

FILED

NORTH CAROLINA 2020 SEP -4 PM 4: 29 IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE WAKE CO., C.S.C. SUPERIOR COURT DIVISION
FILE NO. 19 CVS 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.

ORDER ON INJUNCTIVE RELIEF

This matter comes before the undersigned three-judge panel upon Plaintiff's motion for summary judgment or, in the alternative, a preliminary injunction.

In this litigation, Plaintiffs seek a declaration that N.C.G.S. § 13-1, the North Carolina statute providing for the restoration of rights of citizenship—which includes the right to vote—for persons convicted of a crime, is facially unconstitutional and invalid under the North Carolina Constitution to the extent it prevents persons on probation, parole, or post-release supervision from voting in North Carolina elections. Specifically, Plaintiffs contend Section 13-1 of our General Statutes violates Article I, Sections 10, 11, 12, 14, and 19 of our Constitution. Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from 1) preventing North Carolina citizens released from incarceration or not sentenced to incarceration from registering to vote and voting due to a felony conviction, and 2) conditioning restoration of the ability to vote on payment of any financial obligation.

Procedural History

Plaintiffs filed the initial complaint in this matter on November 20, 2019, and an amended complaint on December 3, 2019. Defendants filed answers to and motions to dismiss the amended complaint in January 2020; the motions to dismiss were subsequently withdrawn. On May 11, 2020, Plaintiffs filed the present motion for summary judgment or, in the alternative, a preliminary injunction.

On June 17, 2020, this action was transferred to a three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4). On June 24, 2020, the Chief Justice of the Supreme Court of North Carolina, pursuant to N.C.G.S. § 1-267.1, assigned the undersigned three-judge panel to preside over the facial constitutional challenges raised in this litigation.

On August 19, 2020, Plaintiffs' motion was virtually heard by the undersigned three-judge panel via WebEx pursuant to the Chief Justice's orders regarding virtual hearings in light of the COVID-19 pandemic. The matter was thereafter taken under advisement.

Upon considering the pleadings, parties' and amici's briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted

to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.” N.C. Const. art. VI, § 2(3).

Plaintiffs’ action challenges the “manner prescribed by law” in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads as follows:

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

- (1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.
- (2) The unconditional pardon of the offender.
- (3) The satisfaction by the offender of all conditions of a conditional pardon.
- (4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.
- (5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

N.C.G.S. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

History of Restoration of Rights of Citizenship in North Carolina

The manner prescribed by law to restore the rights of citizenship for certain persons has a long and relevant history. In 1835, North Carolina amended its constitution to permit the enactment of general laws regulating the methods by which rights of citizenship—

including the right to vote—are restored to persons convicted of “infamous crimes.” Infamous crimes included offenses which warranted “infamous punishments.” Thereafter in 1840, a general law was passed regulating the restoration of rights, including granting the courts unfettered discretion in restoring rights of citizenship.

After the civil war, North Carolina adopted a new constitution which allowed all men to vote, eliminated property-based voting limitations, and abolished slavery. Persons convicted of specific crimes were not expressly forbidden by the constitution from voting; however, a combination of constitutional amendments—including an amendment in 1875 that provided for the disenfranchisement of persons convicted of felonies and infamous crimes—and laws passed over the following decades maintained limitations on the restoration of rights for persons convicted of certain crimes, thereby continuing to deny such persons the ability to vote. Judicial discretion remained part of the process for restoring a person’s rights of citizenship.

These limitations lasted until 1971, when the reference to infamous crimes was removed from the constitutional provision and voting rights were taken away from only persons convicted of felonies. Later, the statute was further amended to remove certain, express requirements that must be met by a person convicted of a felony to have their rights of citizenship restored.

Today, the restoration of rights under N.C.G.S. § 13-1 is automatic upon a person’s “unconditional discharge” and is not expressly subject to a discretionary decision by a government official, e.g., a judge. But while the final decision to restore a person’s rights of citizenship is not left to the discretion of a judge, there do remain a number of discretionary decisions, especially in sentencing, that have a direct effect upon when a person’s right to vote is restored, along with the qualifications and requirements that must ultimately be satisfied before a person convicted of a felony is permitted to vote. Importantly in this case,

one such group of decisions pertain to the assessment of monetary costs arising from a felony conviction, e.g., fees, fines, costs, restitution, and other debts.

Injunctive Relief

Plaintiffs have moved, in the alternative, for a preliminary injunction pending a resolution of this action on the merits. “The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Article VI, § 2(3), of our Constitution takes away the right to vote from persons convicted of felonies but does not command the manner in which the right to vote is restored, leaving it only to be in “the manner prescribed by law.” Hence, it is the implementing legislation that determines whether a person convicted of a felony has met the requisite qualifications to exercise the fundamental right to vote. Plaintiffs in this case challenge the facial constitutionality of that implementing legislation, contending N.C.G.S.

§ 13-1 violates rights guaranteed by multiple provisions of the Declaration of Rights in Article I of our Constitution. Plaintiffs specifically contend that the statute unconstitutionally conditions the ability to vote on the possession and remittance of certain monetary amounts arising out of a person's felony conviction and that the statute unconstitutionally prevents persons convicted of a felony who have been released from incarceration, or were not sentenced to incarceration, from registering to vote and voting.

Plaintiffs' burden to show a likelihood of success on the merits of their claims is substantial because when a plaintiff challenges the facial constitutionality of a statute, the courts presume "that any act passed by the legislature is constitutional," and "will not strike it down if [it] can be upheld on any reasonable ground." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 486 (2005) (quoting *State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 281-82 (1998)); *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 111 (2018) (explaining that courts will not declare a law invalid unless it is determined to be "unconstitutional beyond a reasonable doubt"). Accordingly, "[a]n individual challenging the facial constitutionality of a legislative act 'must establish that no set of circumstances exists under which the [a]ct would be valid.'" *Thompson*, 349 N.C. at 491 (second alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100 (1987)).

*Plaintiffs' Claims Relating to Persons Subject to Financial Obligations
as a Result of a Felony Conviction*

Section 13-1 of our General Statutes imposes upon a person convicted of a felony the requirement of an "unconditional discharge"—and, consequently, the inherent qualifications persons must meet to obtain such a discharge—to regain the right to vote. Even though N.C.G.S. § 13-1 was enacted due to Article VI, § 2(3), of our Constitution, this statute, like all enacted laws, must not run counter to a constitutional limitation or

prohibition, including those guaranteed in the Declaration of Rights contained in Article I of our Constitution. Section 11 of Article I declares that “[a]s political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office,” N.C. Const. art. I, § 11, and Section 19 of Article I declares, in relevant part, that “[n]o person shall be denied the equal protection of the laws,” N.C. Const. art. I, § 19. Importantly, the “fundamental purpose” for which the Declaration of Rights was enacted is “to provide citizens with protection from the State’s encroachment upon these [enumerated] rights.” *Corum v. Univ. of N.C.*, 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992).

Article I, § 11, of our Constitution is clear: no property qualification shall affect the right to vote. Therefore, when legislation is enacted that restores the right to vote, thereby establishing qualifications which certain persons must meet to exercise their right to vote, such legislation must not do so in a way that makes the ability to vote dependent on a property qualification. The requirement of an “unconditional discharge” imposed by N.C.G.S. § 13-1 does exactly that—the ability for a person convicted of a felony to vote is conditioned on whether that person possesses, at minimum, a monetary amount equal to any fees, fines, and debts assessed as a result of that person’s felony conviction.

Article I, § 19, of our Constitution is equally clear that no person shall be denied the equal protection of the laws. Therefore, when legislation is enacted that restores the right to vote, thereby establishing terms upon which certain persons are able to exercise their right to vote, such legislation must not do so in a way that imposes unequal terms. The requirement of an “unconditional discharge” imposed by N.C.G.S. § 13-1 does exactly that—the terms upon which a person convicted of a felony is able to exercise the right to vote are not equal; the terms are instead dependent on that person’s financial status and whether

that person has the ability to pay the fees, fines, and debts assessed as a result of the person's felony conviction.

In light of the above, the Court finds there is a substantial likelihood that Plaintiffs will prevail on the merits and show beyond a reasonable doubt that N.C.G.S. § 13-1 is in violation of Article I, §§ 11 and 19 of the North Carolina Constitution because, by requiring an “unconditional discharge,” the statute makes the ability to vote by a person convicted of a felony dependent on a property qualification and imposes unequal terms on that person exercising the right to vote.

The loss to Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable with voting set to commence in a matter of weeks for the upcoming 2020 general election. As discussed above, Plaintiffs have shown a likelihood of succeeding on the merits of their claims that N.C.G.S. § 13-1 violates multiple fundamental rights guaranteed by the North Carolina Constitution as those rights pertain to persons convicted of felonies and assessed fees, fines, and debts as a result of that conviction. As such, the Court finds that Plaintiffs are likely to sustain irreparable loss to their fundamental rights guaranteed by the North Carolina Constitution unless the injunction is issued, and likewise, issuance is necessary for the continued protection of Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation until there has been a full and final adjudication of *all* claims asserted in Plaintiffs' amended complaint.

As to a balancing of the equities, after weighing the potential harm to Plaintiffs if the preliminary injunction is not issued against the potential harm to Defendants if injunctive relief is granted, the Court concludes the balance of the equities weighs in Plaintiffs' favor. Indeed, the harm alleged by Plaintiffs is both substantial and irreparable should an election pass by with Plaintiffs being precluded from exercising their

fundamental right to vote simply as a result of them being subject to an assessment of fees, fines, and debts arising from a felony conviction.

Plaintiffs' Claims Relating to Persons Released from, or Not Subject to, Incarceration as a Result of a Felony Conviction

Plaintiffs also contend N.C.G.S. § 13-1 impermissibly violates Article I, §§ 10, 12, 14, and 19 of our Constitution because the statute, by conditioning a restoration of the right to vote on an “unconditional discharge of an inmate, of a probationer, or of a parolee,” precludes persons convicted of felonies who have been released from incarceration, or were not subject to incarceration, from registering to vote and voting.

Plaintiffs have put forward persuasive, historical evidence regarding the restoration of rights in our State for those persons convicted of felonies, particularly as it relates to the discretion left to government officials that ultimately determines when a person's rights are restored, as well as the disparate impact of that discretion on persons of lower wealth and persons of color. Defendants, however, have also put forward numerous state interests supporting the statute's requirement that rights be restored to persons convicted of felonies only upon and until such time as that person is unconditionally discharged, without regard to whether a person has been subject to incarceration.

Based upon the record thus far, while not making any findings whether the interests put forward by the state are supported by the facts or empirical evidence, the Court cannot conclude that Plaintiffs have met their substantial burden to demonstrate beyond a reasonable doubt that N.C.G.S. § 13-1 facially violates Article I, §§ 10, 12, 14, and 19 by preventing persons convicted of a felony who have been released from incarceration, or were not subject to incarceration, from registering to vote and voting. The Court therefore limits the injunctive relief provided in this order to those issues on which Plaintiffs prevail on their Motions for Summary Judgment.

Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regard to those persons convicted of a felony and currently precluded from exercising their fundamental right to vote solely as a result of them being subject to an assessment of fees, fines, or other debts arising from a felony conviction. The Court further concludes, in its discretion and after a careful balancing of the equities, that the requested injunctive relief shall not issue in regard to those persons convicted of a felony who have been released from incarceration, or were not subject to incarceration, but remain precluded from registering to vote and voting solely on account of that person not being incarcerated. The Court further concludes that security is required of Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted.

The Honorable John M. Dunlow concurs in part and dissents in part from portions of this Order.

For the foregoing reasons, Plaintiffs' alternative motion for a preliminary injunction is GRANTED in part and DENIED in part as follows:

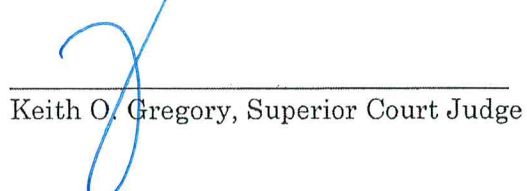
- I. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 11 and 19 for those persons convicted of a felony and, as a result, made subject to property qualifications is GRANTED.
 - a. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that person's only remaining barrier to obtaining an "unconditional discharge," other than regular conditions of probation pursuant to N.C.G.S. § 15A-1343(b), is the payment of a monetary amount.

- b. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probations was reduced to a civil lien.
 - c. References in this Order to "Defendants" encompasses all individuals and entities referenced in this paragraph.
- II. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 10, 12, 14, and 19 for those persons convicted of a felony but not subject to incarceration is DENIED.
- III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.
- IV. Plaintiffs' bond in the amount of \$1000 is sufficient and proper for the issuance of this Order.

SO ORDERED, this the 4 day of September, 2020.



Lisa C. Bell, Superior Court Judge



Keith O. Gregory, Superior Court Judge

as a majority of this Three Judge Panel

NORTH CAROLINA
COUNTY OF WAKE

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COMMUNITY SUCCESS INITIATIVE,
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TIMOTHY K. MOORE, in his official
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Defendants.

**ORDER ON INJUNCTIVE RELIEF
(DISSENT)**

John Dunlow, dissenting.

For the reasons specified in my dissent to the majority's Order on summary judgment, I would find that Plaintiffs have not shown a likelihood of success on the merits of the case and deny injunctive relief.

This the 4th day of September, 2020.



John M. Dunlow

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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This the 4th day of September 2020.



Kellie Z. Myers
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