

No. 23-6824

IN THE
United States Court of Appeals
for the Fourth Circuit

DEMMERICK ERIC BROWN, a/k/a Denrick Eric Brown,
Plaintiff-Appellant,

v.

KAREN STAPLETON, Disciplinary Unit Manager; L. A. MULLINS,
Disciplinary Hearing Officer; BRETT FARMER,
Defendants-Appellees,

and

JOHN DOE, Prison Guard Sergeant,
Defendant.

On Appeal from the United States District Court for the Western
District of Virginia, No. 7:22,v-00349, Judge Robert S. Ballou

BRIEF OF THE PRISON POLICY INITIATIVE AS *AMICUS*
***CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, *amicus curiae* the Prison Policy Initiative makes the following disclosure:

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2. *Amicus* has no parent corporation.
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4. No publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

Dated: January 26, 2024

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INTEREST OF *AMICUS CURIAE*¹

The Prison Policy Initiative (“PPI” or “*Amicus*”) is a non-profit, non-partisan organization that conducts research and engages in advocacy regarding the harms caused by mass incarceration. It is a national leader in producing research about how corporations and correctional facilities charge high fees to incarcerated people and their families for communications, money transfers, commissary, medical co-pays, and other costs.

Amicus submits this brief to add important context to this Court’s consideration of two legal issues presented in this case: (1) whether a fifteen-dollar disciplinary fine constitutes an “atypical and significant hardship” in the prison context, and (2) whether such a fine is excessive under the Eighth Amendment. *Amicus* has conducted extensive research and issued numerous publicly available reports on prison wages and policies, and the myriad of costs associated with prison life in the Fourth

¹ *Amicus* files this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, and all parties to the appeal have consented to the filing of this brief. *Amicus* certifies that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amicus*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

Circuit and across the country. In light of its work, *Amicus* has unique insights into the economic realities for incarcerated individuals, which *Amicus* believes will be valuable to this Court as it considers the issues presented.

INTRODUCTION AND SUMMARY OF ARGUMENT

To a Virginia inmate who earns as little as twenty-seven cents an hour, a fifteen-dollar fine constitutes a significant financial burden. Fifteen dollars represents *more than a week's worth of wages* to an incarcerated person in Virginia. In other states in the Fourth Circuit, fifteen dollars represents as much as *two months* of wages. Wage and account garnishment policies in prisons within the Fourth Circuit further detract from already low prison wages making it even more difficult, if not impossible, for incarcerated people to pay disciplinary fines. Further, due to the relative high costs of basic necessities in prison, fifteen dollars represents nearly an hour's worth of calls home to loved ones, four bottles of body wash, or four tubes of toothpaste.² As a result, it is extremely difficult for most incarcerated individuals within the Fourth Circuit to accumulate the funds necessary to pay a fifteen-dollar disciplinary fine. In fact, a fifteen-dollar fine may force an incarcerated person with limited

² See Prison Policy Initiative, *Red Onion Prison Commissary Price List 1, 3* (Jan. 17, 2024), https://www.prisonpolicy.org/scans/RedOnionPrison_Commissary_List.pdf [hereinafter Prison Policy Initiative, *Commissary Price List*].

financial resources to choose between purchasing food and toiletries, calling home to loved ones, or even seeking medical attention.

The parties in this case have addressed legal issues that include whether a fifteen-dollar disciplinary fine constitutes an “atypical and significant hardship” in the prison context, and whether such a fine is excessive. *Amicus*, drawing on its expertise in studying the economic realities of prison life, submits this brief to add important context to this Court’s consideration of these legal issues: To an incarcerated person, the loss of fifteen dollars is indeed significant, and is equivalent to what would be a much larger fine outside the prison context.

ARGUMENT

Amicus has conducted extensive research on the economic realities of prison life, including the impact of low prison wages, wage garnishment policies, and the high costs of confinement to incarcerated people in the Fourth Circuit and across the country. In this brief, *amicus* provides this Court with a review of the empirical data on the financial realities for inmates in the Fourth Circuit, including data on prison wages, an overview of wage and account garnishment policies in prisons within the Fourth Circuit, and data on various common expenses for

inmates within the Fourth Circuit, including food, medical care, hygiene products, and calls home to family and friends. *Amicus* believes that this empirical data will aid the Court in assessing Appellant’s Due Process and Eighth Amendment arguments.

A review of the empirical data confirms that a fifteen-dollar fine presents a significant hardship for incarcerated people in the Fourth Circuit. First, when considering the meager wages earned by incarcerated people in the Fourth Circuit, a fifteen-dollar fine represents as much as *375 hours of labor*. Second, wage and account garnishment detract from already low wages. Third, paying off a fifteen-dollar fine may render basic necessities unaffordable due to the high “cost-of-living” in prisons—which has been exacerbated by recent inflation.

I. A Fifteen-Dollar Fine Equates to As Much As 375 Hours of Prison Labor in the Fourth Circuit.

Prison wages in the Fourth Circuit range from just five cents to forty-five cents per hour. In Virginia, pay is based on an inmate’s skill level.³ Skilled laborers, who have completed requisite job training, earn

³ See Va. Dep’t of Corr., Operating Procedure (“VADOC Proc.”) 841.2 § VI.A.1 (Aug. 1, 2023), <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-841-2.pdf>.

forty-five cents per hour—less than four percent of the twelve-dollar minimum wage outside of prisons in Virginia.⁴ Semi-skilled laborers earn thirty-five cents per hour, and unskilled laborers earn only twenty-seven cents per hour.⁵ All incarcerated people in Virginia, regardless of skill level, are restricted to working no more than thirty hours per week.⁶

The following table summarizes the maximum weekly wages that incarcerated people in Virginia can earn at the thirty-hour cap by multiplying the hourly rates by thirty:

	Hourly	Maximum Weekly Wages
Skilled	\$0.45	\$13.50
Semi-Skilled	\$0.35	\$10.50
Unskilled	\$0.27	\$8.10

At these hourly rates, a fifteen-dollar fine is equivalent to more than a week's worth of wages at Red Onion State Prison, where the Appellant, Mr. Demmerick Brown, is currently incarcerated. More precisely, it would take an inmate at Red Onion State Prison thirty-three to fifty-five hours of labor to pay off a single fifteen-dollar fine.

⁴ *Id.*; see Va. Code Ann. § 40.1-28.10(D) (establishing minimum wage)

⁵ VADOC Proc. 841.2, § VI.A.1.

⁶ *Id.* § VI.A.3.

Other states within the Fourth Circuit pay even lower wages. As documented in a national survey conducted by *Amicus* in 2017, Maryland prisons paid as little as fifteen cents per hour for prison labor; West Virginia prisons paid as little as four cents per hour; North Carolina prisons paid as little as five cents per hour; and South Carolina prisons paid some incarcerated people nothing at all for their labor.⁷ Accordingly, a single fifteen-dollar fine is equivalent to ***two and a half weeks of labor*** in Maryland and approximately ***two months of labor*** in West Virginia and North Carolina prisons.⁸

To further illustrate the relative cost of a fifteen-dollar fine to an incarcerated person, the following table summarizes what such a fine would cost outside of prison walls at each state's minimum wage:

⁷ Wendy Sawyer, Prison Policy Initiative, *How Much Do Incarcerated People Earn in Each State?* (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> [hereinafter Sawyer, *State Earnings*].

⁸ To pay off a fifteen-dollar fine in West Virginia, an inmate would need to work 375 hours. To pay off the same fine in North Carolina, an inmate would need to work 300 hours.

	Prison Job Minimum Wage (per hour)⁹	Hours of Work Required to Earn \$15.00	State Minimum Wage (per hour)¹⁰	Equivalent Fine at Minimum wage (hours x minimum wage)
Virginia	\$0.27	33	\$12.00	\$396.00
Maryland	\$0.15	100	\$15.00	\$1,500.00
West Virginia	\$0.04	300	\$8.75	\$2,625.00
North Carolina	\$0.05	375	\$7.25	\$2,718.75

Accordingly, a fifteen-dollar fine is the equivalent of \$369.00 to \$2,718.75 outside of prison in this Circuit.

II. Wage and Account Garnishment Detract from Already Low Wages.

Wage and inmate account garnishment policies exacerbate the challenge of low wages in state prisons in this Circuit and across the country—making it even more difficult for incarcerated people to pay off disciplinary fines. Several states, including those in the Fourth Circuit, grant prisons the power to garnish a range of expenses from an inmate’s

⁹ Sawyer, *State Earnings*, *supra* note 7.

¹⁰ U.S. Dep’t of Labor, *State Minimum Wage Laws* (Jan. 1, 2024), <https://www.dol.gov/agencies/whd/minimum-wage/state>.

prison wages, including general prison costs (e.g., room and board), medical care, restitution, and taxes. The consequences of such garnishment can be dramatic. For example, in 2021, Minnesota deducted \$3.48 million from prison wages—reflecting 77 percent of wages earned by incarcerated people in that state—two-thirds of which were used to cover “costs of confinement.”¹¹

Such policies are followed within the Fourth Circuit as well. For example, in Virginia, prisons may garnish five percent of an inmate’s wages to pay any court-imposed fines, costs, forfeitures, restitution, or penalties.¹² In West Virginia, correctional facilities may garnish up to fifty percent of an inmate’s wages for “court-ordered victim restitution, court fees, and child support obligations” and related administrative fees.¹³ In South Carolina, prisons are authorized to garnish between five

¹¹ Filberto Nolasco Gomez, *An Update on Prison Labor in Minnesota*, Workday Magazine (Jan. 5, 2022), <https://workdaymagazine.org/an-update-on-prison-labor-in-minnesota/>.

¹² See Va. Code Ann. § 53.1-41(B); VADOC Proc. 802.2 § V.A (June 1, 2022) <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-802-2.pdf>.

¹³ W. Va. Code § 15A-4-11(c)(1).

and ten dollars per workday to “offset the cost to the local facility providing food, lodging, supervision, clothing, and care to the inmate.”¹⁴

In some states, garnishments apply not only to prison wages but also to outside funds deposited into an inmate’s trust account by friends and family. For example, Maryland prisons are authorized to apply “all incoming funds” against debt including “money received from an outside source” such as a family member or friend.¹⁵ Accordingly, taken together, wage and inmate account garnishments significantly reduce an inmate’s “take home pay” and access to funds and, in turn, increase the relative hardship imposed by a fifteen-dollar fine.

III. Paying Off a Fifteen-Dollar Fine May Render Even Basic Necessities Unaffordable for Incarcerated People.

Incarcerated people also have numerous out-of-pocket expenses, including food; medical and dental care; hygiene products such as

¹⁴ S.C. Code Ann. § 24-13-930 (authorizing prisons to deduct between five and ten dollars per workday to “offset the cost to the local facility providing food, lodging, supervision, clothing, and care to the inmate”). Additional amounts may be garnished to cover restitution, victim assistance programs, and taxes. *Id.* § 24-13-80.

¹⁵ Md. Dep’t of Pub. Safety & Corr. Servs., Fiscal Operations for Inmate Funds, Directive No. ADM245.0001, at 3, 5 (Sept. 26, 2022), <https://itcd.dpscs.state.md.us/PIA/ShowFile?fileID=1418>.

toothpaste, shampoo, soap, and toilet paper; clothing; and other basic necessities.¹⁶

Costs of Food. As a result of inedible, unhealthy food and small portions,¹⁷ incarcerated people frequently rely on commissary purchases to supplement their diet. A 2018 study of prison commissary use in

¹⁶ Harold W. Clarke, Va. Dep't. of Corr., *Reduction or Elimination of Costs and Fees Charged to Inmates in State Correctional Facilities* 20 (Oct. 1, 2022), <https://rga.lis.virginia.gov/Published/2022/RD500/PDF> (“[T]he incarcerated population relies on commissary to supplement day-to-day needs including food staples, basic health items, hygiene products, writing materials, and clothing.”).

¹⁷ *Id.* (acknowledging that “meals vary in quality” and that “VADOC spends just \$2.20 per person per day to provide those 3 allocated meals”); *see also* Sharon Howell Thompson et al., *What Are We Feeding Our Inmates?*, 18(3) J. Corr. Health Care 210, 210 (2012) (study of South Carolina Dep't. of Corrections revealed that meals contained higher levels of cholesterol, sodium, and sugar, and lower than recommended levels of fiber and vitamins). Indeed, incarcerated people have sued prisons for lack of food safety and nutrition. *See, e.g., Gray v. Stolle*, No. 11CV546, 2013 WL 4430915, at *7–8 (E.D. Va. Aug. 16, 2013) (alleging constitutional violations for serving “cold food and food lacking in nutritional value”); *Christian v. Magill*, No. 15-cv-03379, 2016 WL 4975020, at *5 (D.S.C. Sept. 19, 2016) (alleging food unsafety because it is “regularly contaminated with razor blades, bugs, or bodily excrement”). A 2017 American Journal of Public Health article revealed that incarcerated people were six times more likely to contract foodborne illnesses than were members of the general public. Mariel A. Marlow et al., *Foodborne Disease Outbreaks in Correctional Institutions-United States, 1998–2014*, 107(7) Am. J. Pub. Health 1150, 1153 (2017).

Illinois, Massachusetts, and Washington, incarcerated people spent, on average, between \$513 and \$1,207 per year on commissary items.¹⁸ The most common commissary purchase was in the category of “Ready Food”—items such as canned fruits, vegetables, meats, and soups.¹⁹

In recent years, prices for everyday goods in prison have “soar[ed] amid inflation” and “unregulated markups on commissary items.”²⁰ A 2023 survey conducted by The Marshall Project found that “[i]ncarcerated people across the country are paying more now for staple items such as peanut butter, soap, coffee and toothpaste than they did a year ago.”²¹ For example, “[a]cross all state prisons, a jar of peanut butter costs between 25 and 35 percent more than [in 2022].”²² In fact, the rate

¹⁸ Stephen Raher, Prison Policy Initiative, *The Company Store: A Deeper Look at Prison Commissaries* (May 2018), <https://www.prisonpolicy.org/reports/commissary.html>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Alexandra Arriaga, Marshall Project, *Why Inflation Price Hikes Are Even Worse Behind Bars* (May 2, 2023), <https://www.themarshallproject.org/2023/05/02/why-inflation-price-hikes-are-even-worse-behind-bars>.

²² *Id.*

of inflation in prisons has exceeded the rate of inflation outside of prison for many goods.²³

Costs of Hygiene Products. Inmate spending on hygiene products, including soap, toilet paper, and other basic necessities, is second only to spending on food. In addition to these items, some state prisons charge for necessary services such as haircuts.²⁴ A 2022 report from the Virginia Department of Corrections disclosed that a sample commissary order for an incarcerated person costs \$114.22.²⁵

According to the Virginia Department of Correction's 2020 commissary price list, incarcerated people in Virginia paid as much as \$3.10 for body wash, \$2.78 for deodorant, \$3.10 for toothpaste, and \$6.28

²³ *Id.*

²⁴ Recognizing that the staggering prices for necessary goods and services in Virginia prisons are often cost-prohibitive for incarcerated people, the Virginia Department of Corrections organized a work group to recommending reductions in these costs. Clarke, *supra* note 16, at 6. A report was issued in 2022 recommending reduction in the costs of communication, commissary, and financial fees charged to incarcerated people in state correctional facilities. *See generally id.* These recommendations have not been implemented to date.

²⁵ *Id.* at 21–22.

for shampoo.²⁶ Thus, at prices pre-dating the rise in inflation over the last few years, a single fifteen-dollar fine represented four bottles of body wash, five sticks of deodorant, four tubes of toothpaste, or two bottles of shampoo.

Costs of Medical Care. In most states in the Fourth Circuit, incarcerated individuals are required to pay medical co-pays for physician visits, medications, dental treatment, and other health services.²⁷ Prior to the COVID-19 pandemic, medical co-pays in prisons across the country generally ranged from two dollars to five dollars per visit.²⁸ Specifically, in North Carolina, “[i]nmate initiated visits for

²⁶ Prison Policy Initiative, *Commissary Price List*, *supra* note 2, at 1–3. Modifications to the Virginia Department of Correction’s commissary list included a 4.4% overall commissary pricing increase on December 16, 2021, and an 8.5% price increase on all items except personal hygiene and over-the-counter medications on December 19, 2022. *Id.* at 1.

²⁷ See generally, e.g., Clarke, *supra* note 16.

²⁸ Wendy Sawyer, Prison Policy Initiative, *The Steep Cost of Medical Co-Pays in Prison Puts Health at Risk* (Apr. 19, 2017), <https://www.prisonpolicy.org/blog/2017/04/19/copays/> [hereinafter Sawyer, *Co-Pays*]. Virginia has not required incarcerated people to pay for medical care since January 1, 2020. VADOC Proc. 720.4, at 4 (Feb. 1, 2022), <https://vadoc.virginia.gov/files/operating-procedures/700/vadoc-op-720-4.pdf>; Tiana Herring, Prison Policy Initiative, *COVID Looks Like It May Stay. That Means Prison Medical Copays Must Go* (Feb. 1, 2022), https://www.prisonpolicy.org/blog/2022/02/01/pandemic_copays.

medical care are subject to a [five dollar] co-payment fee” and “[i]nmate declared emergency visits are subject to a [seven dollar] co-payment fee.”²⁹ In West Virginia, the correctional facility is authorized to assess “reasonable charges for health care and treatment services” to be “deducted directly from the inmate’s trustee account without the inmate’s consent,” and a “reasonable charge” may not exceed twenty-five dollars. W. Va. Code § 15A-4-13(a)–(b). In South Carolina, inmates may be charged up to five dollars for each occurrence of treatment received for medical services requested by the inmate. S.C. Code Ann. § 24-13-80(B)(2). In Maryland, incarcerated people may be assessed two dollars for each non-emergent visit to a medical provider, with exceptions.³⁰

However, this is only a “temporary suspension.” VADOC Proc. 720.4, at 4.

²⁹ N.C. Dep’t of Corr., *Rules and Policies Governing the Management and Conduct of Inmates under the Control of the Division of Prisons, Inmate Booklet 15* (Apr. 2010), <https://www.doc.state.nc.us/publications/inmate%20rule%20book.pdf> (“With some exceptions, there will be a charge for services provided by a nurse, doctor, dentist or psychologist.”)

³⁰ See Md. Dep’t of Pub. Safety & Corr. Servs., Fees for Inmate Medical Services, Directive No. OPS.130.0001, at 2 (May 29, 2015), <https://itcd.dpscs.state.md.us/PIA/ShowFile?fileID=490>.

Thus, in prisons in the Fourth Circuit, fifteen dollars represents three or more doctor's visits.

Costs of Communicating with Loved Ones. Nearly half of all incarcerated individuals are parents to minor children.³¹ Sixty percent have reported relying on phone calls home to stay in touch with their children.³² Communicating with loved ones outside of prison has had proven benefits for both incarcerated people and the community. A 2014 study of incarcerated women found that those who had phone contact with a family member were “significantly less likely to be reincarcerated within five years” of their release.³³ A 2020 study revealed that parent–child relationships substantially improved with weekly phone calls.³⁴

³¹ Leah Wang, Prison Policy Initiative, *Both Sides of the Bars: How Mass Incarceration Punishes Families* (Aug. 11, 2022), https://www.prisonpolicy.org/blog/2022/08/11/parental_incarceration/.

³² *Id.*

³³ Kelle Barrick et al., *Reentering Women: The Impact of Social Ties on Long-Term Recidivism*, 94(3) *Prison J.* 279, 293 (2014) (finding that, of all forms of social contact studied, “family phone contact seems to have the biggest impact on both the occurrence and timing of reincarceration”).

³⁴ Danielle L. Haverkate & Kevin A. Wright, *The Differential Effects of Prison Contact on Parent-Child Relationship Quality and Child Behavioral Changes*, 5 *Corr. Pol. Prac. & Rsch.* 222, 234 (2020).

Virginia prisons charge incarcerated people for phone calls home, as well as for video visitation, secure messaging, and internet access. Telephone calls in Virginia cost incarcerated people “\$0.25 per minute with a \$1.80 surcharge for collect calls or \$0.33 per minute with no surcharge for prepaid calls.”³⁵ Virginia’s video communications contractor charges four to eight dollars for a single twenty-minute video call.³⁶ Thus, in Virginia prisons, fifteen dollars represents over forty-five minutes of call time with loved ones or up to seventy-five minutes of video calls.

As of 2021, a fifteen-minute phone call in North Carolina costs one dollar and fifty cents.³⁷ In South Carolina, the cost of a fifteen-minute phone call is eighty-three cents, and in West Virginia the cost is forty-five cents.³⁸ Accordingly, a fifteen-dollar disciplinary fine represents

³⁵ Clarke, *supra* note 16, at 8.

³⁶ *Id.* at 14.

³⁷ Prison Policy Initiative, *State of Phone Justice 2022, Appendix Table 1: Phone Rates for 15- Minute Increments in State Prisons 2008-2021* (Dec. 2022), https://www.prisonpolicy.org/phones/appendices2022_1.html.

³⁸ *Id.*

anywhere from two-and-a-half to eight hours of time spent communicating with loved ones in the Fourth Circuit.³⁹

Written communication is likewise costly. At Red Onion State Prison, forty emails cost \$9.95.⁴⁰ Accordingly, fifteen dollars represents approximately sixty emails to loved ones. A 2018 study of commissary prices in three states revealed that inmates spent an average of thirty-two dollars a year on mail and stationary supplies.⁴¹ These figures suggest that a single fifteen-dollar fine equates to half of an incarcerated person's annual budget for mail.

Thus, for many incarcerated people, paying off a disciplinary fine could come at the cost of purchasing even the most basic necessities—such as food, toilet paper, and medical care—and communicating with loved ones given their very limited funds.

³⁹ As a result of hidden fees and other charges, the actual cost of a phone call home may be even higher. Peter Wagner & Wanda Bertram, Prison Policy Initiative, *State of Phone Justice 2022: The Problem, the Progress, and What's Next* (Dec. 2022), https://www.prisonpolicy.org/phones/state_of_phone_justice_2022.html.

⁴⁰ Sawyer, *Co-Pays*, *supra* note 28.

⁴¹ Raher, *supra* note 18.

CONCLUSION

In light of the economic realities of life in prison, a fifteen-dollar fine is significant to an incarcerated person.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because it contains 3,337 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared using Microsoft Office Professional Plus 2016 in 14-point Century Schoolbook font.

Dated: January 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2024, a true and correct copy of the foregoing brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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