

STATE OF NORTH CAROLINA)	IN THE GENERAL COURT OF JUSTICE
)	SUPERIOR COURT DIVISION
COUNTY OF WAKE)	
)	16 CRS 223384
)	16 CRS 223562
)	16 CRS 223563
)	16 CRS 5701
STATE OF NORTH CAROLINA)	16 CRS 205311
)	
v.)	
)	
BRANDON XAVIER HILL)	
)	

**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF THE
INCLUSIVE JURIES PROJECT, EMANCIPATE NC, THE
DECARCERATION PROJECT, AND THE CENTER FOR
DEATH PENALTY LITIGATION**

A coalition of North Carolina groups, the Inclusive Juries Project, Emancipate NC, the Decarceration Project, and the Center for Death Penalty Litigation (collectively, “the coalition”), respectfully moves for leave to file the attached *amici curiae* brief in support of defendant Brandon Hill’s constitutional challenge to the practice of “death qualifying” jurors. In the proposed brief, the coalition establishes the relevance of history to the death qualification challenge before the Court. This motion discusses the coalition’s interest in this case and explains why the Court may benefit from the historically informed perspective of four North Carolina-based groups experienced in addressing racial equity in the legal system generally and in the jury formation process in particular.

The Inclusive Juries Project (IJP) is new initiative within the Duke University School of Law's Center for Criminal Justice and Professional Responsibility. IJP addresses the historical and continuing legacy of racial exclusion in jury composition and believes that diverse, inclusive juries are critical to preventing miscarriages of justice and to the public acceptance of jury decisions. IJP partners with community members, scholars, practitioners, students, and court actors on initiatives aimed at ending juror discrimination and safeguarding the constitutional right to a fair and impartial jury. IJP's leadership has years of experience with research, writing, trainings, and consultations on jury inclusivity issues. This experience addressing racial exclusion from North Carolina juries qualifies IJP to clarify the relevance of historical evidence to the jury formation practice at issue in this case.

Emancipate NC is a Black-led non-profit community organization that employs attorneys, community organizers, and directly-impacted people dedicated to dismantling structural racism and mass incarceration in North Carolina through litigation, education, narrative shift, and idea incubation. Emancipate NC supports North Carolina's people as they work to free themselves from an inequitable and racially discriminatory criminal legal system. In 2022, Emancipate NC produced historically informed scholarship and undertook public education campaigns regarding the history of race discrimination in North Carolina jury selection and the need for careful scrutiny of jury discrimination claims in homicide trials involving Black defendants.

The Decarceration Project (TDP) is a North Carolina nonprofit dedicated to mitigating the inhumane and inequitable effects of mass incarceration. TDP engages in projects to alleviate systemic racial inequity, representing individuals in the criminal legal system, promoting alternatives to incarceration, and joining other projects related to decarceration, jury inclusivity, and prison reform. TDP is involved in training on issues of race, including challenges to racial discrimination in jury selection. Given TDP's knowledge of historical and contemporary causes of racial exclusion from North Carolina juries, TDP has a substantial interest in the issues raised in Defendant's case.

The Center for Death Penalty Litigation (CDPL) is a non-profit law firm and grassroots advocacy organization representing people facing the death penalty. CDPL has successfully litigated key cases pertaining to racial bias in the administration of capital punishment and race discrimination in jury selection. In February of 2022, CDPL client Christopher Clegg was the first person in North Carolina history to win substantive relief under *Batson v. Kentucky*. CDPL leads litigation efforts under the North Carolina Racial Justice Act, a statute enacted in 2009, to ensure that no person would be executed if race was a significant factor in the case. CDPL commissioned a study of discrimination in jury selection and the resulting analysis of more than 7,000 peremptory strike decisions in more than 150 capital proceedings showed that Black citizens are twice as likely to be excluded from jury service as white citizens. CDPL is committed to ensuring that people

facing incarceration or execution are judged fairly by a jury of their peers, drawn from a fair cross-section of the community, and that all citizens, regardless of race, have a voice in our criminal punishment system. CDPL has recently published *Racist Roots*, <https://racistroots.org/contents/>, in collaboration with scholars, advocates, historians, artists, poets and people directly affected by the death penalty, which aims to place North Carolina's modern death penalty within the context of 400 years of history and to expose its deep entanglement with the aims of white supremacy.

Collectively, amici have broad experience and deep commitment to addressing racial exclusion from North Carolina juries. The coalition understands the influence of racial terror lynching on modern death penalty perspectives, along with the myriad ways in which historically informed attitudes toward the legal system impact jury composition and perpetuate the exclusion of African Americans from jury service. As the North Carolina Supreme Court recently recognized, “[t]he ability to serve on a jury is one of the many ways African Americans have struggled to participate in our democratic processes.” *State v. Marcus Robinson*, 375 N.C. 173, 177-179 (2020). In the proposed brief, amici will explain how death qualification exacerbates that struggle. The coalition's proposed brief explains the legal relevance of historical factors to the constitutionality of death qualification and illuminates the need to weigh the continuing influence of history when assessing Mr. Hill's challenge.

Amici respectfully submit that the legitimacy of our justice system depends upon the fairness and integrity of our juries. This coalition is uniquely capable of explaining *both* the connection between our painful history of racial oppression and differential attitudes towards modern capital punishment *and* the constitutional implications of this connection. Amici support Mr. Hill's assertion that the practice of death qualification violates his right to equal protection of the law as it results in the inevitable disproportionate removal of Black potential jurors. For the foregoing reasons, the coalition respectfully requests that this Court grant it permission to file the attached amici curiae brief in support of Defendant's challenge to the constitutionality of death qualifying jurors in capital trials.

Respectfully submitted, this the 17th day of November, 2022.

THE INCLUSIVE JURIES PROJECT

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I certify that the attorney listed below has authorized me to list her name on this document as if she had personally signed it.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 17, 2022, I served a copy of the foregoing **Motion of Motion for Leave to File Amici Curiae Brief of the Inclusive Juries Project, Emancipate NC, the Decarceration Project, and the Center for Death Penalty Litigation**, by electronic means, upon the following counsel of record for the parties:

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This the 17th day of November, 2022.

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