voted in 2016 while on probation. Even though Ms. Bratcher apparently had no idea that she could not vote, she has been charged with a class I felony and faces potential prison time. Sam Levin, *A Black Woman Faces Prison for a Voting Mistake; Prosecutors Just Doubled the Charges*, Guardian (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/voting-arrest-racist-law-north-carolina-lanisha-brachter>.

Ms. Bratcher's case shows the senseless nature of the disenfranchisement statutes. When those statutes are violated, they amount to a surprise attack on a person who seeks civic involvement—the very persons who are *trying* to re-enter society successfully. Perversely, the statutes thus discourage civic involvement and promote recidivism. The result is the opposite of the foremost purpose of our

criminal legal system: protecting public safety. *See* N.C. Gen. Stat. § 15A-1340.12.

III. Disenfranchisement breeds hardships for families and communities—hardships that further undermine public safety.

Finally, disenfranchisement affects the families and communities of the disenfranchised in a troubling way. *See* Wood, *supra*, at 12.

It creates a ripple effect in the form of stigma. Families of disenfranchised persons who have completed terms of incarceration experience as much, if not more, stigmatization as the disenfranchised persons themselves experience. Austin, *supra*, at 180. Communities with many disenfranchised residents experience the same stigma. *Id.* at 183. When families and communities feel unfit to participate in the political process, they experience weak social bonds and an increased likelihood of anti-social behavior. *See* Miller & Agnich, *supra*, at 73.

That anti-social behavior includes low levels of civic participation. Disenfranchising the head of a household discourages the entire family from civic participation. Wood, *supra*, at 12. That effect is especially pronounced for children because a child's decision to vote depends on what she has seen her parents do. *Id.* A parent's disenfranchisement

thus yields irrational consequences: families with an immense stake in government policies—including policies on housing, child welfare, and social benefits—do not vote for the officials who shape those policies. Austin, *supra*, at 18485.

This alienation of whole families can have profound consequences. As shown above, a person who is not engaged in civic participation has a greater chance of deviating from community norms and violating the law. *See supra* pp. 3-9. These consequences, moreover, can spread from families through entire communities: when disenfranchisement is more restrictive, a community's voter turnout is lower. *See Aman McLeod et al., The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications of Reform*, 11 Va. J. Soc. Pol'y & L. 66, 80-81 (2003).

Disenfranchisement, then, affects more than the person no longer incarcerated. It leads to limited civic participation in families and communities. And that limited participation is correlated with an increased likelihood of criminal activity.

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

R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
Graham White
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001
stanton.jones@arnoldporter.com
elisabeth.theodore@arnoldporter.com
daniel.jacobson@arnoldporter.com
graham.white@arnoldporter.com
Counsel for Plaintiffs

Farbod K. Faraji
Protect Democracy
2120 University Avenue
Berkeley, CA 94704
farbod.faraji@protectdemocracy.org
Counsel for Plaintiffs

