STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 19-cv-15941

COMMUNITY SUCCESS INITIATIVE, *et al.*,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, *et al.*,

Defendants.

BRIEF OF CATO INSTITUTE, R STREET INSTITUTE, AND DUE PROCESS INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

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INTRODUCTION AND INTEREST OF AMICI

Amici are non-profit, non-partisan public-policy organizations with an enduring interest in criminal legal policy and the proper role of the criminal justice system in society.

The Cato Institute is dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of criminal sanctions in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers. The R Street Institute's mission is to engage in policy research and educational outreach that promotes free markets and limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty. And the Due Process Institute works to honor, preserve, and restore procedural fairness in the criminal justice system. Founded in 2018 and guided by a bipartisan Board of Directors, the Due Process Institute creates and supports achievable solutions for challenging criminal legal policy concerns through advocacy, litigation, and education.

Under North Carolina law, a citizen convicted of any felony—whether under North Carolina law, federal law, or the criminal code of another state—loses the fundamental right to vote. N.C.G.S. § 163-55(a)(2). That right can be restored only after an ex-offender has been "unconditionally discharged" from probation, parole, and post-release supervision. N.C.G.S. § 13-1. Ex-offenders thus remain disenfranchised for lengthy periods of time after their release from incarceration. Moreover, before regaining voting rights, citizens must pay court costs, fees, and restitution as "conditions" of their probation, parole, or post-release supervision. *Id.* §§ 15A-1343(b)(9), 15A-1374(b)(11a)-(11b), 15A-1368.4(e)(11)-(12). Failure to pay those often

substantial costs can result in lengthy extensions of probation or parole—and consequently continued deprivation of the franchise. *See id.* §§ 15A-1342(a), 15A-1344(d); Pls.' Mot. Summ. J. 14-15.

Amici are concerned that this system of criminal disenfranchisement harms citizens and taxpayers, and is inconsistent with multiple provisions of the North Carolina Constitution. Criminal disenfranchisement was historically limited to those crimes considered particularly serious and violative of the basic social order. Today, by contrast, citizens can be deprived of the right to vote even for substantively minor and technical violations. Whether or not disenfranchisement is justifiable when applied to the extraordinary crimes for which it was originally imposed, it certainly cannot be justified in its broad modern incarnation.

As disenfranchisement has become increasingly common, its impacts on ex-offenders, families, communities, and the democratic process have only grown. Disenfranchisement harms individuals by severing ties to society and increasing the risk of recidivism, harms families by decreasing their civic participation, harms communities by removing their voice in governance, and harms democracy itself by raising the possibility that elections (and the criminal laws enacted by elected representatives) do not truly represent the will of a majority of citizens.

These detrimental effects are further compounded by North Carolina's growing reliance on "user-funded" criminal justice. User-funded justice—under which an ever-growing array of criminal fines and fees are expected to fund not only the justice system, but other aspects of government as well—traps criminal defendants in a cycle of debt and poverty. And because N.C.G.S. § 13-1 restores voting rights only after ex-offenders have been unconditionally discharged from all aspects of their sentence—including the payment of court costs, fines, fees,

and restitution—access to the franchise could, in many cases, turn exclusively on a citizen's wealth.

These features of the current disenfranchisement regime harm taxpayers and raise serious constitutional concerns under multiple provisions of the North Carolina Constitution. Amici thus respectfully submit this brief in support of Plaintiffs' motion for summary judgment.

ARGUMENT

I. DISENFRANCHISEMENT HAS EXPANDED FAR BEYOND ITS HISTORICAL ROOTS

Fully detailing the harms wrought by felon disenfranchisement requires situating the practice in historical context. That history reveals two key facts: That disenfranchisement was imposed as part of an extraordinary punishment intended to sever ties between an offender and the community; and that this severe punishment was reserved for only the most serious crimes. While the serious consequences of disenfranchisement remain, the historical limits on that practice do not.

A. Criminal disenfranchisement has its roots in the ancient common law concepts of "civil death" and the "attainder" laws of Medieval England. Mirjan R. Damaska, *Adverse Legal Consequences of Conviction and their Removal: A Comparative Study*, 59 J. Crim. L. & Criminology 347, 351 (1968). Under these doctrines, one "incident[] consequent upon an attainder for treason or felony" was the "extinction of civil rights, more or less complete, which was denominated civil death. . . . whereby . . . the attainted person 'is disabled to bring any action, for he is *extra legem positus*, and . . . he is in short regarded, as dead in law.'" *Avery v. Everett*, 18 N.E. 148, 150 (N.Y. 1888) (citations omitted). Under varying versions of the doctrine, felons "were prohibited from appearing in court, making speeches, attending assemblies, serving in the army, and voting," William Walton Liles, *Challenges to Felony Disenfranchisement Laws: Past,*

Present, and Future, 58 Ala. L. Rev. 615, 616 (2007), and would "lose all the benefits and protections that society could offer," Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 409 (2012); *see also id.* (explaining that under English attainder, those convicted of certain crimes would suffer forfeiture of property, corruption of the blood, and a loss of civil rights).

Because of their severity, these "early European penalties seem to have been limited to very serious crimes, and were implemented only upon judicial pronouncement in individual cases." Alec C. Ewald, "*Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 Wis. L. Rev. 1045, 1061 (2002). But even if they had been universally imposed upon conviction for any felony, traditional English common law felonies were limited to a small, discrete group of crimes believed to be *malum in se*, such as murder, manslaughter, arson, robbery, rape, and larceny. *See* Will Tress, *Unintended Collateral Consequences: Defining Felony in the Early American Republic*, 57 Clev. St. L. Rev. 461, 464 (2009). As a practical matter, then, disenfranchisement would have been suffered only by those convicted of the most serious crimes. And even there disenfranchisement would necessarily have been brief, since "with nearly all felonies punishable by death in 18th century England, the voting rights of convicted felons had not been a very live issue there." *Green v. Bd. of Elections of N.Y.*, 380 F.2d 445, 450 (2d Cir. 1967) (Friendly, J.).

B. Although the Founders abolished most aspects of civil death in the United States, disenfranchisement remained. Liles, 58 Ala. L. Rev. at 617. But here, too, loss of the franchise would have been suffered only for the most severe crimes. Reflecting that understanding, the Fourteenth Amendment to the United States Constitution permitted States to restrict their citizens' right to vote only "for participation in rebellion, or other crime." U.S. Const. amend. XIV, § 2.

The Framers of that Amendment thus considered only wrongdoers who committed *serious* crimes, on par with "participation in rebellion," to be worthy of disenfranchisement. *See* Abigail M. Hinchcliff, Note, *The "Other" Side of* Richardson v. Ramirez*: A Textual Challenge to Felon Disenfranchisement*, 121 Yale L.J. 194, 229 (2011) (explaining that "rebellion" must be read "as paradigmatic of the sort of offense that justifies disenfranchisement"). Like rebellion, crimes such as murder and piracy were viewed as forms of insurrection against the established political order—and individuals who committed such crimes were believed to have forfeited their place in society.[1]

Contemporary dictionaries confirm that understanding. At the time of the Fourteenth Amendment's passage, the word "crime" had two distinct meanings: a legal, technical meaning of "any" offense, and a common and popular meaning of a "grave" offense. *See* Richard M. Re & Christopher M. Re, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, 121 Yale L.J. 1584, 1651-52 (2012). For example, Webster's Dictionary in 1854 defined "crime" as "[a]n act which violates a law, divine or human; . . . But *in a more common and restricted sense*, a crime denotes an offense, or violation of public law, of a deeper and more atrocious nature; a public wrong." Noah Webster, *American Dictionary of the English Language*, 283 (George and Charles Merriam 1854 ed.). Blackstone similarly noted that although the "general definition" of "crime" "comprehends both crimes and misdemeanors," "in common

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[1] Reconstruction-era legislators in the U.S. Congress plainly assumed that disenfranchisement would apply only to these sorts of severe crimes. One lawmaker for example, described the individuals facing disenfranchisement as "pirates, counterfeiters, [and] other criminals," and argued that the Amendment would allow states to prevent these individuals from "land[ing] their piratical crafts and com[ing] on shore to assist in the election of a President or members of Congress." Cong. Globe, 39th Cong., 1st Sess. 2535 (May 10, 1866) (Statement of Rep. Ephraim Eckley). Another described these individuals as "[m]urderers, robbers, house-burners, [and] counterfeiters." Cong. Globe, 39th Cong., 1st Sess. 3029 (June 8, 1866) (Statement of Sen. Reverdy Johnson); *see also* Cong. Globe, 40th Cong., 3d Sess. 862 (Feb. 4, 1869) (statement of Sen. Willard Warner) ("I am in favor of giving equally to all citizens of the Republic of sound mind and unstained by *great* crimes the right to vote and hold office" (emphasis added)).

usage[,] the word, 'crimes,' is made to denote such offenses as are of a deeper and more atrocious dye." 4 William Blackstone, *Commentaries on the Laws of England* *5.

C. Today, disenfranchisement extends far beyond the few crimes to which it historically applied.[2] Indeed, there has been a massive expansion of criminal laws, both state and federal, in a process frequently labeled the "overcriminalization" of America.[3] By disenfranchising citizens convicted of *any* felony, at the same time that the roster of felonies has ballooned, North Carolina's current regime vastly broadens the scope of disenfranchisement and ensures that even those convicted of relatively minor offenses nonetheless suffer this extraordinary consequence due to their convictions. *See* N.C.G.S. § 163-55(a)(2).

Many of the felonies triggering disenfranchisement in North Carolina today are trivial, purely technical, or merely *malum prohibitum*. For instance, the operation of a bingo game without a license is a felony. *Id.* § 14-309.5(b). So too is intentionally losing an athletic contest for material gain, *id.* § 14-377; willful destruction of library books worth more than $50, *id.* § 14-398; placing "noxious" food "in a position of human accessibility" that might cause a person "mild physical discomfort without lasting effect," *id.* § 14-401.11; and failure by a director of a railroad company to turn over to her successor company records, *id.* § 14-253. Indeed, the single largest

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[2] As Plaintiffs explain, the scope of criminal disenfranchisement was expanded in the wake of the Civil War, in an attempt to prevent political participation by African Americans. Pls.' Mot. for Summary Judgment 4-8. It is against that backdrop that North Carolina came to impose disenfranchisement for any crime labeled a felony. *Id.*; *see* Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship* 34 (2014).

[3] *See, e.g.*, John S. Baker, Jr., *Measuring the Explosive Growth of Federal Crime Legislation*, 5 Engage 23 (2004), https://fedsoc.org/commentary/publications/measuring-the-explosive-growth-of-federal-crime-legislation; Mike Chase, *How to Become a Federal Criminal: An Illustrated Handbook for the Aspiring Offender* (2019); Cato Inst., *Go Directly to Jail: The Criminalization of Almost Everything* (Gene Healy ed., 2004); Harvey A. Silverglate, *Three Felonies a Day: How the Feds Target the Innocent* (2011); Jessica Smith, *Overcriminalization: A North Carolina Issue* (Mar. 2017), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Overcriminalization%20a%20NC%20Issue.pdf

drivers of disenfranchisement in North Carolina are classic examples of merely *malum prohibitum* offenses: non-trafficking drug offenses. *See* Expert Report of Frank R. Baumgartner Filed In Support of Pls.' Mot. Summ. J. (Baumgartner Report) 25 at Table 5. None of those crimes can plausibly be deemed an insurrection against the foundations of society on the scale of rebellion, piracy, or murder.

II. DISENFRANCHISEMENT PREVENTS EX-OFFENDERS FROM FULLY REJOINING SOCIETY, HARMS FAMILIES AND COMMUNITIES, AND REDUCES PUBLIC SAFETY

As the scope of disenfranchisement has expanded, so too have its harmful effects. In keeping with its historical origins, disenfranchisement seeks to sever the relationship between ex-offenders and society. In the words of one early 20th Century scholar, the punishment "sunders completely every bond between society and the man who has incurred it; he has ceased to be a citizen, but cannot be looked upon as an alien, as he is without a country." Carl Ludwig von Bar et al., *A History of Continental Criminal Law*, *in* 6 *Continental Legal History Series* 272 (Thomas S. Bell et al. trans., Little, Brown & Co. 1916) (citation omitted). By applying the modern analogue to this extraordinary, stigmatizing punishment to every offense labeled a felony, the current scheme prevents ex-offenders from fully rejoining society, thereby harming individuals, communities, and the democratic process itself.

A. On the individual level, disenfranchisement implicitly informs the offender that "total rehabilitation is impossible." Hamilton-Smith & Vogel, 22 Berkeley La Raza L.J. at 413. The denial of civil rights deprives an ex-offender of "social dignity" and demonstrates society's "indifference to his interests." Judith N. Shklar, *American Citizenship: The Quest for Inclusion* 39 (1991). That, in turn, increases the likelihood that he will choose to re-offend: "If one has no stake in his or her community, then one has little incentive to behave in a pro-social manner." Hamilton-Smith & Vogel, 22 Berkeley La Raza L.J. at 413.

Empirical evidence backs up this common-sense proposition. "[R]esearch has shown that felons in states who are given back their right to vote after being released from prison within a reasonable time frame are far less likely to become repeat offenders." Amy Heath, *Cruel and Unusual Punishment: Denying Ex-Felons the Right to Vote After Serving Their Sentences*, 25 Am. U. J. Gender Soc. Pol'y' & L. 327, 355-56 (2017). One study, for instance, found that former arrestees who voted were less than half as likely to be re-arrested, as compared to their non-voting counterparts. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 205 (2004). And another study found that "individuals who are released in states that permanently disenfranchise are roughly nineteen percent more likely to be rearrested than those released in states that restore the franchise post-release." Hamilton-Smith & Vogel, 22 Berkeley La Raza L.J. at 426.

These real-world results are not merely coincidental: Academics interviewing former offenders have found that a significant portion made connections between their inability to vote and their reintegration into society. Bryan L. Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 Punishment & Society 402-28 (2012). Criminal disenfranchisement thus engenders the exact public safety problems that it purports to address.

B. Disenfranchisement's negative effects also extend beyond the disenfranchised individual, to families and entire communities.

Evidence suggests "that disenfranchisement of the head of a household discourages his or her entire family from civic participation." Erika Wood, Brennan Ctr. for Just., *Restoring the Right*

to Vote 12 (2d ed. 2009).[4] Children in particular often learn "such mundane information as how to register and where to vote" from their parents, and learn the basics of political engagement from them too. Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 Am. Pol. Sci. Rev. 41, 43 (2002). Rather than being given examples of democratic participation, however, the families of ex-offenders are presented with a core example of civic disengagement, leading to generational non-voting.

These effects extend into the surrounding community. One study, for instance, found that states with highly restrictive criminal disenfranchisement laws have lower overall turnout than states with less restrictive disenfranchisement laws, even among those eligible to vote. Aman McLeod et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 Va. J. Soc. Pol'y & L. 66, 80 (2003). This occurs because voting is "a communal experience, and limitations on some members of the community have been shown to translate into lower overall participation." Wood, *supra*, at 12; *see also* Expert Report of Dr. Traci Burch Filed In Support of Pls.' Mot Summ. J. (Burch Report) 44-45.

Worse, because ex-offenders are more likely to be poor and to live in low-income communities, the dampening effect of disenfranchised citizens on community voting is magnified by this concentration of ex-offenders. *See* Burch Report 43 (noting that some North Carolina communities had community supervision rates as high as 20 percent of young people aged 18-34). That dampening effect, in turn, lessens the political power of the entire community. Politicians can safely ignore these low-engagement communities and focus on areas with higher voter turnout,

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[4] Available at https://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf.

resulting in a communal loss of voice in governance. Such a result strikes at the heart of the democratic process, ensuring that whole communities remain essentially unrepresented.

C. This silencing of communities is not disenfranchisement's only harm to democracy. In barring political participation by those who have previously violated any of a wide range of laws, felon disenfranchisement threatens to create a criminal code that does not reflect the views of a majority of citizens.

For example, there is no principled reason that citizens subject to prosecution for activities that are *malum prohibitum* should lack an equal say in determining whether those activities should continue to be punishable as felonies in the future. Consider laws regulating gambling. Putting aside constitutional considerations, a state might seek to deem the operation of a bingo game without a license to be a felony, *see* N.C.G.S. § 14-309.5(b), while permitting home poker games. But there is no good reason that an individual previously convicted of running illegal bingo games should lack a say as to whether those games should continue to be prohibited in the future, while poker remains legal. The same is true for a citizen convicted of possessing marijuana for personal consumption or a sawed-off shotgun, who might justifiably have views about whether the State should continue to deem possession of those items to be a felony. By depriving ex-offenders of that voice, N.C.G.S. § 13-1 risks skewing the outcome of the democratic process. And this, in turn, directly interferes with citizens' rights under North Carolina's Free Elections Clause to elections that "ascertain, fairly and truthfully, the will of the people." *Common Cause v. Lewis*¸ No. 18 CVS 014001, 2019 WL 4569584, at *110 (N.C. Super. Ct. Sept. 3, 2019); *see* N.C. Const. art. I, § 10; Pls.' Mot. Summ. J. 21-29.

Indeed, felon disenfranchisement may have real-world impacts on which laws are vigorously enforced and what conduct is prohibited. In 2018 alone, two North Carolina county

sheriffs were elected by vote margins less than the number of disenfranchised individuals in the county, and ten members of the General Assembly were elected by a vote margin of less than 1,000 votes. Baumgartner Report 27-28. Barring political participation by those who have run afoul of rules set by the majority may thus have very real effects on those rules' future scope, while risking the possibility that North Carolina's criminal law flouts the democratic will.

III. THE DETRIMENTAL EFFECTS OF DISENFRANCHISEMENT ARE COMPOUNDED BY "USER-FUNDED" CRIMINAL JUSTICE

Just as the harm inflicted by disenfranchisement has been increased through overcriminalization, it has also been compounded by the growth of so-called "user-funded" criminal justice—that is, the funding of the criminal justice system through the collection of fees from criminal defendants. This creates a deeply regressive form of taxation, threatening a vicious cycle of debt, poverty, and crime. And as recent scholarship has made clear, user-funded justice—both in North Carolina and across the United States—frequently leads to a *de facto* system of wealth-based disenfranchisement. *See* Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 Vand. L. Rev. 55 (2019).

The growth of fees and court costs in criminal cases stems from a deliberate policy choice to rely increasingly on the justice system as a source of public revenue. In 1986, the Conference of State Court Administrators noted the proliferation of "[f]ees and miscellaneous charges . . . as [a] method to meet demands for new programs without diminishing general tax revenues." Conference of State Court Administrators, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practices* 4–5 (June 1986).[5] Nearly 30 years later, the Council of Economic Advisors observed that state and local jurisdictions

[5] Available at https://ncsc.contentdm.oclc.org/digital/collection/ financial/id/81/.

were pressured to transfer the burden of criminal-justice expenditures from taxpayers to defendants. Executive Office of the President, *Economic Perspectives on Incarceration and the Criminal Justice System* 34-54 (Apr. 2016).[6]

The resulting proliferation of fines and fees in North Carolina is dizzying. *See* N.C. Admin. Office of the Courts, Court Costs and Fees Chart (Dec. 2019)[7]; Burch Report 24-31. Indeed, the costs of conviction and sentencing have increased by nearly 400% over the past two decades. Burch Report 23. And these costs are significant in amount as well as number: The average probationer owes nearly $2,500 in outstanding fees, court costs, restitution, and supervision fees. Baumgartner Report 22 at Table 3.

Such multiplying fees create a system in which those asked to fund the government are those who often are least able to pay—and can generate a vicious cycle of crime and poverty. Only about half of released North Carolina prisoners are employed a year after their release, making the payment of large court debts unrealistic at best. Burch Report 32. Indeed, one study using nationally representative data found that about 36 percent of people arrested once in 2017, and 49 percent of those arrested multiple times, had individual incomes below $10,000 per year. Press Release, Alexi Jones & Wendy Sawyer, Prison Policy Initiative, *Arrest, Release, Repeat: How police and jails are misused to respond to social problems* (Aug. 2019)[8]; *see also* Adam Looney

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[6] Available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf.

[7] Available at https://www.nccourts.gov/assets/documents/publications/2019_Criminal_court_costs_chart.pdf?uTsvyAraXdZl1sBAK1xTFZfZs8pM3h29.

[8] Available at https://www.prisonpolicy.org/reports/repeatarrests.html.

& Nicholas Turner, *Work and opportunity before and after incarceration*, The Brookings Institution (Mar. 14, 2018).[9]

User-funded justice thus imposes significant harms on its own. But N.C.G.S. § 13-1 compounds those harms by tying the right to vote to a citizen's ability to pay this ever-mounting array of fines and fees. Under N.C.G.S. § 13-1(1), individuals convicted of felonies can regain the franchise only after they have been "unconditional[ly] discharged . . . by the agency of the State having jurisdiction of that person." Individuals still on probation thus remain disenfranchised. And if a probationer fails to pay the amount owed in costs and fees, courts may extend the term of probation first for five years—and then for three additional years to "allow[] the defendant to complete a program of restitution." N.C.G.S. § 15A-1342(a); *see id.* § 15A-1344(d). Failure to pay court costs or restitution can also result in revocation of post-release supervision, triggering a return to prison and the tolling of the supervised release period during that re-incarceration. *Id.* § 15A-1368.4(d), (f).

Although courts may take ability to pay into account when assessing court costs and fees, evidence demonstrates that they rarely do: In 2017, courts in most counties waived (in whole or in part) criminal costs in well under ten percent of cases. *See* N.C. Admin. Office of the Courts, *2018 Report on Criminal Cost Waivers: G.S. 7A-350* at 6-8 (Feb. 1, 2018) (collecting data).[10] Judges in Camden, Perquimans, Cabarrus, and Moore counties waived less than 1 percent of fines and fees that same year. *Id.*; ACLU of North Carolina, *At All Costs: The Consequences of Rising Court*

[9] Available at https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/.

[10] Available at https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/02/20180201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf.

Fines and Fees in North Carolina 14 (2019)[11]; *see also* Burch Report 33.[12] Nor does it appear that judges must consider ability to pay when *expanding* the length of probation due to failure to pay fines and fees. *See* N.C.G.S. § 15A-1344(d) (court may extend probation); *id.* § 15A-1343.2; *id.* § 15A-1364(a) (court can extend time to pay even when failure to pay resulted from good-faith effort); James M. Markham, *Bench Card: Monetary Obligations in North Carolina Criminal Cases* 5 (2018).[13] Just as bad, probationers lack any mechanism to appeal an order extending their probation when it is issued. *See* Pls.' Mot. Summ. J. 14-15.

Taken as a whole, this scheme can disenfranchise citizens unable to pay the costs of their prosecution for years longer than citizens able to pay those ever-mounting costs. In addition to the other constitutional flaws inherent in N.C.G.S. § 13-1, *see supra* 10 (Free Elections Clause); Pls.' Mot. Summ. J. 48-51 (Freedom of Speech and Assembly); *id.* at 38-48 (Equal Protection Clause), that result runs afoul of the plain text of the Property Qualifications Clause of the North Carolina Constitution, which mandates that "no property qualification shall affect the right to vote or hold office." N.C. Const. art. I, § 11.

There is every reason to believe that this clause extends to all sorts of wealth. For instance, one delegate to the 1868 constitutional convention, writing later in his capacity as a North Carolina Supreme Court justice, stated that the term "property," in the Property Qualifications Clause, is used "[i]n its most general sense," and "embraces every thing which a man may have exclusive

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[11] Available at https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf.

[12] This problem is only getting worse: North Carolina legislators recently enacted multiple measures "to deter judges from granting waivers to people who are unable to pay court debt." ACLU of North Carolina, *At All Costs*, *supra*, at 13-14.

[13] Available at https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf.

dominion over." *Wilson v. Bd. of Alderman of the City of Charlotte*, 74 N.C. 748, 756 (1876).[14] Application of the Property Qualifications Clause to N.C.G.S. § 13-1 is thus straightforward: An ex-offender who lacks the wealth necessary to pay the costs of his prosecution is barred from voting for years longer than an otherwise identical ex-offender who has sufficient property to pay those costs, contravening the core command that political rights not turn on wealth.

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In sum, whether or not criminal disenfranchisement can justifiably be imposed for the few egregious crimes for which it was historically intended, it cannot be justified in its current incarnation. Magnified by the effects of overcriminalization and user-funded criminal justice, felon disenfranchisement works deep harms on individuals, communities, and the democratic process, while taxing and injuring those with the least means to respond. That result cannot be squared with sound public policy, and, as Plaintiffs explain in great detail, it cannot be squared with the essential guarantees of the North Carolina Constitution.

[14] *See also* C.C. Pool, *Speech Delivered at Constitutional Convention on the Question of Suffrage and Eligibility to Office* (Feb. 18, 1868), *in* 34 Wkly. N.C. Standard No. 8 (Feb. 26, 1868), https://chroniclingamerica.loc.gov/lccn/sn85042148/1868-02-26/ed-1/seq-4/ (explaining to the constitutional convention that the "best and the most honest men are too frequently totally devoid of financial ability, and often die in poverty; but the State cannot spare such men from her counsels").

CONCLUSION

For the reasons set forth, amici respectfully urge this Court to grant Plaintiffs' motion for summary judgment.

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/s/ Cheyenne N. Chambers
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