

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

PATRICIA WERNERT)	Case No.
Dayton Correctional Institution)	
4104 Germantown Street)	Judge
Dayton, OH 45417)	
)	Magistrate Judge
and)	
)	<u>COMPLAINT</u>
GEORGE CLAYTON)	
Richland Correctional Institution)	
1001 S. Olivesburg Road)	
Mansfield, OH 44905)	
)	
Plaintiffs,)	
)	
)	
vs.)	
)	
OHIO PAROLE BOARD)	
4545 Fisher Road, Suite D)	
Columbus, Ohio 43228)	
)	
Defendant.)	

I. PRELIMINARY STATEMENT

1. This is a declaratory judgment action seeking, in part, a declaration by this Court that the Ohio Parole Board (the “Board”) denied Plaintiffs Patricia Wernert and George Clayton meaningful consideration for parole, in violation of Ohio law.
2. The Board denied meaningful consideration to Ms. Wernert and Mr. Clayton—who have both been incarcerated in Ohio’s prison system since 1976—through the Board’s current practice or policy of denying parole to all individuals, regardless of individual circumstances, who were previously sentenced to death but are now

parole eligible. Upon information and belief, the Board has applied this practice or policy since at least 2016.

3. Ms. Wernert, who has served 45 years in prison and is now 78 years old, has maintained an exemplary institutional record for the entire period of her incarceration and has a viable reentry plan. But at her March 2021 release consideration hearing, the Board denied release pursuant to this blanket practice, continuing Ms. Wernert's next hearing to February 2026. By then, Ms. Wernert will be 83 years old and will have served 50 years of her 20-years-to-life sentence.
4. Mr. Clayton, who has served 45 years in prison and is now 64 years old, has maintained an exemplary institutional record since 2005 and has a viable reentry plan. But at his March 2020 hearing, the Board denied Mr. Clayton release and continued his next hearing to May 1, 2025. By then, Mr. Clayton will be 68 years old and will have served 49 years of his sentence.
5. The Supreme Court of Ohio has held repeatedly that although the Board has broad discretion, individuals who are eligible for parole are entitled to "meaningful consideration." The Board's policy constitutes a denial of meaningful consideration by subjecting Ms. Wernert, Mr. Clayton, and similarly situated people to blanket denials regardless of individual circumstances.

II. THE PARTIES, JURISDICTION, AND VENUE

6. Patricia Wernert (#W13056) is currently an inmate of the Ohio Department of Rehabilitation and Correction (“DRC”), housed at its Dayton Correctional Institution, which is located at 4104 Germantown Street, Dayton, Ohio 45417.
7. George Clayton (#A145587) is currently a DRC inmate housed at Richland Correctional Institution, which is located at 1001 S. Olivesburg Road, Mansfield, Ohio, 44905.
8. The Board, located at 4545 Fisher Road, Suite D, Columbus, Ohio 43228, is a statutorily created, ten-member body charged with responsibility for conducting release consideration hearings on all parole-eligible inmates, pursuant to Ohio Revised Code § 5149.10.
9. This Court has jurisdiction over this matter pursuant to Ohio Revised Code §§2305.01, 2721.02(a), and 2721.12(A).
10. This Court is the proper venue for this action under Ohio Civ.R. 3(B)(1)-(3), as the defendant is in Franklin County, has its principal place of business in Franklin County, and conducted activity there giving rise to this claim.

III. FACTUAL ALLEGATIONS

A. PATRICIA WERNERT

11. Ms. Wernert is a 78-year-old woman who is in her 46th year of a life sentence with parole eligibility after 20 years, for two counts of aggravated murder. The state charged that she and her husband, David Wernert, hired a man named Richard

Arterberry to kill Ms. Wernert's mother-in-law and grandmother-in-law, Harriet Wernert and Velma Bush.

12. Ms. Wernert was convicted and sentenced to death, as were her two co-defendants in separate trials.

13. Subsequently, the Supreme Court of the United States decided *Lockett v. Ohio*, 438 U.S. 586 (1978), striking down Ohio's death penalty statute under the Eighth and Fourteenth Amendments. A plurality of the Court reasoned that "[t]he limited range of mitigating circumstances which may be considered by the sentencer under the Ohio statute is incompatible with the Eighth and Fourteenth Amendments." *Id.* at 608.

14. As a result of *Lockett*, Ms. Wernert's sentence, as well as those of her co-defendants, was reduced to 20-full years-to-life in 1978.

15. Over the years, the full extent of Ms. Wernert's involvement in the murders of her mother-in-law and grandmother-in-law has come into question. In a September 2015 affidavit, co-defendant Richard Arterberry wrote: "To my knowledge, Patricia Wernert was not involved in the planning of the murders of Harriet Wernert and Velma Bush. To the best of my knowledge, Patricia Wernert did not know I would kill Harriet Wernert and Velma Bush."

Ms. Wernert's Rehabilitation, Institutional Conduct, and Reentry Plan

16. Since being incarcerated, Ms. Wernert's conduct has been exemplary. During the nearly 45 years she has spent in DRC institutions, she has committed very few infractions. Her most recent infraction was in 2014 for failing to show up for

nurse's sick call. Ms. Wernert's Current Institutional Report Summary lists no other infractions, although she recalls having had two additional minor infractions decades ago.

17. Ms. Wernert's rehabilitative programming work has been exceptional. She has completed dozens of programs, including Victim Awareness, Thinking for a Change, and Addiction Recovery.
18. Additionally, Ms. Wernert has performed thousands of hours of community service during her incarceration within DRC. In 1994 she helped start the Pilot Dog Service program at Franklin Pre-Release Center. She then trained service dogs from 1995 to 2019, when, at age 76, she reluctantly had to stop participating in the program, as she grew frailer and was unable to handle larger dogs.
19. Ms. Wernert has also developed a strong reentry plan. She has several close friends, community members, and supporters who are willing to house and assist her upon release. Ms. Wernert's housing options include the Women of Excellence residential program in Columbus, Ohio, and three individuals who are willing to house her, including a retired paralegal who worked at a large law firm, and a licensed chemical dependency counselor. Ms. Wernert has provided the identities of each of her housing options to the Parole Board.
20. If released, Ms. Wernert, with the help of her community supporters, plans to launch a virtual dog training program. Aside from any income she might earn from that business, Ms. Wernert would rely on whatever public benefits she is

entitled to receive as well as the support of those willing to house and provide for her basic needs.

Ms. Wernert's Previous Parole Denials

21. Ms. Wernert has had four Parole Board release hearings, in addition to one administrative review. Her first hearing was in 1995, at which time the Board denied release and continued her next hearing for 20 years, to 2015.
22. The Board conducted an administrative "halftime" review for Ms. Wernert in 2006, to review her suitability for release at the midpoint of her 20-year continuance. The Board decided not to schedule a release hearing for her at that time. The Board scheduled her next parole release hearing for 2011.
23. When the Board heard Ms. Wernert's case in 2011, it denied release and set her next hearing for 2015.
24. In 2015, the Board again denied Ms. Wernert release and continued her next hearing to 2020.
25. Ms. Wernert was scheduled to see the Board in November 2020. In a letter to the Board dated October 22, 2020, Julia Bates, Lucas County's Prosecuting Attorney, wrote: "This case is 45 years old, one of the oldest I've seen in my tenure as Lucas County Prosecutor. * * * I trust that you will reflect and consider all the circumstances, from 1975 onward, and render a fair and just decision. I am thus taking no position in this matter and leaving the decision, as it should be, on your wise and seasoned judgment."

26. Ms. Wernert's November 2020 hearing was delayed until March 2021, after she was placed in quarantine for possible COVID-19 exposure.
27. In March 2021, following Central Office Board Review, the Board denied release and continued Ms. Wernert's next hearing to February 2026, at which time she will be 83 years old.
28. The Board's decision sheet does not mention victim or community opposition as a factor in denying release. Upon information and belief, no victim family members objected to the Board paroling Ms. Wernert in 2021.
29. The Board's decision sheet in 2021 also did not mention any defect in Ms. Wernert's institutional record or reentry plan, nor did it recommend any additional action she should take to become more suitable for parole. Upon information and belief, the Board's 2021 decision to deny parole for Ms. Wernert arose either in whole or in substantial part from its current policy of denying parole to all people who had previously been sentenced to death, regardless of any individual factors or circumstances.

B. GEORGE CLAYTON

30. George Clayton is a 64-year-old man who is in his 46th year of a life sentence with parole eligibility after 20 years, for one count of aggravated murder and seven counts of aggravated robbery, stemming from a November 1975 robbery during which a plain clothes detective was shot and killed.
31. The state charged Clayton and three co-defendants—Michael Manns, Dwain Farrow, and Duran Harris—with robbing a paint store on November 10, 1975.

During the robbery, Clayton and co-defendants Mann and Farrow entered the store and herded the customers and store employees, approximately ten individuals total, to a back room where Farrow demanded their money and jewelry, while Harris stayed outside as the getaway driver. Clayton stood watch at the front door, while Manns looted the cash register. While Clayton was guarding the front door, plain clothes detective William Prochazka entered the store—not suspecting a robbery in progress. At gunpoint, Clayton directed Detective Prochazka to the area where Manns stood. Subsequently Manns determined that Detective Prochazka was a police officer and shot him in the neck, killing him. Manns, Farrow, and Clayton then fled the store and were driven away by Harris.

32. Mr. Clayton eventually turned himself in after learning that the man whom Manns shot was a police officer. Mr. Clayton was the only one of the four co-defendants to surrender to the police.

33. A Cuyahoga County jury convicted Mr. Clayton of aggravated murder and seven counts of aggravated robbery. The judge sentenced Mr. Clayton to death for the aggravated murder of Detective Prochazka.

34. Without asking anything in return and disregarding any risk to himself, Mr. Clayton, after he was convicted and sentenced to death, testified against co-defendant Michael Manns at Manns' trial.

35. Tried separately, co-defendants Manns, Farrow, and Harris were also each convicted of aggravated murder and aggravated robbery and sentenced to death.

36. As a result of *Lockett*, Mr. Clayton's sentence, as well as those of his three co-defendants, was reduced to 20-full years-to-life in 1978.

37. In 2003, the Board paroled Harris. Mr. Clayton, and co-defendants Manns and Farrow remain incarcerated.

38. Upon information and belief, in 2003 the Board did not engage in the blanket practice and policy of refusing parole to all individuals who had previously been sentenced to death. The Board began that practice sometime after 2003, and no later than 2016. Pursuant to this blanket policy, whether written or unwritten, the Board's current practice is consistently to deny parole to any individual who was once under a death sentence.

Mr. Clayton's Institutional Conduct, and Reentry Plan

39. Until 2005, Mr. Clayton had trouble adjusting to prison life and his disciplinary record reflected those troubles. Since then, Mr. Clayton has had an exceptionally good institutional record, with no infractions since 2005. Additionally, DRC has classified Mr. Clayton as a Level 1 (minimum security) prisoner since 2012.

40. Mr. Clayton has completed an abundance of rehabilitative programming, including Victim Awareness, Anger Management, Criminal and Addictive Thinking, and various religious programs. Mr. Clayton has also maintained regular employment, and currently works as a Program Aide for the Department of Religious Services.

41. Mr. Clayton has completed college coursework, earning an Associate Degree from Shawnee State in Retail Marketing Management. He has also taken college courses at Ashland University.
42. Moreover, Mr. Clayton has developed occupational expertise in the areas of building maintenance, computer program technology and office operation.
43. By means of his tireless efforts at self-improvement, Mr. Clayton has earned a Certificate of Achievement and Employability (“CAE”). CAEs were created by statute in 2011 as “a way for the [DRC] to indicate that a soon to be released inmate . . . has performed exceptionally while under DRC’s control.” To qualify, Mr. Clayton had to satisfy requirements in each of four categories: (a) he had to complete one or more DRC-approved “in-prison vocational programs”; (b) he had to complete “one or more cognitive or behavioral improvement programs” approved by DRC; (c) he had to “complete community service hours”; and (d) he had to “[show] other evidence of achievement and rehabilitation while under the jurisdiction of the department.” Ohio Rev. Code § 2961.22(A)(1). The effect of a CAE is to lift the bar of any mandatory Ohio law restricting employment, and to immunize prospective employers against potential negligence liability for employing the individual.
44. If released, Mr. Clayton has an employment offer in hand to work in a cleaning business after release. He also hopes to become a motivational speaker focused on steering children away from trouble.

45. As a testament to Mr. Clayton's rehabilitation, at least two DRC employees wrote support letters recommending him for parole. In 2015, Chaplain Scott E. Logan, who has known Mr. Clayton since 2010, wrote: "[Mr. Clayton] has demonstrated an ability and willingness to work well with others. He has mentored inmates adjusting to prison life. I believe that after almost forty years of incarceration he will be an asset to any community. I hope the Parole Board will give him the opportunity."
46. A correctional officer also submitted a letter of support writing: "I supervised Mr. Clayton in his capacity as a program aide for the Chaplain's Office. He is not only [a] responsible and reliable individual but also, he communicates and interacts well with staff and inmates. For the length of time Mr. Clayton has been incarcerated, I am very impressed with his attitude and decorum. I believe Mr. Clayton exemplifies what it means to be a model inmate. More importantly, I am confident he will be a productive member of society if released."
47. When he went up for parole in 2015, Mr. Clayton also received support from an unusual source: U.S. District Court Judge Donald C. Nugent, who was one of Mr. Clayton's trial prosecutors. In a letter to Mr. Clayton, Judge Nugent wrote: "I cannot write to the parole board because of my present position as a district judge. However, if contacted by the board, I would be happy to explain to them that not only has your time in the penitentiary been spent trying to better yourself, but also that you voluntarily testified against the actual shooter in your case. Your testimony was both truthful and you testified without asking for anything in

return and with significant risk to yourself. You have always been straightforward and honest with me. I wish you the best as you seek to fulfill your redemption.”

48. Mr. Clayton also has strong family support, including from two sisters, Pauline and Christine, and a brother Leo. If released, Mr. Clayton would live with Pauline.

Mr. Clayton’s Previous Parole Denials

49. Mr. Clayton has had five Parole Board release hearings, in addition to one administrative halftime review. His first hearing occurred in December 1995, at which time the Board denied release and continued his next hearing to December 2005.

50. The Board conducted an administrative halftime release review in September 2002 but decided not to schedule a release hearing for him, letting his December 2005 hearing remain.

51. The Board next heard Mr. Clayton’s case in February 2006, after a brief continuance of the December 2005 hearing. At the February 2006 hearing, stating that his death “sentence was commuted [sic] to a life sentence after the death penalty was ruled unconstitutional,” the Board denied release and continued Mr. Clayton’s next hearing to November 2010.

52. The Board held Mr. Clayton’s next parole hearing in September 2010, at which time the Board again denied release and continued his next hearing to September 2015. Although the Board noted that Mr. Clayton “had a problematic adjustment

to the institution until early 2005,” it remarked that “[s]ince then, his conduct has been good.”

53. The Board conducted Mr. Clayton’s next hearing in July 2015. Again, the Board denied release and continued his next hearing to May 2020. In its decision sheet the Board wrote: “Inmate has had exceptional institutional conduct over the past several years. Inmate has engaged in good risk relevant programming to abate his risk factors and demonstrates good insight. Inmate has progressed well over the recent years.” Even so, the Board once more denied him release. The Board’s decision sheet stated that “Inmate’s time served, good programming and insight do not outweigh the serious and heinous offense at this time, coupled with the level of opposition.” The 2015 decision sheet did not recommend any further steps Mr. Clayton might take to increase his suitability for parole.

54. The Board next heard Mr. Clayton’s case in June 2020. The Board denied release yet again. In its decision sheet, the Board wrote that its decision was based on “victim impact and significant community opposition” and continued Mr. Clayton’s next hearing to May 2025.

55. Upon information and belief, the Board’s decision in Mr. Clayton’s June 2020 parole consideration arose either in whole or in substantial part from its current policy of denying parole to all people who had previously been sentenced to death, regardless of any individual factors or circumstances. Notably, the Board frequently releases inmates despite “victim impact and significant community opposition.”

C. THE CURRENT PAROLE BOARD'S PRACTICE OF NEVER GRANTING PAROLE TO AN INDIVIDUAL PREVIOUSLY SENTENCED TO DEATH

56. Upon information and belief, the Board currently observes a blanket policy or practice of denying parole to any person who was previously sentenced to death, even after the sentence was changed to life with the possibility of parole. The Board has applied this policy or practice consistently since 2016 at the latest.
57. Upon information and belief, the Board adheres to this policy or practice regardless of any other factors or individual circumstances, including but not limited to demonstrated rehabilitative progress, lack of threat to the community, reentry plan, time served, age, or prosecutor recommendations. The Board's unvarying policy or practice, and its consistent failure to give weight to factors indicating a person's suitability for parole, effectively indicate a policy of permanently denying parole to any individual who was once sentenced to death.
58. The Board denied release to Ms. Wernert and Mr. Clayton pursuant to its current practice of never paroling an individual previously sentenced to death.
59. Ms. Wernert's co-defendants, David Wernert and Richard Arterberry, also remain incarcerated, having been denied parole repeatedly, as do two of Mr. Clayton's co-defendants, Dwain Farrow and Michael Manns. Only Mr. Clayton's co-defendant Duran Harris has been released, having received parole in 2003 before the Board implemented its current policy or practice of denying release to individuals who had previously been sentenced to death.
60. As a result of the above-described policy or practice, the Board ignored all the facts indicating that Ms. Wernert is suitable for release, including that:

- (a) she has served over 45 years of her sentence;
- (b) she is 78 years old;
- (c) she has demonstrated exemplary institutional conduct, committing at most three minor infractions during her entire period of incarceration;
- (d) she positively contributed to the community by training service dogs for nearly 25 years;
- (e) she has a viable reentry plan; and
- (f) the prosecuting attorney, while taking no official position on whether Ms. Wernert should be released, implored the Board to “reflect and consider all the circumstances, from 1975 onward, and render a fair and just decision.”

61. With respect to Mr. Clayton, the Board ignored all the facts indicating that he is suitable for release, including that:

- (a) he has served over 45 years in prison;
- (b) he committed his offense at age 18 and is now 64;
- (c) he has demonstrated exemplary institutional conduct since 2005, including committing zero infractions since then;
- (d) he has completed college coursework and vocational training, and has earned a CAE;
- (e) he has letters of support from two DRC staff members and has the support of his trial prosecutor, who is now a federal judge; and
- (f) he has a viable reentry plan.

62. Upon information and belief, as a result of the Board's policy, there is no rehabilitative effort or demonstration that Ms. Wernert or Mr. Clayton could make that would lead to the Board granting parole.

63. Although Ms. Wernert's and Mr. Clayton's sentences provide for the possibility of parole, the Board's policy or practice has the practical effect of converting their sentences into life in prison without the possibility of parole.

**IV. COUNT ONE – DECLARATORY JUDGMENT THAT THE OHIO
PAROLE BOARD HAS DENIED PATRICIA WERNERT AND
GEORGE CLAYTON MEANINGFUL CONSIDERATION FOR
PAROLE**

64. Ms. Wernert and Mr. Clayton adopt and incorporate the allegations set forth in the foregoing paragraphs of this Complaint as though fully set forth herein.

65. Under well-settled principles of Ohio law, individuals who are eligible for parole must receive meaningful consideration for parole release.

66. Under Ohio law, the Board is charged with making parole decisions and shall consider all the relevant facts and circumstances bearing on whether an individual under parole consideration should be released.

67. Upon information and belief, the Board denied parole to Ms. Wernert and Mr. Clayton pursuant to its current practice of never releasing an individual who had previously been sentenced to death.

68. The Board's policy has the effect of denying Ms. Wernert, Mr. Clayton, and others similarly situated, meaningful consideration for parole.

69. The Board disputes that it has denied Ms. Wernert and Mr. Clayton meaningful consideration for parole, including through the blanket policy described herein.

70. Thus, there is a real and justiciable issue in this case concerning the Board's denial of meaningful consideration to Ms. Wernert and Mr. Clayton.

71. The respective rights, status, and other legal obligations of Ms. Wernert, Mr. Clayton, and the Board are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy which have given rise to this proceeding.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Patricia Wernert and George Clayton demand judgment in their favor and against the Ohio Parole Board as follows:

- A. A declaration by this Court that the Ohio Parole Board's policy of refusing parole in all cases where the person seeking parole had previously been sentenced to death constitutes denial of meaningful consideration for parole, in violation of Ohio law;
- B. A declaration by this Court that by applying its policy in Ms. Wernert's and Mr. Clayton's cases, the Ohio Parole Board has denied them meaningful consideration for parole, in violation of Ohio law;
- C. As necessary, entry of a permanent injunction pursuant to R.C. 2721.03 and 2721.09, requiring the Ohio Parole Board to cease implementation of its policy, and to conduct new hearings for Ms. Wernert and Mr. Clayton.
- D. Attorney fees, expenses, and other court costs as provided by law; and
- E. Such other and further legal and equitable relief as the Court deems just, equitable, and proper.

Dated: July 28, 2021

Respectfully submitted,

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