

COUNTY OF WAKE

2020 JUL 24 P 12:39

WAKE CO., C.S.C

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 *AMICI CURIAE* THE SENTENCING  
PROJECT, THE LAWYERS'  
COMMITTEE FOR CIVIL RIGHTS UNDER  
LAW, AND THE SOUTHERN POVERTY LAW  
CENTER IN SUPPORT OF PLAINTIFFS**

INTRODUCTION<sup>1</sup>

North Carolina law disproportionately deprives Black North Carolinians of the right to vote and prolongs their disenfranchisement based on circumstances that are marked by persistent racial inequity and have no connection to the legitimate interests of the State. In extending the





restoration of voting rights measurably correlates to increased participation in democratic society  
and the reduction of recidivism.

Though the North Carolina Constitution calls for the initial deprivation of voting rights

upon conviction for a felony, extending the period of disenfranchisement based on circumstances

release is unconstitutional.

## ARGUMENT

### **I. Racial disparities inherent in the criminal justice system contribute to the disproportionate disenfranchisement of Blacks in North Carolina.**

In North Carolina, as nationwide, discriminatory racial disparities permeate each stage of contact with the criminal justice system. These disparate outcomes go beyond what can be accounted for by racial disparities in criminal offending. Black Americans, especially Black men, are more likely to be stopped by police, searched by police, shot by police, arrested by

<sup>8</sup> See *N.C. State Bd. of Educ. v. State*, 255 N.C. App. 514, 529 (2017), *aff'd*, 371 N.C. 149 (2018) (affirming “the basic canon of constitutional construction to interpret separate provisions in

values changed by approximately 20% when serum samples were re-analyzed, resulting in higher total

and release.<sup>10</sup>

## A. Policing

The disparate and more negative impact of the criminal justice system on communities of color in North Carolina is evident even before arrest, in decisions about what laws to enforce, how to enforce them, where to enforce them, and whom they are enforced against. Drug enforcement practices, for example, disproportionately target Black North Carolinians, even though drug usage patterns do not differ substantially by race. In 2018, Blacks in North Carolina

[REDACTED]

## B. Stops and Arrests

§ 2019 Black North Carolinians were being arrested at 2.3 times the rate of Whites 16

[REDACTED]

stops and drug possession arrests in North Carolina indicates that differential enforcement contributes significantly. In their book *Suspect Citizens*, scholars Frank Baumgartner, Derek

Epp, and Keenan Shook analyzed more than 20 million stops and searches in North Carolina

from 2004 to 2011. They found that 90 percent of stops were for minor offenses, such as

driving without a license or expired registration. Yet, 70 percent of stops resulted in a search

of the vehicle, and 10 percent of stops resulted in a search of the person. The authors

found that stops of Black drivers were more likely to result in a search of the person than

stops of White drivers. The authors also found that stops of Black drivers were more likely

to result in a search of the vehicle than stops of White drivers. The authors conclude that

these findings suggest that differential enforcement is a significant factor in the

disproportionate stops and searches of Black drivers in North Carolina.

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these findings suggest that differential enforcement is a significant factor in the

disproportionate stops and searches of Black drivers in North Carolina.





Racial discrimination in prosecutors' uses of peremptory strikes in North Carolina has

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

been proven in the courtroom, as well. In *State v. Robinson*, the court found that “race was in

[REDACTED]

[REDACTED]

fact, a significant factor in the prosecution’s use of peremptory strikes.”<sup>28</sup> Among other evidence,

the court’s finding was based on comprehensive statistical studies examining prosecutors’ uses

capitally and in the general form of the evidence presented at

peremptory strikes in North Carolina and showing that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

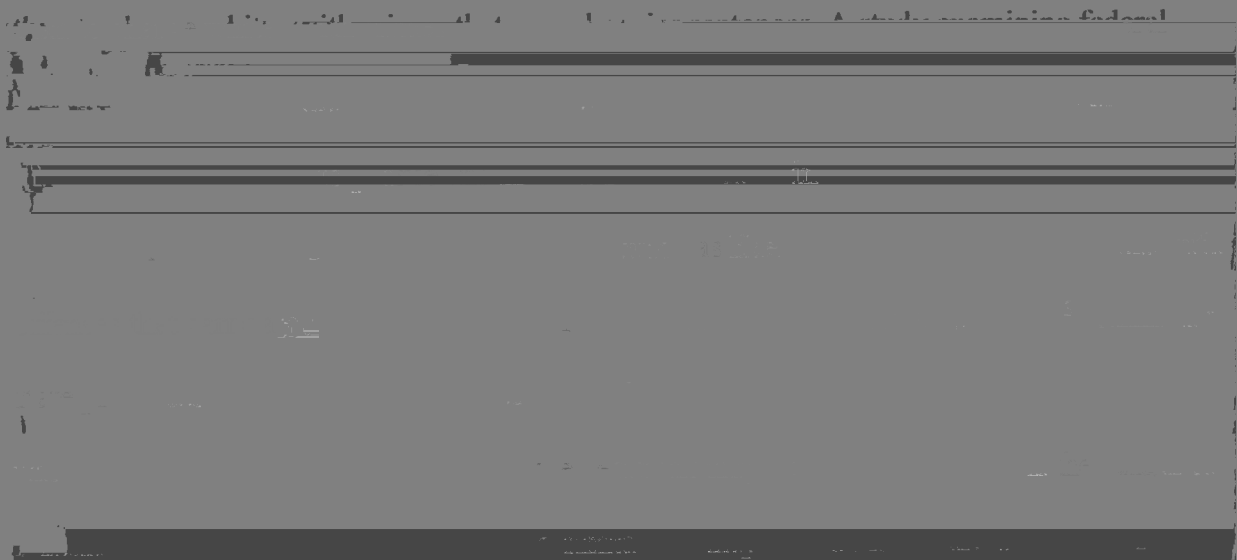
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[REDACTED]

[REDACTED]

same kind of experience.<sup>32</sup>

Even before cases go to trial, prosecutors' discretionary decisions on charging consistently discriminate against Blacks. Prosecutors are more likely to charge people of color



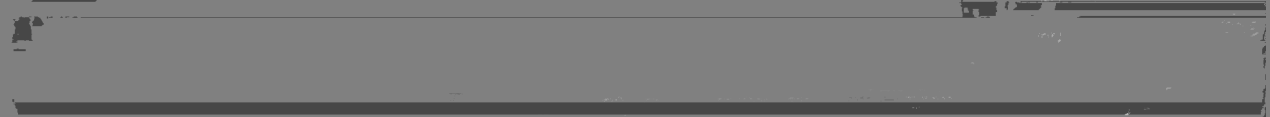
term, including on voting rights.

Policy decisions impacting the prosecution and defense of criminal defendants also have a racially discriminatory impact on Black Americans. Most jurisdictions inadequately fund their

<sup>32</sup> *State v. Hobbs*, 841 S.E.2d 492, 502-03 (N.C. 2020)

<sup>33</sup> See Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. Pol. Econ. 1320, 1335-36 (2014), available at

[https://www.aeaweb.org/articles.php?doi=10.1257/pol.122.6.1320](#)



independent defense programs.<sup>36</sup> for example, and people of color make up a disproportionate share

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



convictions received less severe punishment than both Blacks and Hispanics.<sup>47</sup> Given the limited

empirical research on sentencing disparities in North Carolina, it is helpful to consider studies from other

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[REDACTED]

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[REDACTED]

[REDACTED]

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completed” Blacks.<sup>49</sup>

### **E. Impact on Disenfranchisement**

The racial disparities in policing, stops, arrests, charges, jury selection, access to counsel,

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[REDACTED]

[REDACTED]

[REDACTED]

disenfranchisement for Blacks, as the racial inequities in charging and sentencing subject Blacks to disproportionately longer prison terms, lengthening the period of time before which, under

[REDACTED]

People with criminal records face a host of obstacles in reentering society. These include barriers to securing steady employment and housing, to accessing the social safety net and federal student aid, and to exercising the right to vote. "Poor people, people of color, and men are more likely to be involved in the criminal justice system and therefore to incur these direct

[REDACTED]

percentage is nearly three times higher, at 23%.<sup>51</sup> Among Black men, the rate was one in three (33%).<sup>52</sup> In North Carolina, the percentage of Black adults with felony convictions was more than double the percentage for all adults—14% of Black adults had criminal convictions compared to only 6% for all adults.<sup>53</sup>

Nearly one-third of U.S. workers hold jobs that require an occupational license, a requirement which sometimes bars and often poses cumbersome obstacles for people with criminal records.<sup>54</sup> In sectors that do not require licensing, scholar Devah Pager's Milwaukee study found employers were 50% less likely to call back white job applicants with incarceration histories than comparable applicants without prison records.<sup>55</sup> Black job applicants, who are less



[REDACTED]

57 William Crozier et al., Duke Law Ctr. for Sci. and Justice, *The Explosion of Unpaid Criminal*

[REDACTED]





[REDACTED]

Put simply, as the Duke Law Center for Science and Justice observes, “poverty looks different for black and white families”<sup>68</sup> Beyond income, Black families have fewer assets and

[REDACTED]

[REDACTED]

expected earnings.<sup>71</sup>

<sup>67</sup> Abby Shafroth, Nat’l Consumer Law Ctr., *Criminal Justice Debt in the South: A Primer for the Southern Partnership to Reduce Debt* 5 (Dec. 2018)

[REDACTED]



Perhaps worst of all, the continued deprivation of voting rights for persons on post-

probation supervision furthers the continued oppression of Black American economic

and social progress.

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[REDACTED]

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advancement by depriving Blacks of the political power needed to begin to address these structural inequities, and in particular to end the inequitable imposition of fines and fees on their communities. As Professor Beth Colgan explained in the *Duke Law Journal*, a study of traffic ticketing in North Carolina revealed that municipal reliance on revenue from traffic ticketing could be reduced with even marginal increases in a community's political participation.<sup>76</sup> That is,

There is, thus, a direct link between the disproportionate disenfranchisement of Black Americans

and the disproportionate imposition of fines and fees in Black communities

The disenfranchisement of individuals on community supervision feeds a malignant cycle of racial subjugation: it disproportionately deprives Black Americans of the right to vote for the period of their post-conviction supervision, which is subject to extension due to their existing

<sup>80</sup> N.C. Const. art. I § 9 (“For redress of grievances and for amending and strengthening the laws, elections shall be often held.”).

<sup>81</sup>





in most nations is whether any restrictions at all should be placed on voting for people with

<sup>88</sup> See Laleh Ispahani, *Voting Rights and Human Rights: A Comparative Analysis of Criminal Disenfranchisement Laws* in *Criminal Disenfranchisement in an International Perspective* 26 (Alec C. Ewald & Brandon Rottinghaus eds., 2009).

<sup>89</sup> Nora V. Demleitner, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe* in *Criminal Disenfranchisement*, *supra* note 88, at 79, 86.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 86. See also Laleh Ispahani, *Human Rights and Criminal Disenfranchisement: Disenfranchisement's voting rights* (2005)



In two rulings in 1993 and 2002, the Supreme Court of Canada upheld the importance of

[REDACTED]

The proliferation of racial disparities in the criminal justice system has a profound impact on the lives of people of color. Behind each statistic lies a Black man or woman unjustifiably

[REDACTED]

barred from the electoral process, with lasting effects for that individual's family and community

and ultimately the strength and health of our nation.



# CERTIFICATE OF SERVICE

That I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

Witness my hand and the seal of the Court at the City of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court

\_\_\_\_\_  
Deputy Clerk of the Court

\_\_\_\_\_  
Deputy Clerk of the Court

\_\_\_\_\_  
Deputy Clerk of the Court

Paul M. Cox  
Olga Vysotskaya  
114 W. Edenton St.  
Raleigh, NC 27603  
pcox@ncdoj.gov  
ovysotskaya@ncdoj.gov

*Counsel for State Board Defendants*

Caroline P. Mackie  
Poyner Spruill LLP  
P.O. Box 1801  
Raleigh, NC 27602  
cmackie@poynerspruill.com

Carl A. Racine  
Loren L. Alikhan  
Caroline S. Vanzile  
Carl J. Schifferle  
Jacqueline R. Bechara  
Office of the Solicitor General  
Office of the Attorney General  
441 4th Street, NW, Suite 630 South  
Washington, D.C. 20001  
caroline.vanzile@dc.gov  
*Attorneys for Amici States*

This the 24<sup>th</sup> day of July, 2020.

**Mark Duggan**