

# EXHIBIT 1

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2020 SEP 22 A 11:10  
NORTH CAROLINA ALLIANCE FOR  
RETIRED AMERICANS; BARKER  
FOWLER; BECKY JOHNSON; JADE  
JUREK; ROSALYN KOCIEMBA; TOM  
KOCIEMBA; SANDRA MALONE; and  
CAREN RABINOWITZ,

No. 20-CVS-8881

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS; and DAMON CIRCOSTA,  
in his official capacity as CHAIR OF THE  
NORTH CAROLINA STATE BOARD OF  
ELECTIONS,

Defendants, and,

PHILIP E. BERGER, in his official capacity as  
President Pro Tempore of the North Carolina  
Senate; and TIMOTHY K. MOORE, in his  
official capacity as Speaker of the North  
Carolina House of Representatives,

Intervenor-Defendants.

**PLAINTIFFS' AND EXECUTIVE  
DEFENDANTS' JOINT MOTION FOR  
ENTRY OF A CONSENT JUDGMENT**

Plaintiffs North Carolina Alliance for Retired Americans, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, and Caren Rabinowitz, and Defendants Damon Circosta and the North Carolina State Board of Elections ("Executive Defendants"), by and through counsel, respectfully move this Court pursuant to Local Rule 3.4 for entry of a Consent Judgment, filed concurrently with this Joint Motion. In support thereof, Parties show the Court as follows:

1. On August 18, 2020, Plaintiffs filed an Amended Complaint, seeking declaratory and injunctive relief to enjoin North Carolina laws related to in-person and absentee-by-mail voting in the remaining elections in 2020 that they alleged unconstitutionally burden the right to vote in light of the current public health crisis caused by the novel coronavirus (“COVID-19”).

2. Also on August 18, Plaintiffs filed a Motion for Preliminary Injunction seeking to:

- (i) enjoin the enforcement of the absentee ballot receipt deadline set forth in N.C.G.S. § 163-231(b)(1), (2), as applied to ballots submitted through the United States Postal Service (USPS) for the 2020 elections, and order Defendants to count all otherwise eligible ballots that are postmarked by Election Day and received by county boards of elections up to nine days after Election Day;
- (ii) enjoin the enforcement of the witness requirements for absentee ballots set forth in N.C. Gen. Stat. § 163-231(a), as applied to voters residing in single-person or single-adult households;
- (iii) enjoin the enforcement of N.C. Gen. Stat. § 163-231(b)(1) to the extent that it requires voters to pay for postage in order to mail their absentee ballots;
- (iv) order Defendants to provide postage for absentee ballots submitted by mail in the November election;
- (v) order Defendants to provide uniform guidance and training for election officials engaging in signature verification and instruct county election officials not to reject absentee ballots due to perceived non-matching signatures until the county officials receive such guidance and undergo training;
- (vi) enjoin the enforcement of N.C. Gen. Stat. §§ 163-226.3(a)(5), 163-230.2(c) and (e), 163-231(b)(1), and any other laws that prohibit individuals or organizations from assisting voters to submit absentee ballots or to fill out and submit absentee ballot request forms; and
- (vii) enjoin the enforcement of N.C. Gen. Stat. § 163-227.2(b) and any other laws that prevent county election officials from providing additional one-stop (“early”) voting days and ordering Defendants to allow county election officials to expand early voting by up to an additional 21 days for the November election.

Plaintiffs filed a brief in support of their Motion on September 4, 2020.

3. Since Plaintiffs moved the Court for preliminary injunctive relief, Plaintiffs and Executive Defendants have engaged in substantial good-faith negotiations regarding a potential settlement of Plaintiffs' claims against Executive Defendants.

4. Following extensive negotiation, the Parties have reached a settlement to fully resolve Plaintiffs' claims, the terms of which are set forth in the proposed Consent Judgment filed concurrently with this Joint Motion.

5. As set forth in the Consent Judgment and in the exhibits thereto, (Numbered Memos 2020-19, 2020-22, and 2020-23), all ballots postmarked by Election Day shall be counted if otherwise eligible and received up to nine days after Election Day, pursuant to Numbered Memo 2020-22. Numbered Memo 2020-19 implements a procedure to cure certain deficiencies with absentee ballots, including missing voter, witness, or assistant signatures and addresses. Finally, Numbered Memo 2020-23 instructs county boards to designate separate absentee ballot drop-off stations at all one-stop early voting locations and county board offices, through which voters and authorized persons may return absentee ballots in person.

6. Plaintiffs and Executive Defendants further agree to each bear their own fees, expenses, and costs with respect to all claims raised by Plaintiffs against the Executive Defendants, and all such claims Plaintiffs allege against the Executive Defendants in this action related to the conduct of the 2020 elections shall be dismissed.

WHEREFORE Plaintiffs and Executive Defendants respectfully request that this Court grant their Joint Motion and enter the proposed Consent Judgment, filed concurrently with this motion, as a full and final resolution of Plaintiffs' claims against Executive Defendants related to the conduct of the 2020 elections.

Dated: September 22, 2020

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## CERTIFICATE OF SERVICE

I certify that I served the foregoing document by email to counsel for defendants, addressed as follows:

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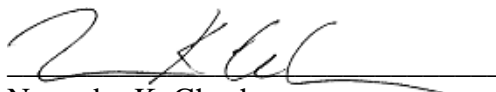
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This the 22nd day of September, 2020.

  
Narendra K. Ghosh

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

NORTH CAROLINA ALLIANCE FOR  
RETIRED AMERICANS; BARKER  
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Carolina House of Representatives,

Intervenor-Defendants.

No. 20-CVS-8881

**STIPULATION AND CONSENT  
JUDGMENT**

Plaintiffs North Carolina Alliance for Retired Americans, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, and Caren Rabinowitz, and Executive Defendants Damon Circosta and the North Carolina State Board of Elections (collectively, “the Consent Parties”) stipulate to the following and request that this Court approve this Consent Judgment. This Stipulation and Consent Judgment encompasses Plaintiffs’ claims, which pertain to elections in 2020 (“2020 elections”) and are premised upon the current public health crisis facing North Carolina caused by the ongoing spread of the novel coronavirus.

**I.**  
**RECITALS**

**WHEREAS** on August 10, 2020, Plaintiffs filed a complaint, and, on August 18, 2020, Plaintiffs filed an amended complaint against Executive Defendants challenging the constitutionality and enforcement, during the 2020 elections, of: (1) North Carolina’s limitations on the number of days and hours of early voting that counties may offer, N.C. Gen. Stat. § 163-227.2(b); (2) its requirement that all absentee ballot envelopes must be signed by a witness during the pandemic, as applied to voters in single-person or single-adult households, Bipartisan Elections Act of 2020, 2020 N.C. Sess. Laws 2020-17, § 1.(a) (“HB 1169”) (the “Witness Requirement”); (3) its failure to provide pre-paid postage for absentee ballots and ballot request forms, N.C. Gen. Stat. § 163-231(b)(1) (the “Postage Requirement”); (4) laws requiring county boards of elections to reject absentee ballots that are postmarked by Election Day but delivered to county boards more than three days after the election, as applied to voters who submit ballots through the United States Postal Service, *id.* § 163-231(b)(2) (the “Receipt Deadline”); (5) the practice in some counties of rejecting absentee ballots for signature defects (the “Signature Matching Procedures”); (6) laws prohibiting voters from receiving assistance from the vast majority of individuals and organizations in completing or submitting their absentee ballot request forms, 2019 N.C. Sess. Laws 2019-239, § 1.3(a) (“SB 683”), (the “Application Assistance Ban”); and (7) laws severely restricting voters’ ability to obtain assistance in delivering their marked and sealed absentee ballots to county boards, and imposing criminal penalties for providing such assistance, N.C. Gen. Stat. § 163-226.3(a)(5) (the “Ballot Delivery Ban”) (collectively, the “Challenged Provisions”);



**WHEREAS** the Complaint seeks to enjoin enforcement of the Challenged Provisions during the 2020 elections due to the ongoing public health crisis caused by the spread of the novel coronavirus (COVID-19);

**WHEREAS** the COVID-19 public health crisis is ongoing, and North Carolina remains under Executive Order 163, which contemplates a phased reopening of North Carolina but strongly recommends social distancing, Exec. Order 163, § 2.2, mandates mask wearing in most business and government settings, *id.* § 3.2, imposes capacity limits in most public-facing business and government settings, *id.*, § 3.2(e), prohibits mass gatherings, *id.* § 7, and states that “[p]eople who are at high risk of severe illness from COVID-19 are very strongly encouraged to stay home and travel only for absolutely essential purposes,” *id.* § 2.1;

**WHEREAS** North Carolina remains under a state of emergency, declared by the Governor, “based on the public health emergency posed by COVID-19,” Exec. Order 116, and under a federal disaster declaration statewide, 85 Fed. Reg. 20701;

**WHEREAS** as of September 19, 2020, North Carolina has had more than 192,248 confirmed COVID-19 cases, with more than 3,235 fatalities;

**WHEREAS** COVID-19 case counts continue to grow across the country, and the director of the Center for Disease Control and Prevention recently warned that the country should brace for “the worst fall from a public health perspective, we’ve ever had”<sup>1</sup>;

**WHEREAS** the Executive Director of the North Carolina State Board of Elections observed that COVID-19 infections in North Carolina are likely to continue into the fall, through at least Election Day;<sup>2</sup>

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<sup>1</sup> *Coronavirus in Context: CDC Director Discusses Next Steps in the War Against COVID*, Interview with John Whyte, WebMD (Aug. 13, 2020), <https://www.webmd.com/coronavirus-in-context/video/robert-redfield>.

**WHEREAS**, on June 22, 2020, the Centers for Disease Control and Prevention (CDC) issued interim guidance to prevent the spread of COVID-19 in election-polling locations.<sup>3</sup> The CDC guidance encourages elections officials to:

- “Encourage voters to stay at least 6 feet apart” from each other by posting signs and providing other visual cues and have plans to manage lines to ensure social distancing can be maintained;
- Increase the number of polling locations available for early voting and extend hours of operation at early voting sites;
- Maintain or increase the total number of polling places available to the public on Election Day to improve the ability to social distance;
- Minimize lines as much as possible, especially in small, indoor spaces;
- “Limit the number of voters in the facility by moving lines outdoors if weather permits or using a ticket system for access to the facility”;
- Offer alternatives to in-person voting;
- Offer alternative voting options that minimize exposure between poll workers and voters;

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<sup>2</sup> N.C. State Bd. of Elections, *Emergency Order, Administering the November 3, 2020 General Election During the Global COVID-19 Pandemic and Public Health Emergency* (July 17, 2020), [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order\\_2020-07-17.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order_2020-07-17.pdf).

<sup>3</sup> *Considerations for Election Polling Locations and Voters: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

**WHEREAS** large crowds at early voting and long lines on Election Day may create public health risks and impose severe burdens on the right to vote, making absentee voting by mail essential to ameliorate these possibilities;

**WHEREAS**, as of September 18, 2020, more than 889,273 absentee ballots had already been requested by North Carolina voters, more than 14 times the number of absentee ballots that had been requested by this time in 2016;

**WHEREAS** the absentee voting period for the 2020 elections began on September 4, 2020, N.C. Gen. Stat. § 163-227.10(a), and, as of September 21, 2020, nearly 1,400 absentee ballots had been flagged for incomplete witness information, according to data from the State Board of Elections<sup>4</sup>;

**WHEREAS**, on August 4, 2020, the United States District Court for the Middle District of North Carolina enjoined the State Board from “the disallowance or rejection . . . of absentee ballots without due process as to those ballots with a material error that is subject to remediation.” *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20-cv-00457-WO-JLW (M.D.N.C. Aug. 4, 2020) (Osteen, J.), ECF 124 at 187. The injunction is to remain in force until the State Board implements a cure process that provides a voter with “notice and an opportunity to be heard before an absentee ballot with a material error subject to remediation is disallowed or rejected.” *Id.*

**WHEREAS** courts in other states have enjoined those states from enforcing witness and notarization requirements, some of which are similar to North Carolina’s Challenged Provisions,

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<sup>4</sup> *North Carolina Early Voting Statistics*, U.S. Elections Project, <https://electproject.github.io/Early-Vote-2020G/NC.html>.

for elections occurring this year during the COVID-19 pandemic. *See, e.g., Common Cause R.I. v. Gorbea*, No. 20-1753, 2020 WL 4579367, at \*2 (1st Cir. Aug. 7, 2020) (denying motion to stay consent judgment suspending “notary or two-witness requirement” for mail ballots and finding that “[t]aking an unusual and in fact unnecessary chance with your life is a heavy burden to bear simply to vote.”), *stay denied sub nom. Republican Nat’l Comm. v. Common Cause*, No. 20A28, 2020 WL 4680151 (U.S. Aug. 13, 2020); *Thomas v. Andino*, No. 3:20-cv-01552-JMC, 2020 WL 2617329, at \*21 (D.S.C. May 25, 2020) (finding “strong likelihood that the burdens placed upon [plaintiffs] by” single-witness signature requirement “outweigh the imprecise, and (as admitted by [defendants]) ineffective, state interests of combating voter fraud and protecting voting integrity”); *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at \*8 (W.D. Va. May 5, 2020) (“In our current era of social distancing—where not just Virginians, but all Americans, have been instructed to maintain a minimum of six feet from those outside their household—the burden [of the witness requirement] is substantial for a substantial and discrete class of Virginia’s electorate. During this pandemic, the witness requirement has become ‘both too restrictive and not restrictive enough to effectively prevent voter fraud.’”); Stipulation and Partial Consent Judgment, *LaRose v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Minn. June 17, 2020) (approving consent judgment to not enforce Witness Requirement and Receipt deadline for primary election); Stipulation and Partial Consent Judgment, *LaRose v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Minn. July 17, 2020) (approving similar consent judgment for November general election);

**WHEREAS** the delivery standards for the Postal Service, even in ordinary times, contemplate at a minimum at least a week for ballots to be processed through the postal system and delivered to election officials<sup>5</sup>;

**WHEREAS** the General Counsel of the Postal Service sent a letter on July 30, 2020 to North Carolina’s Secretary of State warning that, under North Carolina’s “election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standards,” and that “there is a significant risk” that “ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.”<sup>6</sup> In particular, the Postal Service recommended that election officials transmitting communication to voters “allow 1 week for delivery to voters,” and that civilian voters “should generally mail their completed ballots at least one week before the state’s due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials.” *Id.*;

**WHEREAS** mail delivery conditions are already leading to greater delays: since mid-July there have been sharp decreases in the percentage of U.S. Postal Service mail, sent by any method, delivered on time;<sup>7</sup>

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<sup>5</sup> *State and Local Election Mail—User’s Guide*, U.S. Postal Serv. (Jan. 2020), <https://about.usps.com/publications/pub632.pdf>.

<sup>6</sup> Letter to North Carolina Secretary of State from USPS General Counsel, App’x to Compl., ECF No. 1-1 at 53-55, *Commonwealth of Pennsylvania v. DeJoy*, No. 2:20-cv-04096-GAM (E.D. Pa. Aug. 21, 2020).

<sup>7</sup> *Service Performance Measurement PMG Briefing*, U.S. Postal Serv. (Aug. 12, 2020), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing\\_Service%20Performance%20Management\\_08\\_12\\_2020.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf).

**WHEREAS** on August 21, 2020, the State of North Carolina, along with six other states filed a lawsuit challenging the Postal Service’s procedural changes that the State alleges will likely delay election mail even further, creating a “significant risk” that North Carolina voters will be disenfranchised by the State’s relevant deadlines governing absentee ballots;

**WHEREAS** increases in absentee voting, coupled with mail delays, threaten to slow down the process of mailing and returning absentee ballots, and appear likely to impact the 2020 elections;

**WHEREAS** pursuant to N.C. Gen. Stat. § 163-231(b)(2)(c), North Carolina already accepts military and overseas absentee ballots until the end of business on the business day before the canvass which occurs no earlier than the tenth day after the election, *see id.* § 163-182.5(b);

**WHEREAS** for the April 7, 2020 primary election in Wisconsin, the U.S. Supreme Court affirmed the implementation of a postmark rule, whereby ballots postmarked by Election Day could be counted as long as they were received within six days of Election Day, *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020), and other courts have also extended Election Day Receipt Deadlines in light of the current public health crisis. *See Mich. All. for Retired Americans v. Benson*, No. 20-000108-MM (Mich. Ct. Cl. Sept. 18, 2020) (extending ballot receipt deadline for November 2020 election); *Pa. Democratic Party v. Boockvar, K.*, 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020) (extending ballot receipt deadline for the November 2020 election); *New Ga. Project v. Raffensperger*, No. 1:20-cv-01986-ELR (N.D. Ga, Aug. 31, 2020) (granting motion for preliminary injunction in part and extending receipt deadline); *Driscoll v. Stapleton*, No. DV 20-408 (Mont. Dist. Ct. May 22, 2020), *stayed pending appeal* No. DA 20-0295 (preliminarily enjoining Montana’s receipt

deadline and recognizing that enforcing the deadline was likely to disenfranchise thousands of voters); *LaRose v. Simon*, No. 62-CV-20-3149 at \*25 (Minn. Dist. Ct. Aug. 3, 2020) (entering consent judgment extending Minnesota’s receipt deadline);

**WHEREAS** multiple courts have found that the enforcement of various other state election laws during the pandemic violate constitutional rights. *See, e.g., Eshaki v. Whitmer*, 813 F. App’x 170, 173 (6th Cir. 2020) (finding ballot-access provisions unconstitutional as applied during COVID-19 pandemic and upholding part of injunction enjoining state from enforcing the provisions under the present circumstances against plaintiffs and all other candidates); *Garbett v. Herbert*, No. 2:20-CV-245-RJS, 2020 WL 2064101, at \*18 (D. Utah Apr. 29, 2020); *Libertarian Party of Ill. v. Pritzker*, No. 20-cv-2112, 2020 WL 1951687 (N.D. Ill. Apr. 23, 2020) (applying *Anderson-Burdick* in light of pandemic, and alleviating signature and witness requirements for minor party candidates), *aff’d sub nom. Libertarian Party of Ill. v. Cadigan*, No. 20-1961, 2020 WL 5104251 (7th Cir. Aug. 20, 2020); *People Not Politicians Oregon v. Clarno*, 20-cv-1053, 2020 WL 3960440 (D. Or. July 13, 2020); *Cooper v. Raffensperger*, -- F. Supp. 3d --, 20-cv-1312, 2020 WL 3892454 (N.D. Ga. July 9, 2020); *Reclaim Idaho v. Little*, 20-cv-268, 2020 WL 3490216 (D. Idaho June 26, 2020); *Paher v. Cegavske*, -- F. Supp. 3d --, 20-cv-243, 2020 WL 2089813 (D. Nev. Apr. 30, 2020); *Goldstein v. Sec’y of Commonwealth*, 484 Mass. 516, 142 N.E.3d 560 (2020);

**WHEREAS** the State Board of Elections has broad, general supervisory authority over elections as set forth in N.C. Gen. Stat. § 163-22(a). As part of its supervisory authority, the State Board is empowered to “compel observance” by county boards of election laws and procedures as set forth in N.C. Gen. Stat. § 163-22(c).

**WHEREAS** the Executive Director of the State Board, as the chief State elections official, has the authority to issue Emergency Orders pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01.0106, which authorize her to exercise emergency powers to conduct an election where the normal schedule is disrupted. *See, e.g.*, Numbered Memo 2020-14; Numbered Memo 2020-19;

**WHEREAS** the Consent Parties agree that an expeditious resolution of this matter for the 2020 elections, in the manner contemplated by the terms of this Stipulation and Consent Judgment, will limit confusion and increase certainty surrounding the 2020 elections and is in the best interests of the health, safety, and constitutional rights of the citizens of North Carolina, and, therefore, in the public interest;

**WHEREAS** the Executive Defendants believe that continued litigation over the Challenged Provisions will result in the unnecessary expenditure of State resources, and is contrary to the best interests of the State of North Carolina;

**WHEREAS** the Consent Parties wish to avoid uncertainty about the requirements and obligations of voting in the 2020 elections for State Board officials and non-parties including county board officials, staff, and election workers, and the voting public;

**WHEREAS** the Consent Parties, in agreeing to these terms, acting by and through their counsel, have engaged in arms' length negotiations, and the Consent Parties are represented by counsel knowledgeable in this area of the law;

**WHEREAS**, other courts across the country have approved similar consent judgments between parties, *see Common Cause R.I. v. Gorbea*, No. 120CV00318MSMLDA, 2020 WL 4460914 (D.R.I. July 30, 2020) (approving consent judgment to not enforce Witness Requirement in primary and November general elections); Stipulation and Partial Consent



Judgment, *LaRose v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Minn. June 17, 2020) (approving consent judgment to not enforce Witness Requirement and Receipt deadline for primary election); Stipulation and Partial Consent Judgment, *LaRose v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Minn. July 17, 2020) (approving similar consent judgment for November general election); *League of Women Voters of Va.*, 2020 WL 2158249 (approving consent judgment to not enforce Witness Requirement in primary election); *see also Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (denying motion to stay the consent judgment and judgment pending appeal) *stay denied sub nom. Republican Nat'l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151 (U.S. Aug. 13, 2020);

**WHEREAS** the Executive Defendants do not waive any protections offered to them through federal or state law and do not make any representations regarding the merits of Plaintiffs' claims or potential defenses which could be raised in litigation;

**WHEREAS** the Consent Parties agree that the Consent Judgment promotes judicial economy, protects the limited resources of the Consent Parties, and resolves Plaintiffs' claims regarding the 2020 elections against the Executive Branch Defendants;

**WHEREAS** Plaintiffs agree to a waiver to any entitlement to damages and fees, including attorneys' fees, expenses, and costs against the Executive Defendants with respect to any and all claims raised by Plaintiffs in this action relating to the 2020 elections;

**WHEREAS** it is the finding of this Court, made on the pleadings and upon agreement of the Consent Parties, that: (i) the terms of this Consent Judgment constitute a fair and equitable settlement of the issues raised with respect to the 2020 elections, and (ii) the Consent Judgment is intended to and does resolve Plaintiffs' claims;

**NOW, THEREFORE**, upon consent of the Consent Parties, in consideration of the mutual promises and recitals contained in this Stipulation and Consent Judgment, including relinquishment of certain legal rights, the Consent Parties agree as follows:

**II.**  
**JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter of this action pursuant to Article 26 of Chapter 1 of the General Statutes, N.C. Gen. Stat. § 7A-245(a)(2), and N.C. Gen. Stat. § 1-493, and has jurisdiction over the Consent Parties herein. Venue for this action is proper in Wake County Superior Court because the Executive Defendants reside in Wake County. *Id.* § 1-82. The Court shall retain jurisdiction of this Stipulation and Consent Judgment for the duration of the term of this Stipulation and Consent Judgment for purposes of entering all orders and judgments that may be necessary to implement and enforce compliance with the terms provided herein.

**III.**  
**PARTIES**

This Stipulation and Consent Judgment applies to and is binding upon the following parties:

- A. Damon Circosta, in his capacity as Chair of the North Carolina State Board of Elections;
- B. The North Carolina State Board of Elections; and
- C. All Plaintiffs.

**IV.**  
**SCOPE OF CONSENT JUDGMENT**

A. This Stipulation and Consent Judgment constitutes a settlement and resolution of Plaintiffs' claims against Executive Defendants pending in this Lawsuit. Plaintiffs recognize that by signing this Stipulation and Consent Judgment, they are releasing any claims under the North Carolina Constitution that they might have against Executive Defendants with respect to the Challenged Provisions in the 2020 elections. Plaintiffs' release of claims will become final upon the effective date of this Stipulation and Consent Judgment.

B. The Consent Parties to this Stipulation and Consent Judgment acknowledge that this does not resolve or purport to resolve any claims pertaining to the constitutionality or enforcement of the Challenged Provisions for elections held after the 2020 elections.

C. The Consent Parties to this Stipulation and Consent Judgment further acknowledge that by signing this Stipulation and Consent Judgment, the Consent Parties do not release or waive the following: (i) any rights, claims, or defenses that are based on any events that occur after they sign this Stipulation and Consent Judgment, (ii) any claims or defenses that are unrelated to the allegations filed by Plaintiffs in this Lawsuit, and (iii) any right to institute legal action for the purpose of enforcing this Stipulation and Consent Judgment or defenses thereto.

D. By entering this Stipulation and Consent Judgment, Plaintiffs are fully settling a disputed matter between themselves and Executive Defendants. The Consent Parties are entering this Stipulation and Consent Judgment for the purpose of resolving disputed claims, avoiding the burdens and costs associated with the costs of litigating this matter through final judgment, and ensuring both safety and certainty in advance of the 2020 elections. Nothing in this Stipulation and Consent Judgment constitutes an admission by any party of liability or wrongdoing. The Consent Parties acknowledge that a court may seek to consider this Stipulation and Consent

Judgment, including the violations alleged in Plaintiffs' Amended Complaint, in a future proceeding distinct from this Lawsuit.

**V.**

**CONSENT JUDGMENT OBJECTIVES**

In addition to settling the claims of the Consent Parties, the objective of this Stipulation and Consent Judgment is to avoid any continued uncertainty and distraction from the uniform administration of the 2020 elections, protect the limited resources of the Consent Parties, ensure that North Carolina voters can safely and constitutionally exercise the franchise in the 2020 elections, and ensure that election officials have sufficient time to implement any changes for the 2020 elections and educate voters about these changes.

**VI.**

**INJUNCTIVE RELIEF**

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND JUDGED FOR THE REASONS STATED ABOVE THAT:**

A. For the 2020 elections Executive Defendants shall extend the Receipt Deadline for mailed absentee ballots, as set forth in N.C. Gen. Stat. § 163-231(b)(2), to the deadline set forth in paragraph VI.B below and in Numbered Memo 2020-22 (attached as Exhibit A).

B. Pursuant to Numbered Memo 2020-22, an absentee ballot shall be counted as timely in the 2020 elections if it is either (1) received by the county board by 5:00 p.m. on Election Day; or (2) the ballot is postmarked on or before Election Day and received by nine days after the election, which is Thursday, November 12, 2020 at 5:00 p.m. For purposes of this Stipulation and Consent Judgment and as the Numbered Memo requires, a ballot shall be considered postmarked on or before Election Day if it has a postmark affixed to it or if there is information in the Postal Service tracking system (BallotTrax), or another tracking service

offered by the Postal Service or the commercial carrier, indicating that the ballot was in the custody of the Postal Service or a commercial carrier on or before Election Day.

C. For the 2020 elections, Executive Defendants shall institute a process to cure deficiencies that may be cured with a certification from the voter in accordance with the procedures set forth in Numbered Memo 2020-19 (attached as Exhibit B). Curable deficiencies include: no voter signature, misplaced voter signature, no witness or assistant name, no witness or assistant address, no witness or assistant signature, and misplaced witness or assistant signature. If a county board office receives a container-return envelope with such a curable deficiency, it shall contact the voter in writing by mail and, if available, email, within one business day of identifying the deficiency, informing the voter that there is an issue with their absentee ballot and enclosing a cure certification. The written notice shall be sent to the address to which the voter requested their ballot be sent. The cure certification must be received by the county board of elections by no later than 5 p.m. on Thursday, November 12, 2020, the day before county canvass. The cure certification may be submitted to the county board office by fax, email, in person, or by mail or commercial carrier.

D. Pursuant to Numbered Memo 2020-23, (attached as Exhibit C) Executive Defendants shall institute a process for establishing a separate absentee ballot drop-off station at each one-stop early voting location and at county board offices. Such drop-off stations may be located outdoors subject to the conditions set forth in Numbered Memo 2020-23. In addition, when a person returns a ballot in person, the county board intake staffer shall ask the person for their name and whether they are the voter or the voter's near relative or legal guardian. The staffer will indicate this information on a log along with the CIV number of the ballot and the date that it was received. If the person returning the ballot in person indicates that they are not

the voter or the voter's near relative or legal guardian, the county board intake staffer will also require the person to provide their address and phone number.

E. Executive Defendants shall take additional reasonable steps to inform the public of the contents of Numbered Memos 2020-19, -22, -23 and shall encourage all county boards of elections to do the same.

F. Plaintiffs will withdraw their Motion for Preliminary Injunction, filed on August 18, 2020, and will not file any further motions for relief for the 2020 elections based on the claims raised in their Amended Complaint of August 18, 2020.

G. In accordance with the terms of this Stipulation and Consent Judgment, the Consent Parties shall each bear their own fees, expenses, and costs incurred as of the date of this Order with respect to this lawsuit.

H. All remaining claims filed by Plaintiffs against the Executive Defendants related to the conduct of the 2020 elections in this action are hereby dismissed with prejudice. The Court will retain jurisdiction of these claims only as to enforcement of the Stipulation and Consent Judgment.

## **VII.**

### **ENFORCEMENT AND RESERVATION OF REMEDIES**

The parties to this Stipulation and Consent Judgment may request relief from this Court if issues arise concerning the interpretation of this Stipulation and Consent Judgment that cannot be resolved through the process described below. This Court specifically retains continuing jurisdiction over the subject matter hereof and the Consent Parties hereto for the purposes of interpreting, enforcing, or modifying the terms of this Stipulation and Consent Judgment, or for granting any other relief not inconsistent with the terms of this Consent Judgment, until this Consent Judgment is terminated. The Consent Parties may apply to this Court for any orders or

other relief necessary to construe or effectuate this Stipulation and Consent Judgment or seek informal conferences for direction as may be appropriate. The Consent Parties shall attempt to meet and confer regarding any dispute prior to seeking relief from the Court.

If any Party believes that another has not complied with the requirements of this Stipulation and Consent Judgment, it shall notify the other Party of its noncompliance by emailing the Party's counsel. Notice shall be given at least one business day prior to initiating any action or filing any motion with the Court.

The Consent Parties specifically reserve their right to seek recovery of their litigation costs and expenses arising from any violation of this Stipulation and Consent Judgment that requires any Party to file a motion with this Court for enforcement of this Stipulation and Consent Judgment.

## **VIII. GENERAL TERMS**

**A. Voluntary Agreement.** The Consent Parties acknowledge that no person has exerted undue pressure on them to enter into this Stipulation and Consent Judgment. Every Party is voluntarily choosing to enter into this Stipulation and Consent Judgment because of the benefits that are provided under the agreement. The Consent Parties acknowledge that they have read and understand the terms of this Stipulation and Consent Judgment; they have been represented by legal counsel or had the opportunity to obtain legal counsel; and they are voluntarily entering into this Stipulation and Consent Judgment to resolve the dispute among them.

**B. Severability.** The provisions of this Stipulation and Consent Judgment shall be severable, and, should any provisions be declared by a court of competent jurisdiction to be

unenforceable, the remaining provisions of this Stipulation and Consent Judgment shall remain in full force and effect.

**C. Agreement.** This Stipulation and Consent Judgment is binding. The Consent Parties acknowledge that they have been advised that (i) no other Party has a duty to protect their interest or provide them with information about their legal rights, (ii) signing this Stipulation and Consent Judgment may adversely affect their legal rights, and (iii) they should consult an attorney before signing this Stipulation and Consent Judgment if they are uncertain of their rights.

**D. Entire Agreement.** This Stipulation and Consent Judgment constitutes the entire agreement between the Consent Parties relating to the constitutionality and enforcement of the Challenged Provisions as they pertain to the 2020 elections. No Party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Stipulation and Consent Judgment are valid unless they are in writing, identified as an amendment to this Stipulation and Consent Judgment, and signed by all Parties. There are no inducements or representations leading to the execution of this Stipulation and Consent Judgment except as herein explicitly contained.

**E. Warranty.** The persons signing this Stipulation and Consent Judgment warrant that they have full authority to enter this Stipulation and Consent Judgment on behalf of the Party each represents, and that this Stipulation and Consent Judgment is valid and enforceable as to that Party.

**F. Counterparts.** This Stipulation and Consent Judgment may be executed in multiple counterparts, which shall be construed together as if one instrument. Any Party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original.



**G. Effective Date.** This Stipulation and Consent Judgment is effective upon the date it is entered by the Court.

**IX.  
TERMINATION**

This Stipulation and Consent Judgment shall remain in effect through the certification of ballots for the 2020 elections. The Court shall retain jurisdiction to enforce the terms of the Consent Judgment for the duration of this Consent Judgment. This Court's jurisdiction over this Stipulation and Consent Judgment shall automatically terminate after the certification of all ballots for the 2020 elections.

**THE PARTIES ENTER INTO AND APPROVE THIS STIPULATION AND CONSENT JUDGMENT AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED. THE PARTIES HAVE CAUSED THIS STIPULATION AND CONSENT JUDGMENT TO BE SIGNED ON THE DATES OPPOSITE THEIR SIGNATURES.**

**NORTH CAROLINA STATE BOARD OF ELECTIONS; and DAMON CIRCOSTA CHAIR, NORTH CAROLINA STATE BOARD OF ELECTIONS**

Dated: September 22, 2020

By: /s/ Alexander McC. Peters  
Alexander McC. Peters, N.C. Bar No. 13654  
Terrance Steed  
North Carolina Dept. of Justice  
Post Office Box 629  
Raleigh, N.C. 27602  
apeters@ncdoj.gov  
tsteed@ncdoj.gov

**NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS; BARKER FOWLER; BECKY JOHNSON; JADE JUREK; ROSALYN KOCIEMBA; TOM KOCIEMBA; SANDRA MALONE; and CAREN RABINOWITZ**

Dated: September 22, 2020

By: Burton Craige  
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Narendra K. Ghosh, NC Bar No. 37649  
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Molly Mitchell  
PERKINS COIE LLP

**IT IS SO ORDERED. JUDGMENT SHALL BE ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT JUDGMENT.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Superior Court Judge

# EXHIBIT A



# NORTH CAROLINA

---

## STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

### Numbered Memo 2020-22

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** Return Deadline for Mailed Civilian Absentee Ballots in 2020  
**DATE:** September 22, 2020

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The purpose of this numbered memo is to extend the return deadline for postmarked civilian absentee ballots that are returned by mail and to define the term “postmark.” This numbered memo only applies to remaining elections in 2020.

#### Extension of Deadline

Due to current delays with mail sent with the U.S. Postal Service (USPS)—delays which may be exacerbated by the large number of absentee ballots being requested this election—the deadline for receipt of postmarked civilian absentee ballots is hereby extended to nine days after the election only for remaining elections in 2020.

**An absentee ballot shall be counted as timely if it is either (1) received by the county board by 5:00 p.m. on Election Day; or (2) the ballot is postmarked on or before Election Day and received by nine days after the election, which is Thursday, November 12, 2020 at 5:00 p.m.<sup>1</sup>**

#### Postmark Requirement

The postmark requirement for ballots received after Election Day is in place to prohibit a voter from learning the outcome of an election and then casting their ballot. However, the USPS does not always affix a postmark to a ballot return envelope. Because the agency now offers BallotTrax, a service that allows voters and county boards to track the status of a voter’s absentee ballot, it is possible for county boards to determine when a ballot was mailed even if it does not have a postmark. Further, commercial carriers including DHL, FedEx, and UPS offer tracking services that allow voters and the county boards of elections to determine when a ballot was deposited with the commercial carrier for delivery.

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<sup>1</sup> Compare G.S. § 163-231(b)(2)(b) (that a postmarked absentee ballot be received by three days after the election).

**For remaining elections in 2020, a ballot shall be considered postmarked by Election Day if it has a postmark affixed to it or if there is information in BallotTrax, or another tracking service offered by the USPS or a commercial carrier, indicating that the ballot was in the custody of USPS or the commercial carrier on or before Election Day.** If a container-return envelope arrives after Election Day and does not have a postmark, county board staff shall conduct research to determine whether there is information in BallotTrax that indicates the date it was in the custody of the USPS. If the container-return envelope arrives in an outer mailing envelope with a tracking number after Election Day, county board staff shall conduct research with the USPS or commercial carrier to determine the date it was in the custody of USPS or the commercial carrier.

# EXHIBIT B



## Numbered Memo 2020-19

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** Absentee Container-Return Envelope Deficiencies  
**DATE:** August 21, 2020 (revised on September 22, 2020)

---

County boards of elections have already experienced an unprecedented number of voters seeking to vote absentee-by-mail in the 2020 General Election, making statewide uniformity and consistency in reviewing and processing these ballots more essential than ever. County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

This numbered memo directs the procedure county boards must use to address deficiencies in absentee ballots. The purpose of this numbered memo is to ensure that a voter is provided every opportunity to correct certain deficiencies, while at the same time recognizing that processes must be manageable for county boards of elections to timely complete required tasks.<sup>1</sup>

### 1. No Signature Verification

The voter's signature on the envelope shall not be compared with the voter's signature on file because this is not required by North Carolina law. County boards shall accept the voter's signature on the container-return envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

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<sup>1</sup> This numbered memo is issued pursuant to the State Board of Elections' general supervisory authority over elections as set forth in G.S. § 163-22(a) and the authority of the Executive Director in G.S. § 163-26. As part of its supervisory authority, the State Board is empowered to "compel observance" by county boards of election laws and procedures. *Id.*, § 163-22(c).



The law does not require that the voter's signature on the envelope be compared with the voter's signature in their registration record. See also [Numbered Memo 2020-15](#), which explains that signature comparison is not permissible for absentee request forms.

## 2. Types of Deficiencies

Trained county board staff shall review each executed container-return envelope the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review container-return envelopes on each business day, to ensure that voters have every opportunity to correct deficiencies. Review of the container-return envelope for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes.

Deficiencies fall into two main categories: those that can be cured with a certification and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the ballot is issued before Election Day. See Section 3 of this memo, Voter Notification.

### 2.1. Deficiencies Curable with a Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a certification:

- Voter did not sign the Voter Certification
- Voter signed in the wrong place
- Witness or assistant did not print name<sup>2</sup>
- Witness or assistant did not print address<sup>3</sup>
- Witness or assistant did not sign
- Witness or assistant signed on the wrong line

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<sup>2</sup> If the name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the container-return envelope.

<sup>3</sup> Failure to list a witness's ZIP code does not require a cure. G.S. § 163-231(a)(5). A witness or assistant's address does not have to be a residential address; it may be a post office box or other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information also does not invalidate the container-return envelope. For example, if a witness lists "Raleigh 27603" you can determine the state is NC, or if a witness lists "333 North Main Street, 27701" you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the county board shall send the voter the cure certification in accordance with Section 3.

This cure certification process applies to both civilian and UOCAVA voters.

## 2.2. Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification:

- Upon arrival at the county board office, the envelope is unsealed
- The envelope indicates the voter is requesting a replacement ballot

If a county board receives a container-return envelope with one of these deficiencies, county board staff shall spoil the ballot and reissue a ballot along with a notice explaining the county board office's action, in accordance with Section 3.

## 2.3. Deficiencies that require board action

Some deficiencies cannot be resolved by staff and require action by the county board. These include situations where the deficiency is first noticed at a board meeting or if it becomes apparent during a board meeting that no ballot or more than one ballot is in the container-return envelope. If the county board disapproves a container-return envelope by majority vote in a board meeting due to a deficiency, it shall proceed according to the notification process outlined in Section 3.

# 3. Voter Notification

## 3.1. Issuance of a Cure Certification or New Ballot

If there are any deficiencies with the absentee envelope, the county board of elections shall contact the voter in writing within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot and enclosing a cure certification or new ballot, as directed by Section 2. The written notice shall also include information on how to vote in-person during the early voting period and on Election Day.

The written notice shall be sent to the address to which the voter requested their ballot be sent.

If the deficiency can be cured and the voter has an email address on file, the county board shall also send the cure certification to the voter by email. If the county board sends a cure certification by email and by mail, the county board should encourage the voter to only return *one* of the certifications. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has mailed the voter a cure certification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

If, prior to September 22, 2020, a county board reissued a ballot to a voter, and the updated memo now allows the deficiency to be cured by certification, the county board shall contact the voter in writing and by phone or email, if available, to explain that the procedure has changed and that the voter now has the option to submit a cure certification instead of a new ballot. A county board is not required to send a cure certification to a voter who already returned their second ballot if the second ballot is not deficient.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

### 3.2. Receipt of a Cure Certification

The cure certification must be received by the county board of elections by no later than 5 p.m. on Thursday, November 12, 2020, the day before county canvass. The cure certification may be submitted to the county board office by fax, email, in person, or by mail or commercial carrier. If a voter appears in person at the county board office, they may also be given, and can complete, a new cure certification.

The cure certification may only be returned by the voter, the voter's near relative or legal guardian, or a bipartisan assistance team (MAT). A cure certification returned by any other person is invalid. It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot. Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification.

### 3.3 County Board Review of a Cure Certification

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which the cure certification has been returned. The county board shall consider together the executed absentee ballot envelope and the cure certification. If the cure certification contains the voter's name and signature, the county board of elections shall approve the absentee ballot. A wet ink signature is not required, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with a program such as DocuSign.

## 4. Late Absentee Ballots

Voters whose ballots are not counted due to being late shall be mailed a notice stating the reason for the deficiency. A late civilian ballot is one that received after the absentee-ballot receipt deadline, defined in Numbered Memo 2020-22 as (1) 5 p.m. on Election Day or (2) if postmarked on or before Election Day, 5 p.m. on Thursday, November 12, 2020. Late absentee ballots are not curable.

If a ballot is received after county canvass the county board is not required to notify the voter.

COUNTY LETTERHEAD

DATE

NAME

STREET ADDRESS

CITY, STATE, ZIP CODE

RE: Notice of a Problem with Your Absentee Ballot

The [County] Board of Elections received your returned absentee ballot. We were unable to approve the counting of your absentee ballot for the following reason or reasons:

- The absentee return envelope arrived at the county board of elections office unsealed.
- The absentee return envelope did not contain a ballot or contained the ballots of more than one voter.
- Other:  
\_\_\_\_\_

We have reissued a new absentee ballot. Please pay careful attention to ALL of the instructions on the back of the container-return envelope and complete and return your ballot so that your vote may be counted.

If time permits and you decide not to vote this reissued absentee ballot, you may vote in person at an early voting site in the county during the one-stop early voting period (October 15-31), or at the polling place of your proper precinct on Election Day, **November 3**. The hours for voting on Election Day are from **6:30 a.m.** to **7:30 p.m.** To find the hours and locations for in-person voting in your county, visit <http://www.ncsbe.gov>.

Sincerely,

[NAME]

\_\_\_\_\_ County Board of Elections

COUNTY LETTERHEAD

DATE

VOTER'S NAME  
STREET ADDRESS  
CITY, STATE, ZIP CODE  
CIV Number

**Absentee Cure Certification**

**There is a problem with your absentee ballot – please sign and return this form.**

**Instructions**

You are receiving this affidavit because your absentee ballot envelope is missing information. For your absentee ballot to be counted, complete and return this affidavit as soon as possible. **The affidavit must be received by your county board of elections by no later than 5 p.m. on Thursday, November 12, 2020.** You, your near relative or legal guardian, or a multipartisan assistance team (MAT), can return the affidavit by:

- Email (add county email address if not in letterhead) (you can email a picture of the form)
- Fax (add county fax number if not in letterhead)
- Delivering it in person to the county board of elections office
- Mail or commercial carrier (add county mailing address)

**If this affidavit is not returned to the county board of elections by the deadline, your absentee ballot will not count.** If you decide not to return this affidavit, you may still vote in person during the early voting period (October 15-October 31) or on Election Day, November 3, 2020. To find the hours and locations for in-person voting in your county, visit <http://www.ncsbe.gov>.

**READ AND COMPLETE THE FOLLOWING:**

I am submitting this affidavit to correct a problem with missing information on the ballot envelope. I am an eligible voter in this election and registered to vote in [name] County, North Carolina. I solemnly swear or affirm that I voted and returned my absentee ballot for the November 3, 2020 general election and that I have not voted and will not vote more than one ballot in this election. I understand that fraudulently or falsely completing this affidavit is a Class I felony under Chapter 163 of the North Carolina General Statutes.

**(Print name and sign below)**

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**Voter's Printed Name (Required)**

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**Voter's Signature\* (Required)**

\* A wet ink signature is not required, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is in cursive or italics such as is commonly seen with a program such as DocuSign.

# EXHIBIT C



# NORTH CAROLINA STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

## Numbered Memo 2020-23

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** In-Person Return of Absentee Ballots  
**DATE:** September 22, 2020

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Absentee by mail voters may choose to return their ballot by mail or in person. Voters who return their ballot in person may return it to the county board of elections office by 5 p.m. on Election Day or to any one-stop early voting site in the county during the one-stop early voting period. This numbered memo provides guidance and recommendations for the safe, secure, and controlled in-person return of absentee ballots.

### General Information

#### Who May Return a Ballot

A significant portion of voters are choosing to return their absentee ballots in person for this election. Only the voter, or the voter's near relative or legal guardian, is permitted to possess an absentee ballot.<sup>1</sup> A bipartisan assistance team (MAT) or a third party may not take possession of an absentee ballot. **Because of this provision in the law, an absentee ballot may not be left in an unmanned drop box.**

The county board shall ensure that, if they have a drop box, slot, or similar container at their office, the container has a sign indicating that absentee ballots may not be deposited in it.

#### Intake of Container-Return Envelope

As outlined in [Numbered Memo 2020-19](#), trained county board staff review each container-return envelope to determine if there are any deficiencies. Review of the container-return envelope

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<sup>1</sup> It is a class I felony for any person other than the voter's near relative or legal guardian to take possession of an absentee ballot of another voter for delivery or for return to a county board of elections. G.S. § 163-223.6(a)(5).

does not occur at intake. Therefore, the staff member conducting intake should not conduct a review of the container envelope and should accept the ballot. If intake staff receive questions about whether the ballot is acceptable, they shall inform the voter that it will be reviewed at a later time and the voter will be contacted if there are any issues. Intake staff shall accept receipt of all ballots provided to them, even if information is missing or someone other than the voter or their near relative or legal guardian returns the ballot.

It is not recommended that county board staff serve as a witness for a voter while on duty. If a county board determines that it will allow staff to serve as a witness, the staff member who is a witness shall be one who is not involved in the review of absentee ballot envelopes.

### Log Requirement

An administrative rule requires county boards to keep a written log when any person returns an absentee ballot in person.<sup>2</sup> **However, to limit the spread of COVID-19, the written log requirement has been adjusted for remaining elections in 2020.**

When a person returns the ballot in person, the intake staff will ask the person for their name and whether they are the voter or the voter's near relative or legal guardian. The staffer will indicate this information on a log along with the CIV number of the ballot and the date that it was received. If the person indicates they are not the voter or the voter's near relative or legal guardian, the staffer will also require the person to provide their address and phone number.

### Board Consideration of Delivery and Log Requirements

Failure to comply with the logging requirement, or delivery of an absentee ballot by a person other than the voter, the voter's near relative, or the voter's legal guardian, is not sufficient evidence in and of itself to establish that the voter did not lawfully vote their ballot.<sup>3</sup> A county board shall not disapprove an absentee ballot solely because it was delivered by someone who was not authorized

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<sup>2</sup> 08 NCAC 18 .0102 requires that, upon delivery, the person delivering the ballot shall provide the following information in writing: (1) Name of voter; (2) Name of person delivering ballot; (3) Relationship to voter; (4) Phone number (if available) and current address of person delivering ballot; (5) Date and time of delivery of ballot; and (6) Signature or mark of person delivering ballot certifying that the information provided is true and correct and that the person is the voter or the voter's near relative.

<sup>3</sup> *Id.* Compare G.S. § 163-230.2(3), as amended by Section 1.3.(a) of Session Law 2019-239, which states that an absentee request form returned to the county board by someone other than an unauthorized person is invalid.



to possess the ballot. The county board may, however, consider the delivery of a ballot in accordance with the rule, 08 NCAC 18 .0102, in conjunction with other evidence in determining whether the ballot is valid and should be counted.

## **Return at a County Board Office**

A voter may return their absentee ballot to the county board of elections office any time the office is open. A county board must ensure its office is staffed during regular business hours to allow for return of absentee ballots. Even if your office is closed to the public, you must provide staff who are in the office during regular business hours to accept absentee ballots until the end of Election Day. You are not required to accept absentee ballots outside of regular business hours. Similar to procedures at the close of polls on Election Day, if an individual is in line at the time your office closes or at the absentee ballot return deadline (5 p.m. on Election Day), a county board shall accept receipt of the ballot.

If your site has a mail drop or drop box used for other purposes, you must affix a sign stating that voters may not place their ballots in the drop box. However, a county board may not disapprove a ballot solely because it is placed in a drop box.<sup>4</sup>

In determining the setup of your office for in-person return of absentee ballots, you should consider and plan for the following:

- Ensure adequate parking, especially if your county board office will be used as a one-stop site
- Arrange sufficient space for long lines and markings for social distancing
- Provide signage directing voters to the location to return their absentee ballot
- Ensure the security of absentee ballots. Use a locked or securable container for returned absentee ballots that cannot be readily removed by an unauthorized person.
- If your set-up allows the return of ballots outside, plan for the possibility of severe weather. You may need a tent or other covering. Have a plan for how crowd control will occur without the physical barriers of an office and the security of your staff and the balloting materials. For safety reasons, it is not recommended you keep an outside return location open after dark or during inclement weather.

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<sup>4</sup> *Id.*

## **Return at an Early Voting Site**

### **Location to Return Absentee Ballots**

Each early voting site shall have at least one designated, staffed station for the return of absentee ballots. Return of absentee ballots shall occur at that station. The station may be set up exclusively for absentee ballot returns or may provide other services, such as a help desk, provided the absentee ballots can be accounted for and secured separately from other ballots or processes. Similar to accepting absentee ballots at the county board of elections office, you should consider and plan for the following with the setup of an early voting location for in-person return of absentee ballots:

- Have a plan for how crowd control will occur and how voters will be directed to the appropriate location for in-person return of absentee ballots
- Provide signage directing voters and markings for social distancing
- Ensure adequate parking and sufficient space for long lines
- If your set-up allows the return of ballots outside, plan for the possibility of severe weather. You may need a tent or other covering. Have a plan for how crowd control will occur without the physical barriers of an office and the security of your staff and the balloting materials. For safety reasons, ensure that there is adequate lighting as voting hours will continue past dark.

Because absentee ballots must be returned to a designated station, absentee ballots should not be returned in the curbside area.

### **Procedures**

Absentee ballots that are hand-delivered must be placed in a secured container upon receipt, similar to how provisional ballots are securely stored at voting sites. Absentee by mail ballots delivered to an early voting site must be stored separately from all other ballots in a container designated only for absentee by mail ballots. County boards must also conduct regular reconciliation practices between the log and the absentee ballots. County boards are not required by the State to log returned ballots into SOSA; however, a county board may require their one-stop staff to complete SOSA logging.

If a voter brings in an absentee ballot and does not want to vote it, the ballot should be placed in the spoiled-ballot bag. It is recommended that voters who call the county board office and do not want to vote their absentee ballot be encouraged to discard the ballot at home.

## **Return at an Election Site**

An absentee ballot may not be returned at an Election Day polling place. If a voter appears in person with their ballot at a polling place on Election Day, they shall be instructed that they may

(1) take their ballot to the county board office or mail it so it is postmarked that day and received by the deadline; or (2) have the absentee ballot spoiled and vote in-person at their polling place.

If someone other than the voter appears with the ballot, they shall be instructed to take it to the county board office or mail the ballot so it is postmarked the same day. If the person returning the ballot chooses to mail the ballot, they should be encouraged to take it to a post office to ensure the envelope is postmarked. Depositing the ballot in a USPS drop box on Election Day may result in ballot not being postmarked by Election Day and therefore not being counted.

# EXHIBIT 3



# NORTH CAROLINA

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## STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

### Numbered Memo 2020-19

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** Absentee Processes  
**DATE:** August 21, 2020

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As you know—and are preparing for—we are expecting an unprecedented number of voters who will vote absentee-by-mail during the 2020 general election. In light of this, statewide uniformity and consistency in reviewing and processing these ballots will be more essential than ever. County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

This numbered memo directs the procedure county boards must use to address deficiencies in absentee ballots. The purpose of this numbered memo is to ensure that a voter is provided every opportunity to correct certain deficiencies, while at the same time recognizing that processes must be manageable for county boards of elections to timely complete required tasks.<sup>1</sup>

#### 1. No Signature Verification

County boards shall accept the voter's signature on the container-return envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

The law does not require that the voter's signature on the envelope be compared with the voter's signature in their registration record. Verification of the voter's identity is completed through the witness requirement. See also [Numbered Memo 2020-15](#), which explains that signature comparison is not permissible for absentee request forms.

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<sup>1</sup> This numbered memo is issued pursuant to the State Board of Elections' general supervisory authority over elections as set forth in G.S. § 163-22(a) and the authority of the Executive Director in G.S. § 163-26.

## 2. Types of Deficiencies

Trained county board staff shall review each executed container-return envelope the office receives to determine if there are any deficiencies. Review of the container-return envelope for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes.

Deficiencies fall into two main categories: those that can be cured with an affidavit and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot issued if there is time to mail the voter a new ballot that the voter would receive by Election Day. See Section 3 of this memo, Voter Notification.

### 2.1. Deficiencies Curable with an Affidavit (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter an affidavit:

- Voter did not sign the Voter Certification
- Voter signed in the wrong place

The cure affidavit process applies to civilian and UOCAVA voters.

### 2.2. Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by affidavit, because the missing information comes from someone other than the voter:

- Witness or assistant did not print name<sup>2</sup>
- Witness or assistant did not print address<sup>3</sup>
- Witness or assistant did not sign
- Witness or assistant signed on the wrong line
- Upon arrival at the county board office, the envelope is unsealed or appears to have been opened and re-sealed

If a county board receives a container-return envelope with one of these deficiencies, county board staff shall spoil the ballot and reissue a ballot along with a notice explaining the county board office's action, in accordance with this numbered memo.

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<sup>2</sup> If the name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the container-return envelope.

<sup>3</sup> Failure to list a witness's ZIP code does not invalidate the container-return envelope. G.S. § 163-231(a)(5).

### 2.3. Deficiencies that require board action

Some deficiencies cannot be resolved by staff and require action by the county board. These include situations where the deficiency is first noticed at a board meeting or if it becomes apparent during a board meeting that no ballot or more than one ballot is in the container-return envelope. If the county board disapproves a container-return envelope by majority vote in a board meeting, it shall proceed according to the notification process outlined in Section 3.

## 3. Voter Notification

If a county board office receives a container-return envelope with a deficiency, it shall contact the voter in writing within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot and enclosing a cure affidavit or new ballot, as directed by Section 2. The written notice shall also include information on how to vote in-person during the early voting period and on Election Day. The written notice shall be sent to the address to which the voter requested their ballot be sent; however, if the deficiency can be cured and the voter has an email address on file, the county board shall send the cure affidavit to the voter by email. The notice shall also state that, if the voter prefers, they may appear at the county canvass to contest the status of their absentee ballot.

**There is not time to reissue a ballot if it would be mailed the Friday before the election, October 30, 2020, or later.** Within one business day of the determination that the container-return envelope is deficient, the county board shall:

1. Notify the voter by phone or email, if available, to provide information about how to vote in-person at early voting or on Election Day, if the determination is made between the Friday before the election and Election Day (between October 30 and November 3, 2020), and inform the voter about the ability to contest the status of their absentee ballot at county canvass; and
2. Notify the voter by mail. This notification shall inform the voter about the ability to contest the status of their absentee ballot at county canvass.

### Receipt of the Cure Affidavit

The cure affidavit must be received by the county board of elections by no later than 5 p.m. on Thursday, November 12, 2020, the day before county canvass. The cure affidavit may be submitted to the county board office by fax, email, in person, or by mail or commercial carrier. If a voter appears in person at the county board office, they may also be given and fill out a new cure affidavit. The cure affidavit may only be returned by the voter, the voter's near relative or legal guardian, or a bipartisan assistance team (MAT).

A wet ink signature is not required, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with a program such as DocuSign.

## 4. Late Absentee Ballots

Voters whose ballots are not counted due to being late shall be mailed a notice stating the reason for the deficiency and they may appear at the county canvass to contest the status of their absentee ballot.

### 4.1. Civilian Ballots

Civilian absentee ballots must be received by the county board office by 5 p.m. on Election Day, November 3, 2020, or, if postmarked by Election Day, by 5:00 p.m. three days after the election, November 6, 2020.<sup>4</sup> Civilian absentee ballots received after this time are invalid.

### 4.2. UOCAVA Ballots

Ballots from UOCAVA voters must be received by the county board office by 7:30 p.m. on Election Day, November 3, 2020, or submitted for mailing, electronic transmission, or fax by 12:01 a.m. on Election Day, at the place where the voter completes the ballot.<sup>5</sup> If mailed, UOCAVA ballots must be received by the close of the business on the day before county canvass. County canvass is scheduled for November 13, 2020, and therefore the deadline would be November 12, 2020. UOCAVA ballots received after the statutorily required time are invalid.

## 5. Hearing at Canvass

If the voter appears in person at the county canvass to contest the disapproval of their deficient ballot, the county board shall provide the voter with an opportunity to be heard. The county board shall determine by majority vote whether the decision to disapprove the absentee container-return envelope should be reconsidered. The burden shall be on the voter to prove by a preponderance of the evidence that their container-return envelope was properly executed and timely received. The voter cannot “cure” a deficient absentee container-return envelope at the hearing.

## 6. Return of the Ballot

### 6.1. Method of Return

Civilian absentee ballots may be returned:

- In person at the county board office;
- In person at a one-stop early voting site in the voter’s county;
- By mail or commercial carrier.

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<sup>4</sup> G.S. § 163-231(b).

<sup>5</sup> G.S. §§ 163-231(b); 163- 258.10.



An absentee ballot returned to a polling place on Election Day shall not be counted. Precinct officials shall be trained to instruct a voter who brings their ballot to the polling place to instead return it to the county board office or mail it the same day ensuring a postmark is affixed.

## 6.2. Who May Return a Ballot

Only the voter, or the voter's near relative or legal guardian, is permitted to possess an absentee ballot.<sup>6</sup> A bipartisan assistance team (MAT) or a third party may not take possession of an absentee ballot. For this reason, county boards are required by rule to log absentee ballots that are delivered in person to their county board office. The log, which is completed by the person dropping off the ballot, shall include the name of the voter, name of person delivering the ballot, relationship to the voter, phone number and current address of person delivering the ballot, date and time of delivery of the ballot, and signature or mark of the person delivering the ballot certifying that the information is true that that they are the voter or the voter's near relative or legal guardian.<sup>7</sup>

**Because of the requirements about who can deliver a ballot, and because of the logging requirement, an absentee ballot may not be left in an unmanned drop box.** The county board shall ensure that, if they have a drop box, slot, or similar container at their office, the container has a sign indicating that absentee ballots may not be deposited in it.

Failure to comply with the logging requirement, or delivery of an absentee ballot by a person other than the voter, the voter's near relative, or the voter's legal guardian, is not sufficient evidence in and of itself to establish that the voter did not lawfully vote their ballot.<sup>8</sup> A county board shall not disapprove an absentee ballot solely because it was delivered by someone who was not authorized to possess the ballot. The county board may, however, consider the delivery of a ballot in accordance with the rule, 08 NCAC 18 .0102, in conjunction with other evidence in determining whether the container-return envelope has been properly executed.

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<sup>6</sup> It is a class I felony for any person other than the voter's near relative or legal guardian to take possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter. G.S. § 163-223.6(a)(5).

<sup>7</sup> 08 NCAC 18 .0102.

<sup>8</sup> *Id.* Compare G.S. § 163-230.2(3), as amended by Section 1.3.(a) of Session Law 2019-239, which states that an absentee request form returned to the county board by someone other than an unauthorized person is invalid.

## Absentee Board Meetings

Pursuant to Session Law 2020-17, county boards will begin holding their absentee board meetings the fifth Tuesday before the election, rather than the third Tuesday before the election. Because the meetings must be noticed at least 30 days prior to the election, county boards should consider noticing additional meetings in order to plan for the increased volume of absentee ballots that are expected for this election.<sup>9</sup> The meetings may later be cancelled if the county board does not have absentee container-return envelopes to consider at that meeting. Additional guidance will be forthcoming regarding processing the increased volume of absentee ballots at these board meetings.

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<sup>9</sup> G.S. § 163-230.1(f).

## Absentee Cure Affidavit

### Instructions

You are receiving this affidavit because you did not sign the absentee ballot container-return envelope, or because you signed in the wrong place. For your absentee ballot to be counted, complete and return this affidavit as soon as possible. **It must be received by your county board of elections by no later than 5 p.m. on Thursday, November 12, 2020, the day before the county canvass.** You, your near relative or legal guardian, or a multipartisan assistance team (MAT), can return the affidavit by:

- Email
- Fax
- Delivering it in person to the county board of elections office
- Mail or commercial carrier

**If this affidavit is not returned to the county board of elections by the deadline, your absentee ballot will not count. You may still vote in person during the early voting period (October 15-October 31) or on Election Day, November 3, 2020.**

### READ AND COMPLETE THE FOLLOWING:

I am an eligible voter in this election and registered to vote in [name] County, North Carolina. I solemnly swear or affirm that I requested, voted, and returned an absentee ballot for the November 3, 2020 general election and that I have not voted and will not vote more than one ballot in this election. I understand that fraudulently or falsely completing this affidavit is a Class I felony under Chapter 163 of the North Carolina General Statutes.

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Voter's Name

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Voter's Signature

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Voter's Address

# EXHIBIT 4



# NORTH CAROLINA

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## STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255, Raleigh, NC 27611  
(919) 814-0700 or  
(866) 522-4723  
*Fax:* (919) 715-0135

**TO:** Governor Roy Cooper; Speaker Tim Moore; President Pro Tempore Phil Berger; Joint Legislative Elections Oversight Committee; Joint Legislative Oversight Committee on General Government; and House Select Committee on COVID-19, Continuity of State Operations Working Group

**FROM:** Karen Brinson Bell, Executive Director

**RE:** Recommendations to Address Election-Related Issues Affected by COVID-19

**DATE:** March 26, 2020

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The spread of the novel coronavirus (COVID-19) impacts the conduct of elections and daily operations for the State Board of Elections (State Board) and county boards of elections. In response, our agency has taken a number of actions in recent days and weeks to address election-related impacts of the pandemic and inform the public about our efforts. These include:

- An emergency [Executive Order](#) issued on March 20, 2020, that, among other things, rescheduled the Republican second primary in Congressional District 11 from May 12, 2020, to June 23, 2020.
- An amended Administrative Rule 08 NCAC 01 .0106, by both [emergency](#) and proposed [temporary](#) rulemaking, to clarify the Executive Director's statutory authority to exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by a natural disaster, extremely inclement weather, or armed conflict. The amendment clarifies that a catastrophe arising from natural causes includes a disease epidemic or other public health incident that makes it impossible or extremely hazardous for elections officials or voters to reach or otherwise access the voting place or that creates a significant risk of physical harm to persons in the voting place, or that would otherwise convince a reasonable person to avoid traveling to or being in a voting place.
- [Numbered Memo 2020-11](#), released on March 15, 2020, provides guidance on immediate actions that may be taken by authority of the Executive Director and other steps that may be taken by county boards of elections.
- Establishment of a working group of State and county election officials to consider immediate steps that should be taken for the conduct of the federal second primary and also more long-term steps including legislative requests to administer elections in times of disease epidemics, necessary measures if mail balloting were expanded, and efforts that must be taken to ensure the health and well-being of voters and workers during in-person voting.
- A [statement](#) released by the NCSBE on March 12, 2020.

While the State Board will continue to administer elections in the wake of COVID-19 within our current legal authority, the State Board respectfully recommends the General Assembly consider making the following statutory changes to address the impacts of the coronavirus pandemic on our elections. We believe that, in order to ensure continuity and avoid voter confusion, the changes should be made permanent, except where indicated otherwise.

- **Expand options for absentee requests.** We recommend allowing a voter to submit an absentee ballot request form by fax and email. Current law restricts the return of the absentee request form to the voter and the voter's near relative or legal guardian, and restricts the methods by which the requests can be returned to in-person or by mail or designated delivery service. We also recommend a limited exception to G.S. § 163-230.2(e)(2) to allow county boards of elections to pre-fill a voter's information on an absentee request form. The voter or near relative would still be required to sign the form, but this change would allow voters who are home due to COVID-19 to request an absentee request form by phone and have a pre-filled form sent to them rather than having to travel to the county board office to receive assistance.
- **Establish online portal for absentee requests.** The State Board expects a large increase in the number of voters who choose to vote absentee by mail this year, and creating an online portal for absentee voting would make it easier for voters to request an absentee ballot from home. The voter or near relative would provide identifying information (including the voter's date of birth and the last four digits of the voter's Social Security or drivers license number), and an electronic signature as defined in G.S. § 66-312 of the Uniform Electronic Transaction Act would be permitted. An allocation of funds to purchase a program or application to support this functionality may be needed.
- **Allow a voter to include a copy of a HAVA document with their absentee request form if the voter is unable to provide their drivers license number or last four digits of their Social Security number.** We recommend allowing a voter who did not include their drivers license number or the last four digits of their Social Security number the option to include a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the voter. Making this change to G.S. § 163-230.2 would make it easier for those who wish to vote absentee by-mail to do so. The State Board has received multiple reports from county boards of elections and from voters that, without this option, some voters are no longer able to request an absentee ballot. This particularly affects senior citizens who may not have a drivers license number and cannot recall or do not have access to their Social Security number. Allowing this option will make it easier for those most at risk of contracting COVID-19 to vote absentee by mail.
- **Establish a fund to pay for postage for returned absentee ballots.** Elections officials across the nation are anticipating a surge in absentee voting in light of

restrictions on movement imposed due to the spread of COVID-19. Prepaid postage would increase the likelihood that a voter would return their ballot, would eliminate the need for a voter to leave their home to purchase postage, and would also decrease any incentive for a voter to turn their ballot over to someone else. Prepaid postage for the return of absentee ballots would also further enable residents and patients of facilities such as nursing homes and group homes to return their ballots safely, easily, and with minimal human contact.

- **Reduce or eliminate the witness requirement.** In light of social distancing requirements to prevent the spread of COVID-19, we recommend reducing the witness requirement for the certification on absentee container-return envelopes. Currently, a voter must have their absentee envelope signed by two witnesses or one notary. North Carolina residents are currently being asked to stay at home, and without a timeline for when the disease will be under control, requiring only one witness would reduce the likelihood that a voter would have to go out into the community or invite someone to their home to have their ballot witnessed. Eliminating the witness requirement altogether is another option and would further reduce the risk.
- **Modify procedure for counting of ballots on Election Day.** To allow county boards of elections more time to process the anticipated surge in absentee ballots, we recommend amending the law to provide that ballots received by the Saturday prior to the election must be counted on Election Day, and all other absentee ballots that are timely received will be counted on the day of the canvass. Currently, G.S. § 163-234(2) requires county boards to meet on Election Day to count all absentee ballots received by 5:00 p.m. on the day before the election. Changing the timeframe for when absentee ballots are counted would help ease the burden of an increased volume of absentee ballots, especially in larger counties. This change would not affect the deadline for the county boards to receive absentee ballots, nor would it affect which ballots are counted; rather, it would ameliorate the anticipated increase in absentee ballots received by county boards between the Saturday before the election and 5:00 p.m. on the day before the election. As part of this change, we also recommend extending county canvass to 14 days after the election, rather than 10 days after the election as provided in G.S. § 163-182.5(b), to allow county boards of elections sufficient time to count the large number of ballots that are anticipated being received; State Board canvass would also need to be extended accordingly.
- **Temporarily modify restrictions on assistance in care facilities.** Currently, G.S. § 163-226.3(a)(4) makes it a Class I felony for an owner, director, manager, or employee of a hospital, clinic, nursing home, or adult care home to assist a voter in that facility in requesting, voting, or returning the voter's absentee ballot. There are important reasons to discourage facility employees from assisting patients and residents with their absentee requests and with voting their ballots. However, many localities are currently restricting or banning visitors to facilities, and an [Executive Order](#) issued by the Governor prevents visitors altogether to reduce the spread of COVID-19. With this in mind, it may not be possible for

multipartisan assistance teams (MATs), or others who would traditionally assist facility residents, to provide assistance. Individuals may also be unwilling to serve on MATs due to the increased risk of transmission of COVID-19 at a facility. Many voters in these facilities do require help with requesting, voting, and/or returning their ballots, and with no option available for assistance they may effectively be disenfranchised. We suggest considering options, such as temporarily allowing a facility employee to assist, to ensure these voters are able to continue to exercise their right to vote.

- **Clarify authorization for telephonic meetings.** It would be helpful to clarify that telephonic meetings and meetings held by other remote means are specifically authorized by the open meetings law. State Board counsel construe Article 33C of Chapter 143 to permit telephonic and other remotely held meetings. However, the UNC School of Government has a [different interpretation](#) of the law based on its stated familiarity with the law's history.
- **Expand student pollworker program.** We are recommending expanding the student pollworker program to allow students to fill the role of judge or chief judge, to allow juniors or seniors to serve as long as they are at least 16 years old, and to allow service as a pollworker to count as an approved school trip. Chief judges and judges would still be appointed from recommendations provided by the political parties. Currently, G.S. § 163-42.1 requires students be at least 17 years old and only allows them to serve in the role of precinct assistant. It also requires the principal of the student's school to recommend the student; we suggest this section include an exception to that requirement if the school is closed. These changes would increase the county boards of elections' recruitment of students, who tend to be less at risk of COVID-19. The changes will be especially necessary if large numbers of pollworkers are unable to serve. The average age of pollworkers in North Carolina is around 70 and the role requires significant interaction with the public, so we anticipate that pollworkers in at-risk categories may be advised not to serve or may be unable to serve this year.
- **Make Election Day a holiday.** Designating Election Day as a State holiday would expand the potential pool of pollworkers to students, teachers, and younger individuals. It would also encourage state and county employees to work the polls. These groups tend to be in a lower-risk category for COVID-19 and therefore would be an asset given current concerns. An alternative option would be to provide paid leave for state and county employees who serve as pollworkers and providing course credit for student pollworkers.
- **Increase pay for pollworkers.** Precinct officials safeguard the democratic process and help ensure confidence in the system. Increasing pay for pollworkers will help county boards of elections recruit and retain a strong elections workforce this year and for years to come. Current pay for precinct officials is the state minimum wage, \$7.25 per hour. G.S. § 163-46. On Election Day, pollworkers must serve for the entire day without leaving the site—a shift of more than 14 hours. The minimum wage requirement was put in place in 1981 (see Session



Law 1981-796). Ensuring that pollworkers' unemployment benefits are not affected by their service is another way to increase recruitment efforts.

- **Eliminate requirement that a majority of pollworkers reside in precinct.** Eliminating the requirement in G.S. § 163-41(c) that a majority of pollworkers at a polling place must reside in the precinct would provide county boards of elections with greater flexibility to staff their precincts. It would increase the likelihood a county board of elections would be able to keep a polling place open rather than having to combine it with another polling place to meet the residency requirement.
- **Temporarily suspend purchase and contract requirements for elections-related supplies and other items.** To allow the State Board and county boards to continue operating in a time when many business and government entities have reduced capacity or have closed, temporarily lifting the purchase and contract requirements of Article 3 of Chapter 143 in 2020 would significantly speed up the ability to procure necessary supplies.
- **Match HAVA funds.** In order to receive federal elections security funds that were authorized in late 2019, the State must make a 20% match. This funding will be indispensable in our agency's continued effort to secure North Carolina's elections. This is true even more so as we react and respond to the pandemic, since times of crisis and uncertainty increase the threats of cyber attacks, phishing attempts, and scams. Federal authorities have also indicated these funds may be used for COVID-19 response efforts such as cleaning supplies and protective masks for staff and pollworkers, resources to meet an unanticipated increased demand for mail ballots due to self-isolation and quarantine in response to COVID-19, and temporary staff to process the increased absentee ballot demand. Funds may also be used for costs incurred to communicate law changes, such as changes in absentee-by-mail ballot rules, that could result from the pandemic. Exempting HAVA-funded positions at the State Board from a possible hiring freeze would also be important to ensuring the agency is able to continue to secure the statewide voter registration database and many other duties to protect North Carolina's elections from cyber threats.
- **One-Stop.** Consider whether changes to one-stop requirements, such as site and hour requirements, may be needed in light of the uncertainty regarding containment of the COVID-19 pandemic by the early voting period in October 2020. Currently, if any one-stop site is open all one stop-sites must be open and all sites other than the county board office must be open 8:00 a.m. to 7:30 p.m. County boards of elections need flexibility to determine hours because they are affected differently by, and respond differently to, the COVID-19 pandemic.

While the situation with COVID-19 is changing on a daily and sometimes hourly basis, we believe the above recommendations will help the elections that form the basis of North Carolina's democracy remain strong and resilient in these uncertain times.

We are appreciative of the appointment of the House Select Committee on COVID-19, Continuity of State Operations Working Group, and I stand ready to answer your questions or provide any other information that may be useful in consideration of these recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Brinson Bell".

Karen Brinson Bell  
Executive Director  
State Board of Elections

# EXHIBIT 5

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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRACY NORTH CAROLINA, ) Greensboro, North Carolina  
THE LEAGUE OF WOMEN VOTERS ) July 21, 2020  
OF NORTH CAROLINA, ) 9:05 a.m.  
DONNA PERMAR, JOHN P. CLARK, )  
MARGARET B. CATES, )  
LELIA BENTLEY, REGINA WHITNEY )  
EDWARDS, ROBERT K. PRIDDY II, ) File No. 1:20CV457  
SUSAN SCHAFFER, and )  
WALTER HUTCHINS, )

Plaintiffs,  
v.

THE NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, DAMON CIRCOSTA, in his )  
official capacity as CHAIR OF THE )  
STATE BOARD OF ELECTIONS, STELLA )  
ANDERSON, in her official )  
capacity as SECRETARY OF THE )  
STATE BOARD OF ELECTIONS, KEN )  
RAYMOND, in his official capacity )  
as MEMBER OF THE STATE BOARD OF )  
ELECTIONS, JEFF CARMON III, in )  
his official capacity as MEMBER )  
OF THE STATE BOARD OF ELECTIONS, )  
DAVID C. BLACK, in his official )  
capacity as MEMBER OF THE STATE )  
BOARD OF ELECTIONS, KAREN BRINSON )  
BELL, in her official capacity as )  
EXECUTIVE DIRECTOR OF THE STATE )  
BOARD OF ELECTIONS, THE NORTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION, J. ERIC BOYETTE, )  
in his official capacity as )  
TRANSPORTATION SECRETARY, )  
THE NORTH CAROLINA DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )  
and MANDY COHEN, in her official )  
capacity as SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )

Defendants.

and

TRANSCRIPT OF  
EVIDENTIARY HEARING  
Volume 2 of 3  
  
BEFORE THE HONORABLE  
**WILLIAM L. OSTEEN, JR.**  
U.S. DISTRICT JUDGE

COURT REPORTER:  
Joseph B. Armstrong, FCRR  
324 W. Market, Room 101  
Greensboro, NC 27401

1 PHILIP E. BERGER, in his )  
 official capacity as )  
 2 PRESIDENT PRO TEMPORE OF THE )  
 NORTH CAROLINA SENATE, and )  
 3 TIMOTHY K. MOORE, in his )  
 official capacity as SPEAKER )  
 4 OF THE NORTH CAROLINA HOUSE )  
 OF REPRESENTATIVES, )  
 5 )  
 Defendant-Intervenors. )  
 6 )

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7  
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I N D E X

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P R O C E E D I N G S

(At 9:05 a.m., proceedings commenced.)

**THE COURT:** Is Ms. Bell an attorney?

**MR. PETERS:** She is not, Your Honor.

**THE COURT:** She's still going to have to sign one of those forms.

**MR. PETERS:** We have alerted her to that, and I think she was going to print it off and bring it signed and everything, so I think we're straight on that.

**THE COURT:** Sounds good.

**MR. PETERS:** Thank you so much.

**THE COURT:** All right. Everyone is back, and we're ready to continue this proceeding. So where were we? We were getting ready for Mr. Peters's cross-examination of Mr. Bartlett. Ms. Klein, you can start playing when you're ready.

**MS. KLEIN:** Yes. Thank you, Your Honor. I'm sorry, Your Honor. I realize that I'm a little bit off with the timestamp, so we might hear a little bit of testimony that was heard yesterday. I apologize for that.

**THE COURT:** That's all right.

(At 9:07 a.m., video testimony continued.)

(At 9:22 a.m. video testimony concluded).

**MS. MOSS:** Your Honor, I would just like to make clear, early on, I had an objection to Mr. Bartlett offering an

1 opinion related to the uniform hours requirements following --

2           **THE COURT:** The MATS addition, and since we were  
3 getting toward the end, is there -- I understand the basis of  
4 the opinion, and -- I mean the objection. I think it's the  
5 same for both. Is there anything you want to add to that  
6 objection?

7           **MS. MOSS:** The only thing I would say is Ms. Klein  
8 suggests that it only goes to weight. I certainly agree it  
9 establishes that no weight should be given to these opinions.  
10 I think it also goes to whether the opinion should be allowed  
11 in the first instance.

12           It would be the equivalent of a doctor who, you know,  
13 may be qualified by their medical licensure to offer an  
14 opinion; but if they haven't examined the records of the  
15 patient, if they haven't reviewed anything to bring them  
16 up-to-date on the current situation, they haven't spoken to  
17 anybody, then they're just offering opinions that have no  
18 basis. And the point of opinion testimony is that it is an  
19 expert who has brought his expertise to bear, and Mr. Bartlett  
20 has not established that he has that expertise with respect to  
21 either uniform hours or his speculations about how the MATS  
22 would function given that he did no research and admits that he  
23 has no personal knowledge about that situation or how they're  
24 going to be ruled out or anything else related to that.

25           **THE COURT:** All right.



1           **MS. MOSS:** So that's --

2           **THE COURT:** Anything you want to add?

3           **MS. KLEIN:** I do, Your Honor, and I'll be brief. I  
4 won't repeat myself from yesterday. But as far as the uniform  
5 hours, it's very relevant, you know, what impacts flexibility  
6 had on county boards of election when they have flexibility in  
7 hours. That is directly relevant to how -- what county boards  
8 will do if given that flexibility again. So, you know, that's  
9 the patient.

10           **THE COURT:** So your question to Mr. Bartlett was the  
11 downtime has expenses, labor, and that's -- labor is the single  
12 largest expense. You then asked Mr. Bartlett if they didn't  
13 have that labor expense associated with downtime as a result of  
14 uniform hours, would that then allow the county boards to have  
15 more polling places? I mean, how does he say that, just out of  
16 curiosity?

17           **MS. KLEIN:** I think it's -- I mean --

18           **THE COURT:** Isn't that -- let me ask it more  
19 specifically. Isn't that a function of how much money would be  
20 saved, how much money it would cost to have additional polling  
21 places, and what decision the county board of elections made  
22 with respect to any savings from flexibility?

23           **MS. KLEIN:** I think the opinion and the principle  
24 that he is speaking to, Your Honor, is a lot more basic than  
25 that. It's just the connection between -- the point is that

1 when counties manage their budgets, they have limited  
2 resources. The uniform hours requirement require them to spend  
3 money during downtime when voters in a particular area are not  
4 likely to be able to come, right, because of work schedules or  
5 geographically specific schedules and then that drain on  
6 resources naturally prevents counties from spending their  
7 resources on other things, one of which is offering other  
8 voting sites.

9           **THE COURT:** So what is his expertise that allows him  
10 to say if the county has more money available, then they might  
11 spend it on polling places? They might spend it on salaries  
12 for the election board members. They might -- I mean, what  
13 expertise does he bring to the table to suggest the correlation  
14 between any potential sales, whatever that number might be, a  
15 hundred bucks, a thousand dollars, ten thousand dollars,  
16 whatever that number might be in polling places?

17           **MS. KLEIN:** His expertise comes from having oversight  
18 over early voting plans, reviewing early voting plans in five  
19 presidential elections, having the post hoc meetings with  
20 county boards taking the surveys. He has oversight -- we  
21 established this more on the direct, but he had oversight and a  
22 common view, right, of -- an overall view that I don't think  
23 anybody else in this case --

24           **THE COURT:** I mean, I have a common view. We all in  
25 this room, anybody who wants to pick up the documents,

1 understands the budget process. What makes his expertise any  
2 more valuable on the question of how might extra money be spent  
3 on a budget than any person sitting in here who's a voter?

4 **MS. KLEIN:** Because he reviewed -- specifically,  
5 during his time, he reviewed county board of elections' early  
6 voting plans and saw how they managed their budgets together,  
7 which I -- you know, nobody else that I'm aware of has reviewed  
8 that for five --

9 **THE COURT:** Did he ever participate in the budget  
10 process? Does he have any idea how much money might be saved  
11 if the uniform voting hours plan is not in effect? Any idea at  
12 all?

13 **MS. KLEIN:** Again, he's providing a qualitative  
14 analysis on how -- what he observed how county boards are using  
15 the resources that they have.

16 I would also note that early voting plans are still  
17 in process here, like that that data -- that specific data is  
18 not yet available, and, therefore, his overview and opinion of  
19 how county boards allocate resources is relevant and useful to  
20 the Court. And it is a qualitative opinion. It's not  
21 quantitative. We plan to elicit testimony the Court will hear  
22 that's more of a quantitative analysis, but his --

23 **THE COURT:** The expert opinion doesn't have to be a  
24 quantitative analysis, not in the least, but there still has to  
25 be some basis within the expertise to offer the opinion. In

1 terms of management of elections, he certainly has that  
2 expertise.

3           It seems to me in terms of his own budget, the budget  
4 that the North Carolina Legislature from what, '93 to 2013, 20  
5 years, I'm assuming he had participated in that process because  
6 he talks about the honorables down in Raleigh, and he talks  
7 about how money is spent, but I don't hear him saying -- and  
8 he's clearly familiar with county commissions. But in terms of  
9 the budget process and whether any excess money, whatever  
10 amount that might be, that might be generated from any savings  
11 from abandoning the uniform hours process, I mean, they're  
12 expenditures, and the honorables who sit within the county  
13 commissions and within the local boards of election are the  
14 ones who get to make the decision -- it seems to me, maybe I'm  
15 wrong about this -- in terms of how money is spent.

16           And for him to say if this, then that will occur, if  
17 savings, then more polling places, I just -- in the absence of  
18 some information as to how he reaches that conclusion, the  
19 amounts of saving, the cost of additional polling places, why  
20 county boards might be incentivized in some fashion to create  
21 these polling places, how that county board budget -- how those  
22 decisions are made, anything -- some basis to say here's why  
23 I'm an expert.

24           But having said those things, I hear your response in  
25 terms of this is a quantitative thing. As I've done before,

1 I'm going to take it under advisement. I'll make a  
2 determination of whether I think it's admissible in terms of  
3 his particular expertise; and then, if so, how much weight to  
4 apply to that particular testimony. So I'll takes it under  
5 advisement.

6 **MS. KLEIN:** Thank you. May I address MATS very  
7 briefly?

8 **THE COURT:** The what?

9 **MS. KLEIN:** The Multi --

10 **THE COURT:** Yes.

11 **MS. KLEIN:** I just want to highlight for the Court  
12 that his experience with MAT teams during his service is  
13 relevant and useful to the Court's analysis because this would  
14 be a very different situation if Mr. Bartlett were to come and  
15 say we have robust, long-standing MATS, never had any issues,  
16 no disparities in any county, and that's been a long-standing  
17 tradition in North Carolina. And it's very relevant to the  
18 Court's analysis that that is absolutely not the case, and that  
19 that's his observations.

20 So, again, consistent with uniform hours, even if  
21 that one isolated opinion, you know, the Court, you know,  
22 decides whether or not to assign expert weight to that one  
23 isolated opinion, all of the testimony that Mr. Bartlett in his  
24 declarations and in the video gave regarding his experience  
25 with those and his experience overseeing the flexibility of --

1 when the uniform hours requirement was not in effect, the  
2 underlying information, I believe, is very relevant to the  
3 Court's analysis, and I hope that the Court would take that  
4 into consideration, notwithstanding any weight assigned to the  
5 final opinion.

6 **THE COURT:** I will.

7 **MS. KLEIN:** Thank you.

8 **THE COURT:** You may continue.

9 **MS. KLEIN:** Your Honor, Plaintiffs call by video  
10 testimony Professor Paul Gronke.

11 **MS. RIGGS:** Your Honor, may I approach with the  
12 transcript?

13 **THE COURT:** You may. Thank you. You may proceed.

14 (At 9:34 a.m, video testimony begins.)

15 **THE COURT:** Can you pause it just a second. Let me  
16 ask. Is anybody using the big television screen? The way I'm  
17 set up, it's easier for me to look at that than this one, and I  
18 think the picture is little better. I'm going to turn it a  
19 little if nobody is using it. All right. You can continue  
20 playing.

21 (At 9:35 a.m, video testimony continued.)

22 (At 9:46 a.m., video testimony paused.)

23 **THE COURT:** You want to address this?

24 **MR. PATTERSON:** Yes, Your Honor. This has to do, I  
25 think you'll recall, with Dr. Gronke's reply declaration

1 addressing in-county poll worker requirement that is now the  
2 rule after HB11769, we would object to that, and you had  
3 indicated that you were going to strike those portions of his  
4 declarations from the record. My understanding was that then  
5 he could not come and give testimony and speak on this issue,  
6 and it will be sharpened a little on the redirect, I believe.  
7 In the answer I believe he gives here, he speaks more in  
8 generalities about the effects of poll worker shortages and  
9 things of that nature. I don't have an objection to that. But  
10 the objection is to any specific commentary on the in-county  
11 poll worker requirement. He could have put in a new  
12 declaration when Plaintiffs submitted their amended preliminary  
13 injunction motion to address those if you wish to address those  
14 topics.

15 **THE COURT:** Ms. Klein?

16 **MS. KLEIN:** Thank you, Your Honor. First of all, I  
17 would note there's no objection to any discussion of Georgia  
18 and what happened in the Georgia election, so I think that that  
19 stays in regardless.

20 As far as this county versus -- I'm so sorry. I keep  
21 on forgetting to take off my mask. I'm sorry, Your Honor.

22 So the Georgia election information, I believe, stays  
23 in, and he discusses -- he discusses that, and other witnesses  
24 will discuss those as well.

25 Additionally, Your Honor, as far as the county

1 requirement or precinct requirement, these are two sides of the  
2 same coin. The underlying issue is a restriction on who can  
3 serve as a poll worker, and the original relief requested was  
4 to lift that requirement entirely, and the -- what he discussed  
5 in his original declaration was about poll worker shortages,  
6 generally --

7 **THE COURT:** Which related specifically to the  
8 requirement that poll workers come from the precinct, right?

9 **MS. KLEIN:** Yes, Your Honor.

10 **THE COURT:** And 1169 changed that.

11 **MS. KLEIN:** It did, Your Honor, but --

12 **THE COURT:** It allowed poll workers to come from the  
13 county, and he did not submit a new declaration addressing that  
14 particular issue. Right?

15 **MS. KLEIN:** He did not. It was included --

16 **THE COURT:** And his declaration didn't provide any  
17 context to his opinion about the requirement that the poll  
18 workers come from the precinct. It just said that requirement  
19 needs to be lifted. Otherwise, you're going to have a problem  
20 with poll workers, right?

21 **MS. KLEIN:** Yes, Your Honor, and --

22 **THE COURT:** And that requirement was lifted rendering  
23 his opinion moot, didn't it?

24 **MS. KLEIN:** No, Your Honor --

25 **THE COURT:** It has no effect in the case.



1           **MS. KLEIN:** I would contend that it was modified, not  
2 lifted, right? It's the --

3           **THE COURT:** Okay. We'll go with "modified" then. It  
4 was modified to again critique the change in the law that had  
5 taken place addressing his opinion in the first instance. He  
6 didn't say anything in his original declaration about, oh, you  
7 know, countywide won't be sufficient or statewide won't be  
8 sufficient or countrywide won't be sufficient. He just said in  
9 his original declaration that that precinct -- the requirement  
10 that the poll workers come from the precinct needs to be  
11 lifted. He didn't say how much or by what. And then he came  
12 back in the reply affidavit and said it -- countywide won't  
13 work. I mean, so what will exactly?

14           **MS. KLEIN:** I would say two things to that. The  
15 underlying evaluations he has about poll worker shortages and  
16 that there will be poll worker shortages, that remains, I  
17 believe, admissible and relevant to the Court's opinion -- or  
18 to the Court's consideration rather, generally.

19           The second -- the second thing I would say is that,  
20 again, referring back to Federal Rule of Civil Procedure 57 --

21           **THE COURT:** Let me refer you back to something. In  
22 the consented-to motion where the parties agree that a modified  
23 preliminary injunction motion would be filed, in that  
24 particular motion the parties agreed to a briefing schedule,  
25 and the Plaintiffs represented then that they would stand on

1 the original brief and the original affidavits, right?

2 **MS. KLEIN:** Yes, Your Honor.

3 **THE COURT:** And they didn't say anything in that  
4 about filing affidavits in support of the reply, only that they  
5 would address the changes in the reply. Right?

6 **MS. KLEIN:** Yes, Your Honor, that we would address  
7 within the scope of the reply. And we -- and just to be clear,  
8 we respect the Court's opinion and accepted the Court's opinion  
9 to strike those from his declaration. What I'm referring to  
10 here is the testimony, and here I would contend --

11 **THE COURT:** What notice did they have in this process  
12 that this particular witness would come in and say a  
13 requirement that poll workers have to come from the county, or  
14 can come from the county, would so severely restrict the  
15 ability to recruit poll workers that they couldn't get enough?  
16 What notice did anybody have of that?

17 **MS. KLEIN:** They had notice in the second amended  
18 complaint when those allegations were added in the amended  
19 motion --

20 **THE COURT:** In the affidavits. In the affidavits.

21 **MS. KLEIN:** And in the affidavits, they had notice  
22 because he talked about poll worker shortage --

23 **THE COURT:** As it related to the precinct  
24 requirement, right?

25 **MS. KLEIN:** As it related --

1           **THE COURT:** -- specifically.

2           **MS. KLEIN:** -- to the precinct requirement, which is,  
3 again, you know, this two sides of the same coin --

4           **THE COURT:** They are not two -- we're talking about  
5 something different, and here's why we're talking about  
6 something different. It's not two sides of the same coin.  
7 It's an expert opinion that changes only after all the  
8 responses have been filed. I mean, the point -- the whole  
9 point of filing affidavits in support of the motion is to give  
10 the other side notice of what's coming so they can prepare to  
11 respond, and this changed. There's no doubt in my mind it  
12 changed. Is there any doubt in your mind that it changed?

13           **MS. KLEIN:** It was modified certainly. I would agree  
14 with that, Your Honor.

15           **THE COURT:** And so they then -- there's a couple of  
16 things they could do in response. Let me explain it real  
17 carefully. So they can sit on the affidavit and go, you know  
18 what? This opinion is irrelevant because the requirement is  
19 county, not precinct. So that would be a fair response. Do  
20 you agree with that?

21           **MS. KLEIN:** I would say the unique --

22           **THE COURT:** No, do you agree with that? Would that  
23 be a fair response on their part?

24           **MS. KLEIN:** I don't agree because of the unique  
25 circumstances of this matter, the fact that depositions were

1 taken. So they had notice --

2 **THE COURT:** Those unique circumstances do not excuse  
3 not filing your expert's opinion at the start, but modifying it  
4 in the reply, in my mind.

5 **MS. KLEIN:** Okay. I understand that, Your Honor. I  
6 would just point out to the Court that he was examined on this  
7 in his deposition. He was examined thoroughly on the --

8 **THE COURT:** All right. So what witness can they call  
9 at this particular juncture? Let's go back to last week when  
10 we were lining up all this discovery. Which of their witnesses  
11 can they call in response to Gronke's opinion that countywide  
12 requirement is insufficient to allow recruitment of poll  
13 workers?

14 **MS. KLEIN:** Well, they've had the opportunity, Your  
15 Honor, to cross-examine him in a deposition and --

16 **THE COURT:** No, what witness would they call in  
17 response to that opinion?

18 **MS. KLEIN:** If I'm recalling correctly, their witness  
19 Callahan perhaps talked about --

20 **THE COURT:** Did he put in his opinion about  
21 countywide?

22 **MS. KLEIN:** I would have to look back at the specific  
23 record, but I'm not -- I'm not certain that no one -- no  
24 witness would be able to talk about this. So I'm not  
25 certain -- I would have to look back at the record to answer

1 that question, Your Honor.

2           **THE COURT:** Do you understand how if an expert  
3 witness offers an opinion, the other side responds, makes  
4 decisions about how to respond in light of the expert's  
5 opinion, and the expert's opinion is different from what the  
6 facts are --

7           **MS. KLEIN:** I understand --

8           **THE COURT:** -- then that leads people to do things in  
9 reliance on what the opinion is. And if you come back in a  
10 reply and withdraw the first opinion and put a new opinion in,  
11 everything's changed for the parties responding.

12           **MS. KLEIN:** I understand, and I do appreciate that,  
13 Your Honor. I would just point out a couple of things. He --  
14 it's not as if he never talked about anything related to poll  
15 worker shortages at all. He did talk about poll worker  
16 shortages generally, and so this is more of a supplement.

17           The second thing I would say is that here they have  
18 had -- they did have some sort of notice in the amended  
19 complaint, they had notice in the amended PI motion, and then  
20 they also had the opportunity to depose before the --

21           **THE COURT:** What notice did they have that this  
22 witness would modify his opinion to expand it to say that a  
23 countywide requirement was not sufficient to permit recruitment  
24 of poll workers? What notice?

25           **MS. KLEIN:** The fact that he talked about the poll

1 worker requirement at the beginning, and they came back with a  
2 response saying that it was completely alleviated by the county  
3 requirement and his reply was responsive to that.

4 But I again want to reiterate that we accept that the  
5 Court has struck those from his declaration, and I'm not  
6 arguing for those. What I'm --

7 **THE COURT:** You're arguing for him to be allowed to  
8 offer his opinion here after I've struck it in a declaration,  
9 aren't you?

10 **MS. KLEIN:** Yes, Your Honor, and that's because under  
11 Federal Rule of Civil Procedure 37(c)(1), there are exceptions,  
12 specific exceptions to when new information can be considered  
13 by the Court for an expert opinion, and those are if the  
14 nondisclosure was either harmless or substantially justified.

15 And here, and I understand that the Court might not  
16 consider that substantially justified for the reasons that  
17 we've discussed, but the harmless and the relevance to the  
18 Court's analysis and the fact that it was harmless in that this  
19 was -- they have been since given the chance to depose this  
20 expert. They have been given the chance to -- they already had  
21 notice of poll worker shortages being an issue and having an  
22 expert testify to that. Again, I would have to check the  
23 record, but an expert could be called to testify about that  
24 now. We've had depositions --

25 **THE COURT:** Suppose they stood up today and said,

1 Judge, if you're going to let this in, then we want to  
2 supplement our record with a new expert to explain why the  
3 countywide requirement is sufficient. Are you going to agree  
4 to that? Is that okay with you?

5 **MS. KLEIN:** It would depend on if it was going to  
6 substantially delay the Court's decision in this matter, Your  
7 Honor.

8 **THE COURT:** Let's say they'll have it tomorrow. Is  
9 that okay?

10 **MS. KLEIN:** In order --

11 **THE COURT:** It wouldn't be fair, would it, to you if  
12 that happened?

13 **MS. KLEIN:** Your Honor, that -- I would strongly  
14 consider that -- if that was the timing that was offered, I  
15 would strongly consider -- I would have to strongly consider  
16 that --

17 **THE COURT:** But it really wouldn't be fair because  
18 they're being offered a chance to do something with an expert  
19 that's new, and you wouldn't have a chance to respond. That  
20 wouldn't really be fair, would it? Your chance passed with the  
21 reply.

22 **MS. KLEIN:** I understand, Your Honor. I would just  
23 say that he was -- in the deposition, he was questioned  
24 extensively about the county requirement.

25 **THE COURT:** Well, nobody knows what's coming in and

1 what's not as is clear from the objections.

2 **MS. KLEIN:** May I just say one more thing, Your  
3 Honor?

4 **THE COURT:** Um-hum.

5 **MS. KLEIN:** And this is to the point that counsel  
6 already made. His responses during his video testimony talk  
7 about a variety of different issues. It's not just about the  
8 county requirement. So I would --

9 **THE COURT:** This -- what we're dealing with now is  
10 limited to whether the county requirement is sufficient in  
11 terms of his expert testimony, and you all do not have the  
12 benefit of my order. It's coming. It will explain things  
13 further. I did consider whether or not, in light of the fact I  
14 was allowing discovery, whether or not I should -- you can call  
15 it "reconsider" or whether or not I should do something  
16 different because I was allowing discovery, and, for reasons  
17 I'll explain in that opinion, I elected not to.

18 One of the reasons is when you're dealing with expert  
19 witnesses, the party who's filed the affidavit, the report,  
20 whatever you want to call it, in support of the motion, when  
21 that expert witness opinion is not based upon the facts as they  
22 exist at the time the motion is filed, which was in this case  
23 after 1169, I think parties are entitled to rely on that  
24 opinion, and I think parties are entitled to make decisions  
25 based on how to address that opinion based upon how -- what --



1 how the opinion exists.

2           And here, at least in my mind, the opinion of  
3 Dr. Gronke opened the door for two different possibilities.  
4 One was a possibility of coming in and saying, hey, the  
5 requirement is countywide, and here's why countywide is  
6 sufficient. Now, that's one thing.

7           But, more significantly, and I'm only going off my  
8 experience in watching these things unfold in terms of expert  
9 witnesses, one perfectly legitimate strategy is to ignore an  
10 expert opinion that's clearly not based on the facts of the  
11 case, which was the case here, and then come into court and say  
12 that expert witness' opinion is either inadmissible or entitled  
13 to no weight, whichever one you pick, because it's not based on  
14 the facts of the case.

15           So I say all that simply to say that the decisions  
16 are made as cases go along. This is a motion for preliminary  
17 relief. It doesn't mean that this issue is now closed for  
18 purposes of the case. It's a question -- in my mind, it's a  
19 question of what in fairness should be considered here, and  
20 when a party's opportunity to respond directly and fairly to an  
21 expert witness report is cut off because the expert witness  
22 report is not based on facts that exist in the case at the time  
23 the motion is filed, then in my mind, for several reasons, or  
24 at least two reasons that will be more fully explained in my  
25 opinion, that becomes inadmissible.

1           So having said that, on this particular objection as  
2 it relates to Dr. Gronke's opinion specifically as to whether  
3 or not a countywide requirement would allow the recruitment of  
4 sufficient poll workers for the November 2020 election, I've  
5 struck that opinion from the case because that evidence was not  
6 submitted in support of the original motion. It's just struck  
7 for purposes of this proceeding and no other in this case. But  
8 for purposes of this proceeding, that evidence is struck.

9           Now, having said that, I'm going to sustain the  
10 objection to further opinions on that same issue in terms of  
11 Dr. Gronke's testimony, but I'm also going to let you play it  
12 so you can make your proffer of what the testimony would have  
13 been. So you can proceed ahead and play the video.

14           **MS. KLEIN:** Thank you.

15           **MR. PATTERSON:** Your Honor, may I make one point  
16 quickly, just a clarification? I believe opposing counsel said  
17 we were not objecting to testimony about Georgia, but we are  
18 objecting to that testimony. That was the specific state he  
19 pointed to in his reply declaration and said they have a  
20 similar in-county --

21           **THE COURT:** I can't remember. Was that in those  
22 paragraphs?

23           **MR. PATTERSON:** Yes, there were in paragraphs 11 to  
24 13, and he put some news articles that actually did not  
25 attribute poll worker shortages to long lines and those sorts

1 of things. But that was his opinion. He said Georgia has a  
2 similar in-county requirement as North Carolina, so this is  
3 evidence of what's going to happen.

4 **THE COURT:** Okay. I don't have Gronke's declaration  
5 in front of me, and I don't have my draft opinion in front of  
6 me. But the expert testimony as it relates to the paragraphs  
7 previously struck, I'm going to sustain that objection,  
8 whatever was contained in those paragraphs, as new opinion that  
9 was not submitted in support of the original motion. That will  
10 be further explained in an order -- I would like to say, you  
11 know, issued soon, but it's in the process for reasons that  
12 I'll explain in the order.

13 That's my ruling. I'm going to allow the proffer to  
14 be made with the testimony. So you can go ahead and play it.

15 **MR. PATTERSON:** Thank you.

16 **THE COURT:** You can go ahead and continue the video.

17 **MS. KLEIN:** Thank you.

18 (At 10:05 a.m., video testimony continued.)

19 (At 10:08 a.m., video testimony paused.)

20 **THE COURT:** All right. Hold for a second. So on  
21 page 16 of the deposition -- of the written transcript, which  
22 is coming in as the court transcript, his testimony just now,  
23 "If they do not have the flexibility, the likely outcome is  
24 precinct salvation." I think what he said was "consolidation."  
25 So I would -- unless somebody objects, I'm amending this to say

1 "consolidation" not "salvation."

2 **MS. KLEIN:** We would agree with that, Your Honor.

3 **MR. PATTERSON:** Same here, Your Honor.

4 **MR. PETERS:** Yes.

5 **THE COURT:** Is this copy -- I've got the official  
6 version we're going to use for exhibit?

7 **MS. KLEIN:** Your Honor, these are -- I understand  
8 this to be the final copy. But, again, as I mentioned earlier,  
9 the witnesses didn't have a chance to, for example, review and  
10 sign, and it was a little rushed.

11 **THE COURT:** Understood. That's the only one I've  
12 seen so far that I thought was a substantive issue.

13 So we will use these. So we have a day of arguments,  
14 and then we will be -- today is Tuesday. Are the copies out to  
15 the witnesses now for review?

16 **MS. KLEIN:** I believe at least some of them have been  
17 sent out. I would have to double check that, but I'm aware  
18 that maybe some of them may have been sent out for review.

19 **THE COURT:** All right. I'm going to say the official  
20 record of the testimony is the videotape itself, and the  
21 transcripts are -- how does that instruction go? To the extent  
22 the written transcript is inconsistent with the video  
23 testimony, the video testimony controls. All right. You may  
24 continue.

25 (At 10:10 a.m, video testimony continued.)

1 (At 10:48 a.m, video testimony concluded.)

2 **THE COURT:** All right. So where does that leave us  
3 now with respect to Plaintiffs' evidence?

4 **MS. KLEIN:** Your Honor, that concludes the  
5 Plaintiffs' evidence, obviously supplemented by the  
6 declarations that have been accepted in the case.

7 **THE COURT:** All right. So next will be Dr. Plush?

8 **MR. THOMPSON:** Yes, Your Honor, that's correct.

9 **THE COURT:** Okay. Let's take a break, and what's his  
10 first name?

11 **MR. THOMPSON:** Theodore.

12 **THE COURT:** So as we break, I will -- you know, being  
13 in quarantine, you can talk to anybody you can talk to since  
14 nobody else is in the office with you. I had a very nice time  
15 at the birthday party last night. I thought it was a little  
16 strange yesterday when I was talking about that that I so  
17 hastily said "it's not my wife's birthday." I thought that  
18 sounded kind of weird of when I said that. My brain was  
19 obviously trying to tell me something, because I walked into  
20 the house, and the bad news was that my wife said, "Hey,  
21 today's our anniversary." The good news was that she said, "I  
22 forgot." Thank God. Because I did, too. We had a nice time  
23 anyway.

24 All right. We'll be in recess for 10 minutes.

25 (At 10:50 a.m., break taken.)

1 (At 11:05 a.m., break concluded.)

2 **THE COURT:** Who is going to be playing Dr. Plush?  
3 Will you all be handling the video?

4 **MS. MOSS:** Yes, Your Honor. Unfortunately, the  
5 binder isn't big enough for this, but I have his transcript.

6 **THE COURT:** Just lay it right there on that yellow  
7 tape.

8 (At 11:05 a.m., video testimony begins.)

9 **THE COURT:** Let me get you to hit pause for just a  
10 second.

11 (At 11:07 a.m., video testimony paused.)

12 **THE COURT:** Ms. Riggs, I hate to do it to you. I  
13 think you like wearing a mask as much as I do. But in the  
14 gallery, because we have to clean it if you don't keep your  
15 mask on, if you'll keep it on back there. Thank you.

16 (At 11:07 a.m., video testimony continued.)

17 (At 12:17 a.m., video testimony paused.)

18 **THE COURT:** Hold on. Back that up. I think what he  
19 said was -- it was real quick, but it was "I believe we should  
20 be resolved in favor of the area of prevention." Do you all  
21 want to listen to that sentence again?

22 (Video played back.)

23 **THE COURT:** Didn't he say "in favor of prevention"?  
24 You want to play it one more time?

25 **MR. PETERS:** I think it was "in favor of prevention."

1           **MS. MOSS:** I understood him to say "in favor of  
2 prevention within reason."

3           **THE COURT:** You want to hear it again? I think it  
4 was "in favor of prevention."

5           **MS. KLEIN:** I would like to hear it one more time.  
6 (Video played back.)

7           **MS. KLEIN:** Yes, Your Honor.

8           **THE COURT:** I think it's "in favor." I think "we  
9 should be resolved in favor of prevention," not "the area of  
10 prevention." All right. You may continue.

11 (At 1:02 p.m., video testimony concluded.)

12           **THE COURT:** All right. Then we'll come back, and the  
13 last evidence will be Bell's testimony? All right. I need a  
14 few extra minutes. What do we have, 2 1/2 hours? Is that what  
15 you all allocated?

16           **MR. PETERS:** Yes, Your Honor.

17           **THE COURT:** Okay. I like nice round numbers like  
18 coming back at 2:30, but I can come back a little early if you  
19 want to start. We'll just shoot -- let's say 2:20. We'll be  
20 in recess.

21 (At 1:03 p.m., break taken.)

22 (At 2:20 p.m., break concluded.)

23           **THE COURT:** Mr. Peters, did you have something you  
24 want to say?

25           **MR. PETERS:** I'll put it this way, Your Honor. I've

1 been waiting for the courtroom to reopen to get some exhibits  
2 in order that I had held off numbering until I saw what  
3 happened this morning. So I can either move about to hand up  
4 exhibits, or if you want to give me about three minutes, I can  
5 mark them real fast.

6 **THE COURT:** Take your three minutes.

7 **MR. PETERS:** I figured that would be easier.

8 **MR. THOMPSON:** Your Honor, while we have a moment,  
9 may I raise a housekeeping matter?

10 **THE COURT:** You may.

11 **MR. THOMPSON:** Just want to make sure that for  
12 tomorrow, is the lineup 2 hours for Plaintiffs, 2 1/2 hours for  
13 us and the State Defendants, Executive Defendants, and then 30  
14 minutes of rebuttal?

15 **THE COURT:** Are you sure you can't do it in an hour?  
16 Is that what you all agreed to?

17 **MS. KLEIN:** I think it's what the Court in one of the  
18 earlier status conferences indicated might be allowed.

19 **THE COURT:** I think you all might have browbeat me  
20 into that. I'm not taking the full credit for that. If that's  
21 what I agreed to do, then that's what it will be. So it's  
22 2 1/2 total?

23 **MR. THOMPSON:** Yes, Your Honor.

24 **THE COURT:** So 2 hours, 2 1/2, with that 2 1/2 hours  
25 split between argument and rebuttal.



1           **MR. THOMPSON:** Yes, Your Honor.

2           **THE COURT:** So 4 1/2 hours tomorrow total.

3           **MR. THOMPSON:** Well, I guess that's 5, because  
4 they'll kick off with 2, then we'll go 2 1/2, and then the  
5 other 30 minutes in rebuttal.

6           **THE COURT:** All right. Got it.

7           **MR. THOMPSON:** And if it were possible to start at  
8 nine, we would take it as a kindness, just I have a flight that  
9 I would like to catch, if possible.

10           **THE COURT:** 9:00 will be fine with me if everybody  
11 agrees.

12           **MS. KLEIN:** And we'll be addressing the Court's  
13 specific questions just right off during that time in our  
14 initial oral argument, or do you want us to loop that into our  
15 oral argument?

16           **THE COURT:** Nope, I think it would be most helpful to  
17 me if you just bang, bang, bang, bang, give your answers. I  
18 won't even ask a question while you answer. I'll just let you  
19 run.

20           **MS. KLEIN:** Okay, understood. Thank you, Your Honor.

21           **THE COURT:** Let me ask about this witness. So we've  
22 got 2 1/2 hours of testimony total --

23           **MR. THOMPSON:** Yes, Your Honor.

24           **THE COURT:** -- with Ms. Bell? And is -- how is it  
25 divided? Who's calling her? Who's direct?

1           **MR. PETERS:** I will be calling her, and I believe the  
2 arrangement we have is that I have 45 minutes of direct and  
3 redirect, that the Legislative Defendants have 30 minutes, and  
4 the Plaintiffs have an hour and 15 minutes so that it balances  
5 out.

6           **THE COURT:** Who's timing? Is that my job?

7           **MR. THOMPSON:** We're happy to keep the time, Your  
8 Honor.

9           **MS. MOSS:** Did you want to go before me? I can say  
10 I'm doubtful that I will have very many questions; and if I go  
11 after the plaintiffs, there'll likely be fewer. But I'm happy  
12 to go in whatever order the Court and the plaintiffs want.

13           **THE COURT:** Why don't you all talk about it.  
14 Ms. Welch, did you bring your phone? Have you got a timer on  
15 that phone?

16           **THE CLERK:** Yes.

17           **THE COURT:** I'm going to add to your courtroom  
18 responsibility.

19           **MS. RIGGS:** Your Honor, may I go over there?

20           **THE COURT:** So it's -- so we have 45, 45. What were  
21 those numbers again? Is any of the 45 -- well, it will be just  
22 you. Is any of the 45 minutes subject to being reserved for  
23 redirect examination?

24           **MR. PETERS:** Yes, Your Honor.

25           **THE COURT:** All right.

1           **MR. THOMPSON:** Thank you. I apologize.

2           **THE COURT:** That's all right. All right. So what's  
3 the order?

4           **MR. THOMPSON:** Well, Your Honor, the order is going  
5 to be that Mr. Peters will do the direct, and then we will do a  
6 short cross at that point. Then there will be a long cross.  
7 And because we're not really sure if the witness -- whether --  
8 you know, if there's a need to cross her, we were going to keep  
9 a little bit of time back if we need to do a follow-up, if  
10 that's okay, and then she'll do the redirect.

11           **THE COURT:** Okay. That's good. So it will be 45  
12 minutes total, 30 minutes total, an hour and 15 total?

13           **MR. THOMPSON:** Yes, Your Honor.

14           **THE COURT:** All right. Ms. Welch has the timepiece.  
15 If anybody wants to time -- have a backup timer, you're  
16 certainly welcome to do that. I'm going to try to hold you to  
17 it. But a minute or two either way, I'm not going to worry  
18 about too much.

19           The -- I've told Ms. Welch just to yell out at the  
20 5-minute mark. So hopefully -- the reality with timing, having  
21 condition some swim meets and some other things, it's  
22 occasionally difficult not to get caught up in what happens and  
23 forget and that kind of thing. If that does, it does. The  
24 parties will have to live with it, but we'll do the best we can  
25 to give you a five minute alert when the time comes.

1 All right. Mr. Peters, you may call your witness.

2 **MR. PETERS:** Thank you, Your Honor. The State calls  
3 Karen Brinson Bell.

4 **THE COURT:** Ms. Bell, if you will step over right in  
5 front of that podium; and once you step inside, unless there's  
6 a reason to keep it on, I'll ask you to take it off.

7 (Witness affirmed by the Court.)

8 **THE COURT:** All right. You may take the witness  
9 stand. You may proceed.

10 **MR. PETERS:** Thank you, Your Honor.

11 KAREN BRINSON BELL,

12 DEFENDANTS' WITNESS, SWORN AT 2:30 p.m.

13 DIRECT EXAMINATION

14 **BY MR. PETERS:**

15 Q Could you state your name for the record, please.

16 A Yes, Karen Brinson Bell.

17 Q And what is your occupation, Ms. Bell?

18 A I'm the Executive Director of the North Carolina State  
19 Board of Elections.

20 Q And I'm going to ask you to look at the stack of papers  
21 there on the podium, and do you see what has been marked as  
22 Exhibit 1?

23 A Yes.

24 Q And can you identify what that document is?

25 A It's the declaration I provided to the Court.

1 Q Okay. So you have provided that declaration, but could  
2 you briefly describe for the Court what your responsibilities  
3 are as Executive Director of the State Board of Elections?

4 A I'm the State's chief election official, which means that  
5 I'm responsible for the election administration in our state as  
6 well as campaign finance compliance and reporting. I directly  
7 oversee the 100 county boards of election in our state and the  
8 operations of all elections, federal down to the most local  
9 level for our state.

10 Q Okay. And what do you understand to be the interest of  
11 the State Board and, by extension, your interest as the  
12 Executive Director and the chief elections official in  
13 administering elections in North Carolina?

14 A Our fundamental responsibility is to ensure that any  
15 eligible voter may do so in our state.

16 Q All right. In addition to your experience as Executive  
17 Director, do you have other experience as an elections  
18 administrator?

19 A Yes, I've worked in elections administration for 14 years.

20 Q And what experience other than Executive Director do you  
21 have?

22 A From 2006 until 2011, I worked for the State Board of  
23 Elections as a district election technician with the 12  
24 westernmost counties of North Carolina. After that, I was a  
25 County Elections Director in Transylvania County for four

1 years. Then I worked for a software company dealing with  
2 elections. I also was a consultant at a national level dealing  
3 with rank choice voting and our experience administering  
4 instant runoff voting in North Carolina, and I've also been a  
5 precinct chief judge.

6 Q Okay. What does being a precinct chief judge involve?

7 A That means I'm the top -- I was the top official in  
8 March 2016 for a precinct in Buncombe County, North Carolina.  
9 So I was responsible for the election administration for that  
10 precinct on that election day.

11 Q So does that mean that you have acted in some capacity  
12 administering elections at the precinct level, at the county  
13 level, and now at the state level?

14 A Yes, sir.

15 Q Okay. We'll go through this in a little bit more detail;  
16 but just for a background framework as we start, could you tell  
17 us what some of the big picture statutory and administrative  
18 deadlines that you and the Board are working with to prepare  
19 for the November 3 general election?

20 A So beyond November 3, we have to be prepared to start  
21 early voting, one-stop early voting, on October the 15th. We  
22 have to be prepared to train all the officials that are needed  
23 for that in-person voting before we start one-stop or election  
24 day. We also have September 4 as a deadline to administer  
25 absentee-by-mail. That's our deadline for that to start.

1 Q All right. What about with regard to one-stop early  
2 voting plans?

3 A Yes. So the county boards are currently developing those  
4 plans. I issued an emergency order on Friday that extended  
5 that deadline from July 31 to August the 7th, and the State  
6 Board is going to consider the nonunanimous plans on August the  
7 31st.

8 Q And I'll ask you to look in your stack there at what has  
9 been marked as Exhibit 2.

10 A Okay.

11 Q Is that the emergency order you just referred to?

12 A It is.

13 Q And that was issued on Friday?

14 A Yes.

15 Q All right. We'll come back to that. You mentioned  
16 absentee voting starts on September 4. What needs to happen in  
17 order for absentee-by-mail voting to start on September 4?

18 A There's considerable preparation that goes into  
19 absentee-by-mail. We have to have all the absentee-by-mail  
20 container envelopes prepared, the design for that, and the  
21 printing of those envelopes, the printing of the  
22 absentee-by-mail instructions that will go out with the  
23 packets. Obviously, we're processing absentee-by-mail request  
24 forms currently, and those will be -- based upon the number of  
25 forms that have been received, the counties will assemble those

1 packets and make sure that they're out the door by the deadline  
2 of September 4.

3 Q All right. And what is involved in planning and preparing  
4 the container envelopes for absentee ballots?

5 A We have undergone a redesign of the envelope, and then  
6 with the legislative changes we've made further changes to the  
7 design of the envelope. We do have to -- we also work with the  
8 Postal Service to make sure that we're in compliance with the  
9 Postal Service standards for election mail and also the  
10 components of intelligent mail barcoding which we're  
11 introducing this election. Then from there the counties will  
12 coordinate to have those printed. We may also help with the  
13 printing, but we have to get in queue with the print houses to  
14 have those ballot envelope -- container envelopes printed.  
15 We'll also be printing ballots themselves once the nominations  
16 are official.

17 Q You mentioned smart mail barcoding. What is that?

18 A Intelligent mail barcoding is going to be applied on a  
19 label on the front of the materials that gets sent out as well  
20 as what gets returned on the absentee container envelope, and  
21 that will allow the voters to track where their ballot is in  
22 the system. We've had the ability for voters to know where it  
23 is in the elections office, but this will be the first time  
24 that they've been able to actually track it in the postal  
25 system.



1 Q Okay. And you also mentioned that you had undertaken a  
2 redesign of the container envelopes. Why did you do that?

3 A If I had the old envelope to show, you would see a  
4 considerable difference. It was very small print. It was  
5 very -- we were finding that voters were not completing it  
6 thoroughly, and so we worked with the Center for Civic Design  
7 who has done usability studies about forms and documents  
8 related to elections, and they helped us to design a more  
9 user-friendly envelope so that the voters will better  
10 understand and execute their ballot.

11 Q And in terms of getting those envelopes printed and so  
12 forth, where are you in that process?

13 A We have -- the Postal Service had a change that they  
14 wanted to make, so we are -- that actually is probably done  
15 while I've been here today, and so then those counties will  
16 have their templates. They've been in contact with printers.  
17 We know we're on about a four-week schedule, at best, for them  
18 to be able to turn around the envelopes, particularly with the  
19 increased volume that we're -- we already have in absentee  
20 requests.

21 Q All right. Turning to the issue of COVID-19, which, of  
22 course, this litigation is about -- let me ask you first. Have  
23 you ever administered an election during a global pandemic?

24 A Technically, yes, June 23.

25 Q And what election was that?

1 A That was the second primary in the 11th Congressional  
2 District Republican runoff, second primary essentially, and  
3 then there was a new election called in the Columbus County  
4 District 2 Republican primary.

5 Q Okay. What -- in your experience both with that election  
6 and in planning for the general election in 2020, what are you  
7 finding -- what ways are you finding that COVID-19 has an  
8 impact on election administration?

9 A In addition to all the preparatory work that we would  
10 normally be doing, we now have to consider public health and  
11 social distancing, facilities that will allow for social  
12 distancing, protective gear for both the voters and our poll  
13 workers, securing poll workers when many of them are in the  
14 vulnerable population, and also trying to navigate all of this  
15 during supply chain issues that also come up because of the  
16 protective gear.

17 Q Are there any -- other than what you've just mentioned,  
18 are there any particular impacts you have either seen or expect  
19 for in-person election on voting day?

20 A We certainly have seen an increase in absentee-by-mail  
21 requests. Typically, we would see about a 4 to 5 percent  
22 participation in absentee-by-mail, and right now we're tracking  
23 from, you know -- it at least appears that we'll have  
24 20 percent, but we're planning for up to 40 percent  
25 participation by mail.

1 Q Okay. What about the effect on either -- of any kind of  
2 in-person voting on election day or early voting? What does  
3 that require you to take into account?

4 A Certainly, our facilities have to be able to allow for  
5 social distancing. We have to consider whether the voting  
6 booths, the check-in stations, where the voters will wait, if  
7 those can be properly socially distanced. We've seen in other  
8 states that potentially we could have poll workers not show up.  
9 So we're having to account for that. We could potentially have  
10 polling places that have to be closed. And any of these things  
11 account for issues with lines, and, therefore, voters could be  
12 standing in line and be exposed to, you know, coronavirus and  
13 not have, you know, that ability to go elsewhere.

14 Q Okay. And does that have an effect on the planning for  
15 polling places?

16 A It certainly does. We had to account for that with the  
17 June 23 second primary and those facilities, and we're doing so  
18 now, and part of the reason for the emergency order was to  
19 account for one-stop early voting sites.

20 Q All right. Let me ask you. Other than the emergency  
21 order, have you or the State Board taken any action to try to  
22 address the challenges that COVID-19 presents?

23 A We've taken many actions. Even back in March -- well, we  
24 learned the first case in North Carolina was on the March 3  
25 primary, so that -- we were already looking at hand sanitizers

1 and things like that because we didn't know what coronavirus  
2 meant at that point. But since then we have had a task force.  
3 I've issued an emergency order pertaining to the second primary  
4 and to the closure of offices and to how we do our precinct  
5 sorts and things of that nature because everything changed.

6           We had to start doing county board meetings in a  
7 telephonic or some sort of teleconference format. We had to  
8 limit the number of people who could come into the office and  
9 sometimes limit whether the offices could even be opened, so I  
10 issued also -- knowing that there was going to be a special  
11 session in the legislature, I issued recommendations to them,  
12 15 items that we thought would help us to administer the second  
13 primary and also the November election.

14           We have formed a task force, if I didn't mention  
15 that. We have also worked with our state emergency management  
16 regarding the PPE. We've done the redesign of the absentee  
17 envelope in regards to COVID-19. We've been holding routine  
18 meetings, and I've talked with the counties about the steps  
19 they'll need to take in selecting their one-stop sites and how  
20 we plan to address precinct mergers as well. I think I may  
21 have covered everything.

22 Q       Okay. Let me ask you to look in the stack you've got of  
23 what, because I was moving quickly and things got out of order,  
24 has been marked as Exhibit No. 6. It says at the top,  
25 "Numbered Memo 2020-11."

1 A Yes.

2 Q Can you identify what that document is?

3 A Yes. So we issued this numbered memo once we knew, you  
4 know, the governor and the president had called states of  
5 emergency and natural disaster and so forth. This was to help  
6 the counties be prepared to deal with their public meetings, to  
7 deal with their canvass issues, because we had not completely  
8 wrapped up the primary that was held on March the 3rd, just how  
9 they would be able to operate their offices and how they would  
10 deal with petitions and voter registration forms that would be  
11 dropped off if they were to be closed or could not be open to  
12 the public.

13 Q All right. And you mentioned writing to the governor and  
14 the legislature. Let me ask you to look at Exhibit Number -- I  
15 think this one will be three.

16 A Yes.

17 Q Is that the letter that you mentioned writing?

18 A Yes, this was the memo that we sent with our 15  
19 recommendations.

20 Q All right. Let me ask you to look on page 3 of that.

21 A Okay.

22 Q And do you see a heading that says "reduce or eliminate  
23 the witness requirement"?

24 A Yes.

25 Q Is there a reason that you said "reduce or eliminate"?

1 A Yes. We had recognized that North Carolina up until, you  
2 know -- at this point in time North Carolina required two  
3 witnesses to an absentee envelope; and because of coronavirus,  
4 we knew that would extend the exposure that someone would have,  
5 particularly because we know that more than 70 percent of our  
6 voters live in a one- or two-person household. So we made the  
7 recommendation to either reduce or to eliminate with the  
8 consideration that if they chose to eliminate that we were in a  
9 position to consider signature verification.

10 Q And what is signature verification?

11 A So states generally -- there's one or two methods that  
12 states go about. They can either have a witness, or they'll do  
13 a signature verification to verify who the voter is in an  
14 absentee-by-mail, similar to the way when someone votes in  
15 person, they would state their name and address to an election  
16 official, thereby that election official is essentially  
17 witnessing their presence, and there's the opportunity for a  
18 challenge. When you administer absentee-by-mail either by  
19 witness or by signature verification, you're verifying that  
20 individual.

21 Q And you said we would have been in a position to utilize  
22 signature verification if the General Assembly had eliminated  
23 the witness requirement?

24 A Yes, we were -- I'm aware -- we were aware at that time  
25 that there is software that does signature checking or

1 signature matching that can help with that process and is used  
2 by most states that use signature verification.

3 Q If the witness requirement were eliminated now, would you  
4 be in a position to utilize signature verification?

5 A No, we would be hard -- I don't think we could do it at  
6 all. We don't have an exemption from the procurement process  
7 at this point. We would not have time to properly train or  
8 implement that system, and I would have to even inquire whether  
9 there is a vendor who could meet the deadline because so many  
10 other states are going through these processes as well to  
11 address COVID-19.

12 Q Okay. Let me ask you to look at what's been marked as  
13 Exhibit No. 4, and is that one of the numbered memos you listed  
14 earlier in the list of things you had done?

15 A Yes, this is one of the numbered memos. We did this for  
16 the June 23 second primary and election.

17 Q All right. And then No. 5, Exhibit No. 5, is that also  
18 one of the numbered memos you have issued?

19 A Yes, this one is the direction we gave to all 100 counties  
20 pertaining to their one-stop plans for this upcoming election.

21 Q Okay. Can you tell us just a little bit about the  
22 Judicial Voter Guide and how that will be utilized with  
23 particular reference to COVID-19 this election?

24 A Right. We would do -- we still have the funds available  
25 to do a Judicial Voter Guide. So in addition to covering the

1 judicial races, we'll be doing some voter education about not  
2 only absentee-by-mail, but the steps we're taking with  
3 in-person voting during the pandemic. We'll also include an  
4 absentee-by-mail request form. It will be in the centerfold  
5 for the voter to complete and return to the county board of  
6 elections.

7 Q And that is -- am I correct that that's sent to every  
8 household in the state?

9 A That's right, every household.

10 Q All right. What are you doing with regard to recruiting  
11 poll workers across the state?

12 A About a month ago, we launched the Democracy Heroes  
13 Campaign. That's our effort to -- at that point in time it was  
14 to put an interest survey up on our website. We're promoting  
15 that through press releases. So the media is asked and covered  
16 that; we've done it through social media; and we are extending  
17 that working with civic organizations, veterans groups, the  
18 university system as a means to recruit individuals who would  
19 be interested in serving for this election.

20 Q All right. Let me just ask one question. With regard to  
21 numbered memo 2020-13, did it have any recommendations in it  
22 regarding how many days the one-stop locations should be  
23 opened?

24 A Yes, I "strongly encouraged," I think those are my exact  
25 words in that memo, that they utilize all 17 days of the early



1 voting period.

2 Q All right. Now, let me go to a couple of specific matters  
3 that are at issue in this case. Can you describe briefly what  
4 is the process in getting and voting an absentee ballot?

5 A So the voter can go online and print off a request form.  
6 They can call and have one mailed to them, or they can, you  
7 know, complete the form and mail it in themselves, fax or email  
8 as well, but they do need to complete the state-issued absentee  
9 request form. Once we receive that, it's processed in our  
10 system. Currently, we can't mail the -- we can't fulfill the  
11 request, but we will by September 4 once we have the ballots  
12 printed. We -- did you just want to know the request part or  
13 the entire process?

14 Q If you want to run through the whole thing, just the quick  
15 overview of it.

16 A Yes. That request could also be made by their legal  
17 guardian or near relative, I should point that out, and they  
18 can drop it off in person before we complete the process.

19 So then they'll receive their packet. It gives them  
20 instruction on having a witness present. When they do mark  
21 their ballot, they'll sign, the witness will sign. They can  
22 have assistance with that process, and that's notated. They  
23 then mark their ballot, put that in the envelope, and then they  
24 return it to us either by mail or by dropping it off at the  
25 county board of elections or at the one-stop sites during that

1 one-stop period.

2 Q And are there restrictions upon who can make the request  
3 on behalf of the voter, is that correct?

4 A That's correct. It's only the voter or their near  
5 relative or legal guardian.

6 Q And are there restrictions with regard to who can deliver  
7 the ballot on behalf of the voter?

8 A It's the same individuals.

9 Q Okay. Are there any restriction on who can assist the  
10 voter with any other aspect?

11 A When they're marking their ballot, they can be assisted,  
12 but it can't be a candidate, for example, unless that's the  
13 near relative. There's also restrictions if they're in a care  
14 facility. It cannot be someone who is employed by that care  
15 facility.

16 Q Are those the only two restrictions on who can assist in  
17 completing the ballot?

18 A Yes.

19 Q Okay. And how can a voter obtain the absentee ballot  
20 request form?

21 A It's available on our website. They can call the Board  
22 office and have one sent to them. It's also -- we do not  
23 restrict others from making copies of blank ballots -- or  
24 excuse me -- ballot request forms and providing that to them,  
25 but they do have to be blank, and they do have to be the

1 State-issued form. And then we are currently in development on  
2 an absentee portal that will be launched before September 1 or  
3 by September 1 to allow them to complete that electronically.  
4 That was authorized by the legislation in one of my  
5 recommendations.

6 Q All right. And how can the completed form be returned?

7 A That can be faxed; emailed; if it's through the portal, it  
8 will be electronically returned; or they can deliver it in  
9 person or through the mail.

10 Q All right. Let me ask you, are you familiar with what  
11 happened in Congressional District 9 in the 2018 election?

12 A I'm familiar. I was not Executive Director at the time,  
13 but I'm familiar.

14 Q What is your understanding of what happened?

15 A A gentleman by the name of McCrae Dowless was hired by one  
16 of the candidates in the Congressional District 9. He was  
17 hired by the Republican candidate to essentially -- I mean, he  
18 organized a group of individuals who went out and collected and  
19 the voter -- excuse me -- absentee request forms. In some  
20 cases they processed those or sent those in fraudulently. Then  
21 with the ballots, once those folks received it, they were  
22 witnessing, sometimes improperly, not in the presence,  
23 sometimes the voter didn't know that it was being done, and it  
24 was -- you know, they were being paid to do all of this.

25 Q All right. And that was uncovered when?

1 A The State Board of Elections uncovered that. It was  
2 during the State Board's canvass meeting that it was first  
3 revealed, and then it was investigated.

4 Q And canvass is what?

5 A That's the certification period. There's a county canvass  
6 and then the State Board does the final certification.

7 Q Okay. Does the term "ballot harvesting" mean anything to  
8 you as an election administrator?

9 A Yes.

10 Q What -- go ahead.

11 A I'm sorry. So, yes, ballot harvesting -- well, in --  
12 that's actually the phrase that we use in terms of what McCrae  
13 Dowless was doing. He was ballot harvesting, but the issue was  
14 he was ballot harvesting fraud. That's the issue.

15 Ballot harvesting, you know, is permitted, at that  
16 point in time especially, meaning that organizations can help  
17 voters. But he was fraudulently doing it by having people  
18 witness who were not really witnessing by, you know, sending  
19 them without the voter's knowledge or manipulating the process.

20 Q And in contrast to ballot harvesting, what do you  
21 understand to be voter fraud?

22 A So voter fraud is typically more about when someone's  
23 impersonating another, when a voter presents themselves or  
24 tries to double vote or something -- presents themselves as  
25 another or tries to double vote as themselves or another.

1 Q All right. So what happened in 2018 Congressional  
2 District 9, if I understand you correctly, was ballot  
3 harvesting rather than voter fraud?

4 A Yes. Yes, sir.

5 Q Okay. Has the Board -- State Board ever done any other  
6 investigation into the incidence about harvesting in North  
7 Carolina?

8 A In 2017, the prior Executive Director ordered an audit.  
9 It stemmed from some, you know, concerns that had arisen in the  
10 2016 election due to a number of protests and things. The  
11 audit was looking for, you know, any irregularities,  
12 particularly, you know, determining if data illustrated, and  
13 then there was some investigations conducted based upon that  
14 audit.

15 Q All right. And was an audit -- a report issued of that  
16 audit?

17 A There was a report issued.

18 Q And is that a publicly available report?

19 A It is.

20 Q Have you done any investigation -- has the State Board  
21 done any investigations into the incidence of other types of  
22 voter fraud like double voting or voter impersonation?

23 A When we receive a complaint, we consider, you know, the  
24 merits of the situation, and our Investigations Division looks  
25 into those situations. And I know of some circumstances from

1 that audit and so forth that have occurred because of  
2 complaints or data they received.

3 Q And in the course of doing those investigations, has the  
4 State Board found any evidence of widespread voter fraud -- in  
5 terms of double voting or voter impersonation?

6 A No, it's -- actually, nationwide, it's very, very minimal.  
7 I believe in that particular situation, there were over  
8 4 million voters, and the two cases of voter fraud were two  
9 individuals.

10 Q All right. I want to move to uniform hours requirement  
11 for early voting. You stated earlier that early voting starts  
12 on October 15?

13 A That's right, Thursday, the 15th.

14 Q And what needs to happen before early voting can start on  
15 October 15?

16 A The counties procure the sites; and in some ways, because  
17 of COVID-19, they're actually looking for new facilities,  
18 because previous facilities wouldn't be large enough to  
19 accommodate social distancing and the spacing that's needed,  
20 both while the voter stands in line or while they're voting.  
21 So in some cases they're leasing commercial spaces, or they are  
22 working with government entities or, you know, community groups  
23 that might allow for the use of their buildings to make sure  
24 there's no conflict and to also promote that to the public.

25 So mid-September, we will put out a notice of these

1 sites. They will -- you know, once they identify the number of  
2 sites, that will be how they determine how many workers they  
3 need. Workers, because of the number of hours, generally work  
4 in shifts, so you'll have more than one team assigned to each  
5 site. That's also important during COVID-19 because if one  
6 team were to have an illness due to somebody contracting  
7 coronavirus, then we would have a backup team to come in.  
8 They'll have to train those individuals. They'll have to  
9 prepare all the laptops for the check-in process. They'll have  
10 to, you know, go through, you know, just -- I mean, those are  
11 the basic procedures and prepare for curbside voting during  
12 that period, too.

13 Q What is curbside voting?

14 A That's when an individual who can't enter the polling  
15 place due to age or disability is allowed to vote from their  
16 car, and a precinct official or one-stop official basically  
17 serves as their feet to and from the polling place.

18 Q And you mentioned letting people know where the early  
19 voting sites are, I think you said in mid-September, is that a  
20 statutory deadline?

21 A Yes, we're required to give notice 45 days before one-stop  
22 begins.

23 Q You've mentioned an emergency order a few times. Why did  
24 you issue that emergency order?

25 A Are you meaning the one on Friday?

1 Q Yes.

2 A Okay. So in looking at the one-stop period, we -- not  
3 only had I stressed in a previous memo that we wanted to  
4 utilize all 17 days, the rationale behind that and then the  
5 rationale behind the emergency order is because we have seen in  
6 other states that if you don't have adequate spaces, if you  
7 don't have adequate hours and opportunity, that -- you know,  
8 and spread those opportunities, then you wind up with lines,  
9 you wind up with closures, you wind up with people being  
10 exposed for extended periods of time.

11 And so what I knew that had to be done is we're  
12 reaching that point where, you know, if a county is going to be  
13 able to procure a site, if they need additional sites, they  
14 needed to know through that emergency order that we had  
15 determined that they should have additional hours -- or minimum  
16 is what we said -- a minimum number of hours on the weekends,  
17 the two full weekends. The final weekend is already set by  
18 law. That's Saturday, eight to three. But for those first two  
19 weekends, we wanted a minimum of 10 hours for each of the sites  
20 to be opened.

21 We also looked at data from previous elections and  
22 realized the number of people who were turning out and the  
23 median of that and then looked at the number of people who had  
24 voted on single days, and many sites, large counties/small  
25 counties, were having people more than 1,000, more than 1,500,



1 more than 2,000 show up on a single day. And so we knew if we  
2 didn't determine a certain ratio for them to open enough sites  
3 that we would be risking lines.

4           So that was the purpose of the emergency order.

5 Q     I believe you mentioned in your declaration that you were  
6 working on a process by which county boards could cure problems  
7 with absentee ballot requests and absentee ballots. Do I  
8 recall that correctly?

9 A     Yes, that's one of the items of data that we're working on  
10 right now.

11 Q     So you're still working on that right now?

12 A     Right. We haven't issued that, but we're drafting it.

13 Q     What are your plans with regard to that guidance? I mean,  
14 not necessarily the specifics of it, but in terms of relaying  
15 it to the counties and that sort of thing.

16 A     The counties would already have a practice that if  
17 someone's request form wasn't complete or if their ballot  
18 wasn't complete, the staff reviews these before they put them  
19 before the board, but the board has an obligation, too, to  
20 approve them if completed properly. But they would reach out  
21 to voters, but this will be very specific to ensure uniformity  
22 across all 100 counties that be it the request form or be it  
23 the actual ballot returned document that if they are not  
24 completed properly that there will be a uniform cure.

25 Q     All right. And would I be correct in assuming that you

1 intend to have that guidance ready in time for counties to be  
2 able to train all their election workers on how to implement  
3 it?

4 A Yes. That guidance pertains primarily to the full-time  
5 staff that you would see in the elections office or the  
6 temporary staff that they would have. Like I said, it's --  
7 I've seen some degree of a draft. We've met and talked about  
8 it. It's just not issued yet, but it will be very shortly.

9 **MR. PETERS:** I believe that's all the questions I  
10 have at this point. Thank you.

11 **THE COURT:** All right. Ms. Welch, did you turn the  
12 clock off?

13 **THE CLERK:** Yes, sir.

14 **THE COURT:** How much time has he got left?

15 **THE CLERK:** 10 minutes, 23 seconds.

16 **THE COURT:** All right.

17 **THE WITNESS:** Is there anyway I can get some water?  
18 I know we're in strange times for --

19 **THE COURT:** I'll tell you what we'll do. I left a  
20 couple of things upstairs, so why don't we take five minutes,  
21 and you can step down. There's water on each of the counsel  
22 tables. I'm sure Mr. Peters will be happy to you -- have you  
23 got water?

24 **MR. PETERS:** We have cups --

25 **THE WITNESS:** There's a water fountain outside.



1 Q What is your current estimation of the number of  
2 absentee-by-mail ballots you expect to get?

3 A We're still working on that number if for no other reason  
4 but to be sufficiently prepared, but we're now -- we're  
5 figuring that it will be anywhere from 20 percent might be the  
6 low to 30 percent. Probably going to be tracking for about  
7 30 percent participation by mail.

8 Q And in terms of planning for the various polling sites for  
9 early voting, are there reasons other than poll worker shortage  
10 that may cause a county to not use a site that it's used in  
11 past years?

12 A Yes. We -- this happened in the June 23 primary, for  
13 example. There are some facilities that are so small. I think  
14 of one in Madison County that is about 150 square feet, so that  
15 doesn't allow for social distancing of the precinct officials,  
16 much less of the voters and the voting booths. It also does  
17 not have running water which we find in some of our more rural  
18 locations.

19 Q Were there polling sites that have been traditionally used  
20 for early voting that are located in or near nursing  
21 facilities?

22 A Generally, our early voting sites are not in care  
23 facilities or retirement communities, but you might find that  
24 for an election day site.

25 Q And you're aware that one of the requirements that is

1 being challenged in this case is what's known as the uniform  
2 hours requirement. Are you familiar with that --

3 A Yes, I am.

4 Q -- challenge? In your emergency order that you discussed  
5 with Mr. Peters, did you make any provisions that would  
6 allow -- or require, I should say -- counties to offer certain  
7 number of early voting sites?

8 A State your question again, please.

9 Q Sure. Did your emergency order have any requirements for  
10 counties to offer a certain number of early voting sites?

11 A We did instruct them that we wanted there to be -- if a  
12 county had fewer than 20,000 registered voters, then they could  
13 have simply one site, but that one site should have an  
14 alternate in case that facility had to be shut down. We wanted  
15 to know that there was a backup staffing and backup site in  
16 that circumstance.

17 For counties above 20,000 for, you know, even if  
18 they're 21,000 registered voters, that would then say they  
19 would have two sites for each 20,000 registered voters or  
20 portion of. They can request a waiver if they can demonstrate  
21 that there's adequate social distancing, that they can reduce  
22 the wait time, and things of that nature.

23 Q Just to make sure I understand. It's one site per 20,000  
24 registered voters, unless they get an exception?

25 A Or portion of, so, yes. If a county has 21,000 registered

1 voters, we still suggest -- you know, ordering that they would  
2 have two sites or request a waiver.

3 Q When you review the one-stop plans that the counties, I  
4 guess, now have to submit by August 7, does the number of sites  
5 that they offer come into consideration in determining whether  
6 to approve the plan or not?

7 A The -- if a county board is unanimous and is complying  
8 with the emergency order, then that would move forward. There  
9 would be no reason to not allow for that. If they are  
10 nonunanimous, then that goes before the state board.

11 Q And when it goes before the state board, do you take into  
12 account -- or will you consider the number of hours that are  
13 being made available to voters to go to the early voting sites  
14 in that county?

15 A That has traditionally been one of the factors.

16 Q Is one of the factors the number of sites that will be  
17 made available for voters?

18 A They do consider that as well.

19 Q And can the state board not approve a plan if it doesn't  
20 believe either of those things is sufficient?

21 A They have sort of -- in the past, they have at times  
22 issued their own plan, not choosing the minority or majority  
23 plan if they felt like there was -- if neither plan provided  
24 for the factors that they were considering or the quality of  
25 sites that they felt like were needed in the counties.

1 Q One last area I want to talk to you about, and that's the  
2 assistance that may be provided to individuals in nursing  
3 facilities or other similar congregate care facilities and  
4 filling out their absentee ballots. I believe you told  
5 Mr. Peters that there are restrictions on who can assist a  
6 resident, for example, in nursing facilities, is that right?

7 A Yes.

8 Q And are you aware of why the restriction is in place to  
9 prevent staff from assisting residents of nursing facilities  
10 from filling out absentee ballots?

11 A Though I didn't write the statute that prohibits it, my,  
12 you know, understanding is that it's to ensure there's not, you  
13 know, any nefarious acts towards that voter by the care  
14 facility person, you know, either mismarking their ballot or  
15 misrepresenting that ballot.

16 Q Is there a concern that the staff may be able to exercise  
17 undue influence over the residents?

18 A Again, I didn't write the statute, but that could be part  
19 of the reasoning.

20 **THE COURT:** All right. Let's turn the clocks off.

21 All right. So at present, as you're aware, nursing  
22 facilities are on lockdown.

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** Limited entrance and exit.

25 **THE WITNESS:** Or no entrance or exit.

1           **THE COURT:** Or no entrance or exit. So a nursing --  
2 when we're talking about nursing care facilities, we're not  
3 talking about independent living retirement homes exclusively.  
4 We're talking about nursing facilities, and in my mind those  
5 are two different things. Is that your understanding as well?

6           **THE WITNESS:** They could be variations of those. It  
7 could be a hospital, a Hospice center, a rehab center.

8           **THE COURT:** Okay. So let's take an extreme example.  
9 A facility where people are in various states of lucidity,  
10 physical ability, physical strength, and other things. So if  
11 that's a locked down facility, walk me through how someone who  
12 wants to do an absentee ballot perhaps requiring assistance is  
13 going to be able to vote, at least in your review of the plan  
14 that's coming to fruition.

15           **THE WITNESS:** Right, yeah, and I should have stated  
16 earlier that a Multipartisan Assistance Team can assist. I  
17 simply said the voter or the near relative or legal guardian.  
18 But, yes, so if there's a voter within a facility, there can be  
19 a request made to the county board of elections by the voter by  
20 someone in that facility. That's not a problem if they contact  
21 the county board and say that there's a need for a  
22 Multipartisan Assistance Team to come out. They can help with  
23 the request form and that process, or they can help with  
24 witnessing or assisting the voter in their -- you know, with  
25 their ballot. They --



1           **THE COURT:** Okay, so -- go ahead.

2           **THE WITNESS:** No, go ahead with your question. I  
3 might can clarify it.

4           **THE COURT:** So I understand that there are these  
5 services available, but how do they get in?

6           **THE WITNESS:** I mean, traditionally, they would  
7 just -- you know, they would have coordinated with the care  
8 facility. They would know that they were coming. They  
9 could -- you know, if it's multiple people in the facility,  
10 they could set up in their cafeteria or something like that.  
11 They can go from room to room --

12           **THE COURT:** But, I mean, is -- I don't want to press  
13 you too much, but you're the Executive Director and going to be  
14 responsible for this. If the facility is on lockdown, how  
15 does -- how do I get in?

16           **THE WITNESS:** No, I totally understand. This was --  
17 it was one of my recommendations. It's the one that's probably  
18 weighed on me the most that I actually issued another memo to  
19 the legislature saying, you know, if you -- the reason I'm  
20 wanting this is because we don't know. If they're not even  
21 allowing family members to go visit someone, how do I send in a  
22 Multipartisan Assistance Team, not expose them, not expose the  
23 residents when we see the outbreaks.

24           And so what I proposed to the legislature is what is  
25 done in some other states like Indiana where two officials --

1 two employees are designated. It's known. It's on record.  
2 They can be of different political parties. They can go  
3 through training, and they work with the county board of  
4 elections to administer. That's the recommendation that I made  
5 to the legislature, but they did not take action to that.

6           And so now we're working with Health and Human  
7 Services to develop some sort of guidelines to give a report  
8 back to the legislature, but those guidelines have to go into  
9 effect now, you know, or soon by August 1, and it's at a time  
10 when they're even trying to determine, well, can they let those  
11 residents come out in to, say, the courtyard or the front porch  
12 or something like that to visit with their family.

13           **THE COURT:** If we go back to a Hospice facility, the  
14 likelihood of somebody being able to get up and walk outside --

15           **THE WITNESS:** Is very slim.

16           **THE COURT:** -- is very slim.

17           **THE WITNESS:** Yeah.

18           **THE COURT:** So if -- let's say if I were to enjoin  
19 that statute and say this limitation that's been put in place  
20 that prohibits nursing -- we're going to say employees of the  
21 nursing home.

22           **THE WITNESS:** Um-hum.

23           **THE COURT:** I get that there can be varying degrees  
24 of concern about undue influence. But if I were to say enjoin  
25 the part of the statute that says the director -- no, excuse

1 me -- enjoin the part of the statute that would prohibit an  
2 employee -- we'll leave the prohibition in place as to a  
3 director or assistant director or other levels of the  
4 statute -- what then in the absence of a statute happens in  
5 terms of how those ballots will be administered by the State  
6 Board? Are you going to issue -- would you then have to issue  
7 guidance to the local boards to say this part of the statute's  
8 been enjoined so they can use an employee of the facility to  
9 witness or assist in filling out the ballot? Is that what  
10 would happen then?

11           **THE WITNESS:** That's what we would do, and I think at  
12 that point what I envision is if a care facility were not  
13 already identified and have the employee identified or  
14 employees that we could also -- you know, if they contact us,  
15 we could at that point say they need to complete training  
16 before we would issue the materials, but we have training for  
17 our Multipartisan Assistance Teams so we would utilize that  
18 training and just apply it to those employees. Then we could  
19 even go so far as to deliver -- we would still use  
20 Multipartisan Assistance Teams to deliver the materials there,  
21 you know, but we can coordinate that. That is what I was  
22 recommending.

23           I also just, for your knowledge, will say that not  
24 only did they not go towards the recommendation I made, but  
25 they expanded what the Multipartisan Assistance Teams can do,

1 and now we're supposed to provide guidance on how someone,  
2 anyone, can request a Multipartisan Assistance Team, which also  
3 causes us pause, because now if someone requests it, we have to  
4 send them to their home not knowing whether they have  
5 coronavirus, or, you know, if it's -- I mean, candidly, a  
6 domestic violence situation, you know, or someone who still,  
7 you know, is homebound and can't come outside, then I'm sending  
8 those people in as well to someone's home which is even more  
9 limiting in some ways.

10           **THE COURT:** So at least in terms of the nursing home  
11 thing, though, there is a little bit of an issue with respect  
12 to -- assuming nothing changes with respect to coronavirus, and  
13 nursing homes or assisted care facilities remain on lockdown in  
14 November, there's going to be a problem if people can't come in  
15 to assist as is contemplated by the statute.

16           **THE WITNESS:** Yes, sir. If there's a problem for the  
17 voter, there's a problem in delivering it, there's a problem in  
18 having the people who would even deliver it. I mean, at least  
19 the people who are already working there are taking  
20 precautions. They're already -- you know, they're employees.  
21 They're being tested and things of that nature, and they're  
22 already working in that facility.

23           But the risk that I have -- I mean, it weighs on me  
24 because I have to consider not only am I exposing that voter,  
25 but I'm exposing those people, and at that point if you were a

1 member of a Multipartisan Assistance Team and caught  
2 coronavirus, would you be willing to continue, or would you --  
3 if you heard that one of your teammates had contracted it,  
4 would you be willing to continue? That's a struggle.

5 **THE COURT:** Yep, the bad news for you is I get to ask  
6 the questions, you don't.

7 **THE WITNESS:** I'm sorry.

8 **THE COURT:** That's fine. All right. Start the  
9 timer. You can continue.

10 **MS. MOSS:** Your Honor, you asked some of the  
11 questions I was going to ask.

12 **BY MS. MOSS:**

13 Q Would you agree that if that provision was going to be  
14 stricken, that some regulation should be put in place on how  
15 staff could assist nursing facility residents such as limiting  
16 the number of staff and training them?

17 A Yes, that's what I recommended in April to the  
18 legislature.

19 **MS. MOSS:** Your Honor, I have one exhibit I would  
20 like to show her, if I may. I apologize now for the printing.  
21 I printed this at the hotel, and it printed back to front and  
22 kind of upside down. Shall I leave that here for the witness?

23 **THE COURT:** Yes, that will be fine.

24 **MS. MOSS:** Do you want me to take it to her or --

25 **THE COURT:** Yeah, just put it up there on the

1 bench -- on the witness box. If you need one back, you can  
2 have it.

3 **THE REPORTER:** Ms. Moss, could you move your  
4 microphone? I'm having just a tad bit of trouble. If you can  
5 just move it a little more in front of your mouth, please.  
6 Thank you.

7 **MS. MOSS:** Yes.

8 **THE COURT:** Okay. So let me show you the microphone.  
9 Well, go ahead. So it's best if you can get the microphone so  
10 as you ask the question, you're talking across the microphone,  
11 if that makes any sense to you.

12 **MS. MOSS:** It does.

13 **THE COURT:** It can be a little bit on the low side.

14 **BY MS. MOSS:**

15 Q So, Director Bell, if you could turn to page 2 of this  
16 exhibit, which is on the back side of the first page, I'll flip  
17 it over. It's printed upside down. This is -- and I'll  
18 represent to you this is a printout from the website for the  
19 Davis Community, which we understand from filings in this  
20 record is the nursing facility in the Porters Neck area of New  
21 Hanover County where Plaintiff Mr. Hutchins resides.

22 On their website, they have a section that talks  
23 about that this week Governor Roy Cooper gave approval for  
24 nursing homes in North Carolina to allow for outdoor visits  
25 with nursing home residents provided that certain -- or several

1 certain conditions have been met. Is that something -- are you  
2 familiar with the order by Governor Cooper that allows for  
3 outdoor visits at nursing facilities?

4 A I'm generally familiar with it, not detailed.

5 Q Okay. And I take it -- do you have any familiarity with  
6 what the rules are for each of the nursing facilities in the  
7 state as to whether they're at a point where they can comply  
8 with the governor's lifting the restrictions at this point?

9 A I haven't gotten into the details of it, no.

10 Q Okay. And this particular printout from the website, it  
11 goes on to say that:

12 "Unfortunately, these limitations mean that we  
13 cannot yet resume visitations for our residents. As I've been  
14 sharing with you, we are still considered to be in the midst of  
15 an outbreak and can't allow visitors right now. In the  
16 meantime, we are developing visitation policies with plans to  
17 welcome visitors as soon as possible."

18 I take it you have no specific familiarity with what  
19 the Davis Community is doing currently?

20 A No, I don't.

21 Q And do you know whether they will, in fact, be open to  
22 allow some form of visitation before November?

23 A I don't think we know what any of the facilities are going  
24 to be doing between now and November.

25 Q So it's possible they could, it's possible they may not?

1 A That's right.

2 MS. RIGGS: Objection, calls for speculation.

3 THE COURT: I'll overrule it.

4 MS. MOSS: That's all the questions I have. Thank  
5 you.

6 THE COURT: All right. Cross-examination? Clocks  
7 off. Just a second, we'll get you the time. That was 10:58.

8 MS. RIGGS: I'm sorry, Your Honor?

9 THE COURT: That was 10:58, roughly. We'll call it  
10 eleven minutes. If you need the two seconds, you can ask.

11 All right. You may proceed.

12 MS. RIGGS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. RIGGS:

15 Q Good afternoon, Director Bell.

16 A Hello.

17 Q A central goal of the State Board of Elections and you, as  
18 its Executive Director, is to ensure that all eligible North  
19 Carolinians are able to cast their votes safely in the  
20 November 2020 election, correct?

21 A Correct.

22 Q In recognition of that goal, you made a series of  
23 recommendations in two separate letters to the legislature  
24 about election law changes that could help protect voters and  
25 poll workers, correct.



1 A Correct.

2 Q You also formed a task force to make to help you gather  
3 best practices and advice with respect to COVID-19 election  
4 responses, is that correct?

5 A Yes.

6 Q No county board of elections member was part of your  
7 COVID-19 task force, is that right?

8 A No county board member, correct.

9 Q Okay. And that would include the declarants from the  
10 Cumberland and Wake County Board of Elections offered by  
11 Legislative Defendants in this case, correct?

12 A If they are board members, they are not members, correct.

13 Q It's true, isn't it, that on March 26 and April 22 of this  
14 year, you recommended that the legislature either reduce or  
15 eliminate the requirement for witness signatures for absentee  
16 ballots?

17 A Yes, I did.

18 Q And you made that recommendation because you wanted voters  
19 to have less exposure to someone outside of their home, is that  
20 right?

21 A Yes.

22 Q I believe you talked to Mr. Peters about how approximately  
23 70 percent of North Carolina registered voters are within a  
24 one- or two-person household. Did I get that number, correct?

25 A Yes, it's 70-some percent.

1 Q Okay. And do you have any reason to dispute the statistic  
2 that 28.42 percent of North Carolina registered voters live in  
3 a single-person household?

4 A I don't know that statistic one way or the other.

5 Q Okay. And, likewise, you would have no basis to dispute  
6 the statistic that of those 28.42 percent of North Carolina  
7 registered voters who live in a single-person household, that  
8 37.37 percent of those voters are ages 65 or older?

9 **MS. MOSS:** Objection, Your Honor. She just testified  
10 she has no basis to know if that statistic is accurate or not.

11 **THE COURT:** Do you know that statistic?

12 **THE WITNESS:** Not without looking it up, no.

13 **THE COURT:** I'll sustain.

14 **BY MS. RIGGS:**

15 Q And when you made that -- those recommendations to the  
16 legislature, you thought that there would be an eight-week  
17 window in which the pandemic might be brought under control, is  
18 that correct?

19 A During that time, yes, we were all talking about an  
20 eight-week window --

21 Q Okay.

22 A -- as the key time period.

23 Q And as of last Friday when you issued your emergency  
24 order, you're aware from the North Carolina Department of  
25 Health and Human Services that North Carolina's daily case

1 counts of COVID-19 continue to increase, is that correct?

2 A That is my understanding, yes.

3 Q And you're aware from DHHS that the percent of COVID-19  
4 tests that are positive remains elevated, is that right?

5 A That's my understanding, yes.

6 Q And you're aware from DHHS that Emergency Department  
7 visits for COVID-19-like illnesses are increasing, is that  
8 right?

9 A That's right, that's my understanding.

10 Q And, likewise, from DHHS, you're aware that  
11 hospitalizations for COVID-19 are increasing, correct?

12 A That's correct.

13 Q And since you issued those recommendations on March 26 and  
14 April 22, you've become aware from the North Carolina  
15 Department of Health and Human Services of evidence that  
16 suggests the probability that COVID-19 transmission indoors is  
17 approximately 18.7 times higher than in open air environments,  
18 is that right?

19 A I've been advised, yes, that's an issue.

20 Q And all in-person voting is conducted indoors, correct?

21 A Well, actually during the second primary, we had one  
22 county that conducted it outdoors. But, generally, yes  
23 in-person voting is conducted indoors except for the curbside  
24 voting.

25 Q Is that the only example of a polling place that wasn't

1 indoors that you're aware of?

2 A That I'm aware of, yes.

3 Q Okay. You stated publicly that it's critical that voters  
4 are able to exercise their constitutional right to vote without  
5 undue risk, correct?

6 A Yes.

7 Q And you're aware from researchers -- you're aware that  
8 researchers from Wisconsin found a statistically and  
9 economically significant association between in-person voting  
10 and the spread of COVID-19 two to three weeks after the  
11 election, is that correct?

12 A That's my understanding, yes.

13 Q You testified in deposition months after you made these  
14 recommendations that, and I quote, we do not have strong mask  
15 compliance. Isn't that correct?

16 A I don't recall saying that specifically. In what regard?  
17 Are we talking about voters or --

18 Q Would it --

19 A -- North Carolinians or --

20 Q Would it refresh your recollection if I handed you a copy  
21 of your deposition transcript from last week?

22 A You can, but I think if you'll just clarify your question  
23 for me, maybe I can respond.

24 **MS. RIGGS:** May I use the ELMO to display? May I  
25 approach, Your Honor?

1           **THE COURT:** If you've got to use the ELMO, just pop  
2 it up.

3           **MS. RIGGS:** Give me one second. Do you see on  
4 lines 21 through 23 --

5           **MR. PETERS:** I'm sorry, which page is this?

6           **MS. RIGGS:** Sorry, page 138, lines 21 through 23.  
7 You were speaking, I believe, with Mr. Patterson at the time.  
8 Can you see it, or do you need me to zoom?

9           **THE WITNESS:** I can see it.

10 **BY MS. RIGGS:**

11 Q       Okay. You said: "And I know more and more people  
12 personally who have been affected by it, and we do not have a  
13 strong mask compliance, and we've been told that it will help."

14           You continue on to say: "So do we fear that we will  
15 still be in a pandemic situation in November? Yes, we do."

16           Do you recall saying that now?

17 A       I do. I think I was talking about in general overall  
18 compliance of North Carolinians or as a country.

19 Q       And in your executive -- sorry -- in your emergency order  
20 issued Friday, you noted explicitly that voters will not be  
21 required to wear a mask at polling places in November -- or in  
22 October/November, correct?

23 A       I stated it on Friday. I stated it before. There is no  
24 constitutional requirement for an individual to wear a mask in  
25 order to vote.

1 Q And you understand that voters being exposed to other  
2 voters who are not wearing masks could increase their risk of  
3 transmitting and contracting COVID-19, is that right?

4 **MS. MOSS:** Objection, to the extent it's asking her  
5 to offer a medical opinion.

6 **THE COURT:** Well, as the Director of the State Board,  
7 I think she's entitled -- I think they're entitled to inquire  
8 as to what her understanding may be so that they better  
9 understand the requirements that they may be putting in place.  
10 Her understanding is not a medical opinion, but her  
11 understanding certainly would seem to me something that would  
12 guide her decision-making process, so I'll overrule. You can  
13 answer the question.

14 **THE WITNESS:** Could you repeat your question,  
15 please --

16 **MS. RIGGS:** Can the court reporter read it back?

17 (Question read back by the reporter.)

18 **THE WITNESS:** What I understand is that we are  
19 providing masks at all polling places for any voter who wishes  
20 to wear one. We are requiring our poll workers to wear masks,  
21 and so that's how we're able to comply with exposure -- risk --  
22 lessening the exposure that anyone would have in contracting  
23 the virus in terms of masks.

24 **BY MS. RIGGS:**

25 Q And that didn't quite answer my question. You're aware,

1 aren't you, based on the recommendations you made to the  
2 legislature and the number of memos that you've issued, that  
3 voters being around other voters not wearing a mask will  
4 increase the risk of transmission and contraction of COVID-19.  
5 Isn't that correct?

6 A We're aware that we need to have masks available and that  
7 those will be provided to any and all voters, we'll have social  
8 distancing in place, and we'll be providing all voters the  
9 opportunity to vote in person or by mail.

10 Q But an at-risk voter who goes to vote in person will not  
11 be guaranteed that the voters around him or her will be wearing  
12 a mask, correct?

13 A They will not be guaranteed, but they can make the choice  
14 to wear the mask themselves which reduces their exposure.

15 Q Not nearly as much, to your knowledge, as other voters  
16 wearing masks -- everyone wearing masks, correct?

17 A I don't know that. That's -- that is a medical decision.  
18 I know I wear my mask because I know that reduces my risk of  
19 contracting the virus from someone else.

20 **THE COURT:** Okay. Timers off for just a second.

21 Okay. So I get your point about there is no  
22 constitutional requirement to wear a mask to vote. I get that.  
23 But how do you square the presence or absence of a  
24 constitutional requirement with the current rules in place with  
25 respect to individuals being required to wear masks when,

1 quote, social distancing is not possible indoors -- I don't  
2 have the exact language in front of me. So there's an  
3 emergency order, and then there's constitutional issues.

4           **THE WITNESS:** It is something we're having to  
5 reconcile, but we also did state that we will require social  
6 distancing, but we have to be mindful that, you know, we --  
7 there is nothing in our constitution that says you have to be  
8 anything other than a citizen, 18 years of age, and registered  
9 to vote properly in order to cast a ballot. So that's the  
10 legal guidance that I've been given is that we don't have a way  
11 to restrict that. Similarly, if -- right now there's an  
12 injunction that says we can't require photo ID.

13           So we will -- we are working with the governor's  
14 orders, but what you just mentioned is sort of the reason we're  
15 going to be enforcing social distancing as well.

16           **THE COURT:** But if I were to say to you the  
17 constitution doesn't require social distancing to vote, so how  
18 do you pick and choose which ones to enforce?

19           **THE WITNESS:** By asking someone to stand 6 feet apart  
20 from another doesn't keep them from being able to go and cast  
21 their ballot. But if I say that you must leave because you  
22 don't have a mask on, that's different. I also -- I'm sorry?

23           **THE COURT:** Wouldn't you also say if they refuse to  
24 maintain social distances that you have to leave? How are you  
25 going to address that if you say no?



1           **THE WITNESS:** We do have to keep order, and that's  
2 one of the roles of the chief judge and two judges that are  
3 appointed at each polling place, that they do have to maintain  
4 order. If there's not order, they can -- they actually are  
5 authorized to call in law enforcement, but we have to be very  
6 mindful of that because we don't -- law enforcement is also  
7 seen as voter intimidation, so I don't want to be in a  
8 situation where we have, you know, law enforcement stay at our  
9 polling places.

10           **THE COURT:** I assume even if you decided you could  
11 enforce the governor's order in terms of wearing a mask  
12 indoors, the actual language of the governor's order says that  
13 if an individual says they can't wear a mask, or they're  
14 excepted from wearing a mask, no inquiry is permitted. So even  
15 if you enforce the governor's order and somebody says no,  
16 you're bound by that.

17           **THE WITNESS:** That's right, and similarly when  
18 someone presents themselves to vote curbside, if they say, you  
19 know, I can't go in because I've had back surgery, I don't ask  
20 them to show me the scar.

21           **THE COURT:** Um-hum.

22           **THE WITNESS:** So, yeah, it's a difficult, you know,  
23 place to balance. Yes, sir.

24           **THE COURT:** All right. Hold on a second. You can  
25 turn the timers back on. You may proceed.

1 **BY MS. RIGGS:**

2 Q Director Bell, as of your July 14 deposition, you had not  
3 yet reviewed and approved the final proof for the absentee  
4 application or envelope, is that correct?

5 A That's correct.

6 Q And you were still planning to have counties review that  
7 proof as of the next day, July 15, 2020, is that right?

8 A I believe that's right, yes.

9 Q You've been working with the Center for Civic Design prior  
10 to the pandemic on redesigning the absentee envelope, is that  
11 right?

12 A Yes.

13 Q If this Court ordered the elimination of the witness  
14 requirement, you haven't talked to the Center for Civic Design  
15 about whether they could revise the envelope design in a matter  
16 of days, is that right?

17 A Actually, I'd like to go back to your last question. I  
18 think you asked if I was working with the Center for Civic  
19 Design before the pandemic. Only had there been a conversation  
20 at a conference. We were in the pandemic by the time we  
21 started doing the work with the Center for Civic Design.

22 Q Okay.

23 A I just wanted to clarify, so now if you'll --

24 Q That's fine. If the Court ordered the elimination of the  
25 witness requirement, you haven't talked to the Center for Civic

1 Design about whether they could revise the envelope design in a  
2 matter of days, is that right?

3 A I have not spoken with them about that, that's correct.

4 Q And your position is that the timing concerns in producing  
5 absentee envelopes isn't a matter of altering the design in  
6 sufficient time, is that right?

7 A There is -- I may not be understanding your question  
8 correctly. There is time involved in the redesigns. Is that  
9 what you just asked me?

10 Q I'm asking you, I understood your testimony at your  
11 deposition to be that that wasn't the make it or break it, the  
12 design of the envelope, is that correct?

13 A It is a factor, but it's probably not the most  
14 time-consuming part in this.

15 Q And if the Court ordered you at the end of July, say, to  
16 remove the witness requirement, you'd work with the Center for  
17 Civic Design to reformat and review the redesigned envelope,  
18 right?

19 A I would.

20 Q And it's true, isn't it, that you haven't personally  
21 spoken with any of the printers who might be contracted with in  
22 order to print the absentee ballots about what would happen if  
23 you sent them a proof at the end of July or early August, is  
24 that right?

25 A I have not personally, but staff has spoken with printers.

1 Q Did you -- so your position -- did that happen since your  
2 deposition?

3 A They have spoken in the past few days with printers, yes.

4 Q But as of your deposition, you hadn't instructed staff to  
5 have that conversation either?

6 A If they had conversations, it was not in my instruction.

7 Q During your tenure as a State Board of Elections Director,  
8 when Commercial Enterprises, with whom you have a state  
9 contract, was unable to deliver a printed guide on the timeline  
10 you wanted it, you were able to shift to a commercial printer,  
11 is that right?

12 A The entity is Correctional Enterprises. Sorry. I do that  
13 myself. But, yes, we have a circumstance where they could not  
14 meet the order, and we shipped it to a commercial printer.

15 Q My apologies. I think you corrected it in your  
16 deposition.

17 And you're not aware of any situation where you  
18 haven't been able to find an alternative printing vendor when  
19 timing became a problem, isn't that correct?

20 A I only have one circumstance to compare it to, so -- in my  
21 time.

22 Q So the answer is you're not aware of any situation?

23 A I'm not, but that also was not during a pandemic.

24 Q And if the Court were to order the witness requirement  
25 eliminated, and one or more printers were unable to meet that

1 deadline, you would seek out the service of alternative  
2 vendors, right, Director Bell?

3 A I would need to or the counties would need to.

4 Q Okay. You told the Court in your declaration that if  
5 envelopes are not ready in mid-August, county boards of  
6 elections will not be prepared to send out absentee ballots by  
7 the September 4, 2020, deadline, is that right?

8 A I do agree with that, yes.

9 Q Okay. But you're able to print absentee envelopes in  
10 batches, isn't that right?

11 A In some circumstances, they can be printed in batches.

12 Q And not all absentee applications and envelopes have to be  
13 mailed on September 4, correct?

14 A Actually, I mean, that's the deadline, so, yes. When we  
15 proceed, we should be mailing them at that point by state law.

16 Q But all absentee envelopes and applications that go out to  
17 North Carolina voters don't and can't be sent out on  
18 September 4, isn't that right?

19 A All that we received, we will be sending on September 4.

20 Q Exactly. In fact, voters have until the Tuesday before  
21 election, October 27, to request an absentee ballot, correct?

22 A That's correct.

23 Q So counties will still be mailing absentee application and  
24 envelopes after September 4, isn't that right?

25 A They will be, yes.

1 Q So they don't need all of the envelopes they may need to  
2 send out over the entire election period by September 4, isn't  
3 that right?

4 A Do they need to have all of them right then and there?  
5 No. But it does affect their pricing. It does affect whether  
6 they're able to comply with all that they've received, and  
7 they've already received an increased amount over previous  
8 presidential election years. So their volume of what they need  
9 right now is even more substantial than what they've had in the  
10 past.

11 Q But the expected participation by absentee mail, you've  
12 revised those projections downward since the June 23 election,  
13 isn't that correct?

14 A We do think it may be lower than we projected, but I  
15 believe I indicated earlier that we prepare for what we could  
16 possibly see so that we don't come up short. So we are still  
17 planning for 40 percent participation in case that does happen.

18 Q And you'll be monitoring the numbers received up until  
19 September 4 certainly to track what those projections will be,  
20 won't you?

21 A We'll continue to monitor, yes.

22 Q Okay. And as of your deposition, you've not had any  
23 conversations with either -- and I'm going to get this wrong  
24 again, I apologize -- Correctional Enterprises or any other  
25 printers about your concerns that they may not be able to get

1 print jobs done on a shortened time frame because of COVID-19,  
2 is that correct?

3 A At the time, that's correct.

4 Q There may be some costs saved by aggregating envelope  
5 printing orders if half the counties ask the State Board of  
6 Elections to print ballots for them, isn't that correct?

7 A We have asked what -- we have reached out to Correctional  
8 Enterprises about batch ordering, but -- or bulk ordering, but  
9 the difference is that we've also moved forward with the  
10 ballot -- ballot return envelope design that specifies the  
11 county board of elections' phone number. So it's not like  
12 we're printing hundreds of thousands of the exact same  
13 envelope.

14 Q But there may still be some costs saved by the counties  
15 ordering through you, isn't that correct?

16 A I don't know. I have seen where we've asked for an  
17 estimate from Correctional Enterprises in the last few days the  
18 time frame, and then we'll be able to share that information  
19 with the counties to determine if that's a lesser cost than the  
20 vendor they would normally use.

21 Q Sitting here today, you don't have that information?

22 A I haven't made a comparison, no.

23 Q Okay. And at least as of your deposition on July 14, the  
24 question of whether counties will be ordering their absentee  
25 envelopes on their own or having the State Board of Elections

1 do it was, in your words, "an evolving process of how we're  
2 going to handle printing." Is that correct?

3 A That's correct. It is the counties for them to determine  
4 which way they want to go. Also, when we originally sent out  
5 that inquiry to the counties, the legislature had not made the  
6 final vote on the CARES Act; and in doing so, they allocated to  
7 the counties as sub grants. So we don't have a fund where we  
8 actually place the order. They can instruct us, we can draw  
9 from their funds, but we are not the ones making the purchase.

10 Q But as of a week ago today, the question of who was going  
11 to order it, the State Board or the counties, was still an  
12 evolving question, correct?

13 A It is.

14 Q And accurate to say it's still an evolving question today?

15 A That's correct.

16 Q Thank you. There are many states that conduct elections  
17 either absentee-by-mail or all mail elections that do not have  
18 witness requirements, correct?

19 A Correct.

20 Q And their voters' perception of the election being secure  
21 is fine as far as you know, correct?

22 A I haven't spoken with voters in those states, but as far  
23 as I know.

24 Q As far as you know, yes?

25 A As far as I know, yes.



1 Q Okay.

2 A But those other states do signature verification, so maybe  
3 that's the reason the voters are assured.

4 Q Do you know if those voters even know about that process?

5 A All --

6 **THE COURT:** She hadn't talked to the voters. I don't  
7 want her to speculate about that.

8 **THE WITNESS:** And I don't know what voter education  
9 they do.

10 **THE COURT:** You don't have to answer that.

11 **THE WITNESS:** Thank you.

12 **BY MS. RIGGS:**

13 Q State laws require counties to constitute Multipartisan  
14 Assistance Teams, or MAT teams, to assist voters, particularly  
15 those residing in certain facilities, in requesting and casting  
16 an absentee ballot, correct?

17 A Correct.

18 Q In past elections, though, there have been counties  
19 where -- that have not made MAT teams available, is that  
20 correct?

21 A That's my understanding.

22 Q Director Bell, I want to show you an exhibit that we  
23 discussed at your deposition and given it to the Court and mark  
24 it, if we can. We'll call this Plaintiffs' Exhibit 1?

25 **THE COURT:** Are you going to use the overhead?

1           **MS. RIGGS:** I don't have to for this one if I'm  
2 handing one up and it's marked, but I can if you prefer it.

3           **THE COURT:** So to the extent you can, I do right now  
4 prefer using the overhead. Just put the official exhibit up on  
5 the bar right there next to -- on the yellow spot, and then  
6 just show it.

7           **MS. RIGGS:** May I approach, Your Honor?

8           **THE COURT:** Um-hum.

9 **BY MS. RIGGS:**

10 Q       Director Bell, can you see this?

11 A       Yes, I see it, yes.

12 Q       That's just a description of what it is.

13           **MS. RIGGS:** Your Honor, this exhibit, which we've  
14 marked as Plaintiffs' Exhibit 1, has also been previously filed  
15 at ECF 73-8 at pages 7 through 9. It was authenticated by the  
16 witness at her deposition.

17           **THE COURT:** All right.

18 **BY MS. RIGGS:**

19 Q       Director Bell, do you remember us discussing this exhibit  
20 at your deposition?

21 A       I do.

22 Q       In fact, in the March 2020 primary, you're aware that  
23 Davidson County did not have a MAT team to assist a voter in an  
24 assisted living facility, correct?

25 A       Correct.

1 Q And you were copied on this email exchange, that is,  
2 Exhibit 1?

3 A Yes, I am copied.

4 Q And this is an email exchange between the North Carolina  
5 State Board of Elections' general counsel Katelyn Love and  
6 Kenya Myers who works for Disability Rights North Carolina?

7 A It is.

8 Q You discussed Ms. Myers' inquiry with Ms. Love, correct?

9 A I do remember having some conversation.

10 Q That in early voting for the primary election this year,  
11 Ms. Myers notified you that Davidson County, despite its  
12 statutory obligation to do so, did not make a MAT team  
13 available to assist a voter that had requested its assistance,  
14 is that right?

15 A That's my understanding.

16 **MS. MOSS:** Your Honor, may I lodge an objection,  
17 please? The document that is attached -- that she's asking her  
18 about was attached to the Myers declaration, which you struck;  
19 and while Director Bell may have authenticated that this is an  
20 email that was sent, to the extent that she's eliciting hearsay  
21 testimony or hearsay information from Ms. Myers who is not here  
22 to be cross-examined or, you know, for us to know the veracity  
23 or foundation for anything that she's saying to Ms. Love, I  
24 would submit that that is hearsay that should not be  
25 considered.

1           **MS. RIGGS:** Your Honor, may I respond?

2           **THE COURT:** No. Let me hear the rest of the  
3 questions, and then I'll rule because I'm really unclear where  
4 this is going at this particular juncture with respect to the  
5 Executive Director. So let me hear some more; and then when  
6 we're done, I'll hear from you.

7           **MS. RIGGS:** Absolutely.

8 **BY MS. RIGGS:**

9 Q       And so you discussed with Ms. Love that in early voting  
10 for the primary this year, Ms. Myers notified you that Davidson  
11 County, despite its statutory obligation to do so, did not make  
12 a MAT team available to assist a voter that had requested its  
13 assistance, is that right?

14 A       General Counsel Love made me aware of it. You can see  
15 that the correspondence is really between Ms. Love and  
16 Ms. Myers.

17 Q       If Ms. Love had provided Ms. Myers misinformation, would  
18 you have followed up with her about that?

19 A       Yes.

20 Q       Okay. And Ms. Love informed Ms. Myers that unfortunately  
21 not every county has a MAT team, isn't that right?

22 A       I believe that's what the email says, yes.

23 Q       Okay. And she said it may be difficult to find a team of  
24 bipartisan volunteers to serve, and the MATS program has no  
25 funding allocated to it by the legislature, is that right?

1 A That's what it states, yes.

2 Q MAT teams still have no dedicated state funding, is that  
3 correct?

4 A That's correct.

5 Q You expect that MAT team recruitment may be more difficult  
6 because volunteers may be -- sorry -- recruitment may be more  
7 difficult because volunteers may be concerned about contracting  
8 or transmitting COVID-19, is that right?

9 A We are concerned about that, yes.

10 Q And while the State Board of Elections has oversight over  
11 elections, if there's a shortage of volunteers, you can't  
12 compel people to appear and act as MAT volunteers, is that  
13 right?

14 A No, I cannot compel them.

15 **MS. RIGGS:** Those are the questions I have about this  
16 exhibit, Your Honor.

17 **THE COURT:** I mean, the Board of Elections told  
18 Ms. Myers that another person could assist a voter?

19 **MS. RIGGS:** Not staff.

20 **THE COURT:** Yeah. I mean, the question was can we  
21 assist a voter, right?

22 **MS. RIGGS:** Your Honor, the State and Legislative  
23 Intervenors in this case have taken the position that MAT teams  
24 somehow are a fail safe, and this evidence which was  
25 excluded --

1           **THE COURT:** No, the objection goes to the fact that  
2 I've struck the exhibit.

3           **MS. RIGGS:** Because it was in a reply declaration.  
4 Legislative Intervenors wanted discovery --

5           **THE COURT:** So one of the reasons that I struck the  
6 declaration was a carefully crafted effort to limit the  
7 information, as I saw it. Specifically, there is nothing to  
8 confirm the substance of the letter when it was initially filed  
9 with the motion, right?

10           **MS. RIGGS:** I'm not -- we're not --

11           **THE COURT:** And, second, in the reply declaration,  
12 Ms. Myers comes in and says there's no MATS team, right? But  
13 Ms. Myers never answers the question that was posed in the  
14 letter, which was if a MAT team is not available, can another  
15 individual assist the voter? Right? That was the question.

16           **MS. RIGGS:** Your Honor, I'm sorry. That's not the  
17 reason it's being offered. We are offering it for the  
18 admission by the State Board of Elections that there is not a  
19 MAT team in every county despite the statutory obligation  
20 that --

21           **THE COURT:** So what do we do with the other stuff in  
22 email? The stuff about if there's a MAT team is not available,  
23 another person can assist. Can that come in?

24           **MS. RIGGS:** That can come in. But this is an  
25 admission by the State Board of Elections' general counsel

1 there is not a MAT team in every county.

2 **THE COURT:** Could you have just asked her the  
3 question?

4 **MS. RIGGS:** I did, in her deposition.

5 **THE COURT:** And what did she say?

6 **MS. RIGGS:** She was uncertain until this refreshed  
7 her recollection.

8 **THE COURT:** Okay. Recollection refreshed. There's  
9 not a MATS team in every county, is that correct?

10 **THE WITNESS:** That's correct.

11 **THE COURT:** All right. This really, really troubles  
12 me, because had I -- let's take a recess. We'll be in recess  
13 for 10 minutes.

14 (At 4:05 p.m., break taken.)

15 (At 4:13 p.m., break concluded.)

16 **THE COURT:** All right. Ms. Bell's testimony -- as I  
17 understand, Ms. Bell, is that not every county in the state  
18 created a MATS team as required, is that correct?

19 **THE WITNESS:** That's correct, sir.

20 **THE COURT:** In terms of this particular exhibit,  
21 these are communications between the general counsel for the  
22 State Board of Elections and an individual named Kenya Myers,  
23 is that correct?

24 **THE WITNESS:** That's correct.

25 **THE COURT:** And do you know Ms. Myers?

1           **THE WITNESS:** I believe I've met her or had a meeting  
2 before.

3           **THE COURT:** Did you conduct any investigation as to  
4 the contents of her communication to Ms. Love?

5           **THE WITNESS:** Ms. Love handled it and spoke with the  
6 county, as I recall.

7           **THE COURT:** Ms. Bell's testimony stands with respect  
8 to whether or not every county created a -- whether or not  
9 every county created a MATS team. The testimony specifically  
10 is they did not.

11           To the extent the letters and the communications or  
12 the emails and the communications are used to refresh her  
13 recollection, which is not ordinarily an exhibit to be admitted  
14 into evidence, I do find that apparently -- I will find that  
15 they did refresh her recollection as to that fact. In terms of  
16 introduction of the exhibit for any substantive purpose, I'm  
17 going to sustain the objection.

18           The statute says that if a MATS team is not  
19 available -- or "unavailable" I think is the actual word --  
20 then another individual, not otherwise excluded under the terms  
21 of the statute, may assist; and for reasons that will be  
22 further set forth in a written opinion, I'm going to sustain  
23 the objection. I don't think this has -- even though the rules  
24 of evidence don't apply, I'm not going to let Ms. Bell opine or  
25 suggest any type of substantive finding based upon information



1 from third parties who have neither submit -- who -- well, at  
2 this point don't have an affidavit in evidence or are not  
3 before the Court.

4           You may continue.

5           **MS. RIGGS:** Thank you, Your Honor.

6 **BY MS. RIGGS:**

7 Q       Ms. Bell, you spoke with opposing counsel and Judge Osteen  
8 about your recommendation that the legislature temporarily  
9 modify restrictions on voter assistance in care facilities so  
10 that nursing home staff could assist a voter in requesting or  
11 returning an absentee ballot, yes?

12 A       Yes.

13 Q       And should that -- should this Court enjoin the criminal  
14 penalties for care facility staff assisting a voter, do you  
15 know if staff would be compelled to provide that assistance?

16 A       If there was an injunction to that effect, then, yes, they  
17 would be designated, and we would -- they would provide that  
18 assistance.

19 Q       If -- sorry. The injunction would be against the statute  
20 that imposes criminal penalties on the assistance. That  
21 doesn't necessarily mean, though, does it, that care facility  
22 staff has to help a voter in a lockdown facility, isn't that  
23 right?

24 A       I guess it would depend upon what the injunction is and  
25 how we would carry -- I don't know.

1 Q The voter guide that the State Board of Elections sends  
2 out goes to every household in North Carolina, not every  
3 registered voter, correct?

4 A It is by household.

5 Q And so there's only going to be, per your declaration, one  
6 absentee request form in each of those voter guides, is that  
7 right?

8 A There would just be one in the guide, yes.

9 Q So that may be insufficient in households where there's  
10 more than one registered voter, isn't that correct?

11 A It could be, yes, if there's more than one, but there will  
12 also be a QR code or something where they can access the online  
13 portal that I mentioned or to print their own.

14 Q If they have access to online and printers, correct?

15 A Correct.

16 Q Okay. And you were not -- you testified that you were not  
17 the Executive Director of the State Board of Elections during  
18 the CD 9 investigation, is that correct?

19 A That's correct.

20 Q So you have no -- you were not even living in North  
21 Carolina at the time of that State Board hearing, isn't that  
22 right?

23 A That's correct.

24 Q So you have no firsthand knowledge of that investigation  
25 and hearing, is that right?

1 A No firsthand, that's correct.

2 Q You ordered that the Congressional District 11 Republican  
3 primary in a Columbus County county-level primary runoff be  
4 delayed because of the pandemic, right?

5 A Actually, I ordered the second primary for the  
6 Republican -- well, the Congressional District and the  
7 primary -- a new primary for the district to Republican  
8 Columbus County election.

9 Q I'm sorry. Thank you for that correction.

10 But it was because of the pandemic, correct?

11 A That's correct.

12 Q And moved to June 23?

13 A From May 12 to June 23, yes.

14 Q And you mandated that any county participating in that  
15 election whose office was closed have a secured dropoff box for  
16 election materials, correct?

17 A Yes, a lockbox. A locked box, yes.

18 Q For voters to drop election materials in?

19 A That's right, if they were not open.

20 Q Okay. And those election materials would include voter  
21 registration forms, although not for that particular primary  
22 runoff or redo, correct?

23 A It could be for the primary, but not for the second  
24 primary, correct.

25 Q Okay. Those election materials would also include

1 absentee ballots, correct?

2 A We actually had not issued absentee ballots at that point.  
3 It could be the absentee ballot request form.

4 Q Okay. So that could be returned by the secure drop box or  
5 lockbox, correct?

6 A That's right.

7 Q Do you know if any absentee ballots themselves were  
8 returned via that lockbox?

9 A Not that I'm aware of. I believe that most of the county  
10 offices had found a way to -- in those 18 counties that were  
11 conducting elections, they resumed operations in some way to  
12 retrieve those.

13 Q Okay. But while only the June 23 primary runoff for  
14 primary counties were mandated to get these secured lockboxes  
15 or drop boxes, any of the 100 counties could have obtained a  
16 drop box if their office was closed, correct?

17 A That's correct. I believe that was a universal  
18 instruction in terms of the operations of those counties.

19 Q Okay. And you're not aware of how many of the 100  
20 counties actually did obtain a drop box, correct?

21 A No, I did not specifically chart that. It was indicated  
22 in our website where we would update people about the hours and  
23 so forth.

24 Q Okay. And you're not aware of any counties wanting to  
25 procure drop boxes but being unable to do so, is that right?

1 A I'm not aware. I know that when we tried to order one for  
2 the State Board, it actually took some time for us to receive a  
3 small drop box that we could use in our office.

4 Q What is "some time"?

5 A It seems like it was over a month. I don't know exactly,  
6 but we went at least a month without one after we had ordered  
7 it.

8 Q But you're not aware of any of the counties -- the 100  
9 counties having those issues, isn't that right?

10 A I do not know one way or another.

11 Q Okay. So when -- you're not aware of any counties that  
12 used a drop box or a lockbox when their offices were closed  
13 that had any security-related issues with respect to those  
14 boxes, isn't that correct?

15 A Not that I'm aware of.

16 Q There are processes within SEIMS, the State Election  
17 Information Management System, that can look for voter  
18 registration duplications across counties, is that right?

19 A Yes.

20 Q And there are processes within SEIMS that can look within  
21 your systems in order to process voter registrations in the  
22 order in which they are received if it's the same county, is  
23 that right?

24 A Yes.

25 Q If a voter misses the voter registration deadline --

1 that's 25 days before the election -- that voter has a  
2 fail-safe of going in person to a one-stop early voting site  
3 and using same-day registration, correct?

4 A Correct.

5 Q But in a pandemic, going in person to a voting site may  
6 not be recommended for at-risk individuals, correct?

7 A That is a recommendation, correct. They can vote curbside  
8 or do same-day registration curbside.

9 Q Okay. So let me come back to that.

10 But if a high-risk individual misses the voter  
11 registration 25-day deadline and is advised not to vote in  
12 person, there's no other fail-safe that allows them to register  
13 in time without going somewhere in person to vote in an  
14 election conducted during a pandemic, isn't that right?

15 A Other than same-day registration, if someone wants to  
16 register after the 25-day deadline, then they will need to  
17 go -- that's their only option.

18 Q And you have to do that in person, correct?

19 A That's correct.

20 Q And you've agreed that there are limited options for  
21 someone in that situation, isn't that right?

22 A Limited options?

23 Q As a fail-safe, if they've missed the voter registration  
24 deadline?

25 A If they've missed the voter registration deadline, then

1 they would need to same-day register.

2 Q But you just mentioned curbside voting during early  
3 voting; but under North Carolina law, in order to use curbside  
4 voting, a voter has to attest to being unable to come into the  
5 voting location due to age or physical disability, isn't that  
6 correct?

7 A That is the attestation, yes.

8 Q And your position under oath in your deposition was that a  
9 voter's fear of contracting COVID-19, even if they were at  
10 risk, is not a physical disability or age?

11 A That is the legal interpretation that our agency has made.

12 Q Okay. So curbside at early voting really isn't even a  
13 limited option for those at-risk people if they miss the voter  
14 registration deadline, isn't that right?

15 A If they're at risk, I actually would consider that to be a  
16 physical disability keeping them from coming into the polling  
17 place, and they would attest to such, and then we would be able  
18 to administer curbside voting.

19 Q I'm sorry. I thought you just said that your position was  
20 that a voter's fear of contracting COVID-19, even if they were  
21 at risk, is not a physical disability?

22 A I thought you were indicating is fear the reason to not  
23 come -- to vote curbside. I did not recognize it as fear if  
24 they are at risk.

25 **THE COURT:** As I understand what you're saying, fear

1 is not an excuse to do one-stop -- or curbside voting?

2 **THE WITNESS:** That is right, sir. They shouldn't  
3 attest to that.

4 **THE COURT:** If I have asthma or obesity that perhaps  
5 puts me at high risk, then that you would consider? If they  
6 say, "I have asthma," you would consider that?

7 **THE WITNESS:** That's a reason to not come into the  
8 polling place, yes.

9 **BY MS. RIGGS:**

10 Q What education do you plan to share with voters so that  
11 they understand that having an underlying medical condition  
12 that increases their risk can be used to satisfy the curbside  
13 voting?

14 A I think -- I mean, we can include information in our  
15 judicial guide. As I mentioned, we would be giving information  
16 about the pandemic and how we'll conduct voting, but we have  
17 indicated -- the way we conduct curbside voting is much like I  
18 mentioned to the judge earlier. If you state that you have had  
19 back surgery, I don't ask you to show me the scar in order  
20 to -- it's what the voter is attesting to. So, you know,  
21 that's how we administer curbside voting. We don't -- we don't  
22 grill somebody about whether they are attesting correctly or  
23 not. We provide that service to those voters.

24 Q But a voter needs to know that when he or she attests that  
25 they have a physical disability that prevents them from going



1 into a polling place, that having an underlying condition,  
2 which there are numerous ones, satisfies that, and they can  
3 legally attest that they have a physical disability. Isn't  
4 that right?

5 A We ask the voter can they attest to the fact that by age  
6 or by disability they are unable to come into the polling  
7 place. If they say yes, they sign it, and we administer  
8 voting.

9 Q Well --

10 A I'm not sure that I understand your distinction.

11 **THE COURT:** Let me -- so if a voter rolled up and  
12 said, "I'm a vulnerable person, I'm 69, I can't go in," that  
13 counts?

14 **THE WITNESS:** That counts, yes, sir. I'm not going  
15 to ask them to prove their age at that point.

16 **THE COURT:** If they say, "I have health conditions  
17 that prevent me from going inside that building," that counts?

18 **THE WITNESS:** That counts.

19 **THE COURT:** All right. You can continue.

20 **BY MS. RIGGS:**

21 Q Is the State Board going to issue guidance to the counties  
22 about this topic?

23 A I believe in my time of administering elections in North  
24 Carolina, that's how we've operated. I would have to look back  
25 to see if we've actually issued guidance before to that effect;

1 but we have many materials, and that's what it instructs. I  
2 mean, it doesn't say prove -- have the voter prove to you that  
3 they can't come into the polling place.

4 Q But if a voter pulls up and says, "There's people not  
5 wearing masks; I don't want to go in there in case I get  
6 COVID-19," that would not be a reason for them to be allowed to  
7 use curbside voting, correct?

8 A We would say, "Are you attesting that you are unable to  
9 come into the polling place due to age or disability."

10 Q And is there guidance to county boards specific to this  
11 global pandemic that we're in and people's fear about  
12 contracting COVID-19 to that effect?

13 A I believe if I looked back at our guidance that we gave to  
14 those conducting the June 23 elections, it does instruct them,  
15 I believe -- I would have to go back -- or we've done it in  
16 training, and there's nothing to prohibit us from issuing that  
17 guidance now.

18 Q You believe it's in that numbered memo from -- on  
19 conducting elections on June 23, is that right?

20 A I don't recall specifically. If we can look at it, I'll  
21 be happy to see if it's in there.

22 Q You most certainly can.

23 A At a glance -- wait a minute.

24 At a glance, I don't see where we specified that. We  
25 talk about the care for the privacy sleeves during curbside

1 voting and disinfecting those. I do believe it's been  
2 discussed during the trainings that we do routinely with the  
3 counties through webinars. And, again, we've got many items of  
4 guidance that we still need to put out. So there's nothing to  
5 prohibit us from clarifying that, though I think the counties  
6 are aware of how we would handle this because it's something we  
7 do already.

8 Q In the one election we've had in a pandemic?

9 A In the elections that we conduct -- candidly, I mean, if  
10 it rains, I can say that there are people who will come and say  
11 that they can't go inside of the polling place, but we don't  
12 say, "Prove that to me." We conduct voting.

13 Q When you've -- well, in the -- there are frequently  
14 complaints about lines for using curbside voting, isn't that  
15 correct?

16 A There have been complaints. I don't know if I would say  
17 frequently.

18 Q Okay. Do you know how many North Carolinians possess one  
19 of the factors that lead to increased risk of contracting or  
20 suffering ill effects from COVID-19?

21 A I don't know off the top of my head, no.

22 Q Okay. Do you know what would happen if all of those  
23 voters avail themselves of curbside voting?

24 A If they're like any voter who presents themselves to vote  
25 before 7:30 -- or by 7:30 p.m, we'll conduct voting for them if

1 we have to walk to every single car that's in the parking lot.

2 Q What if there's more cars than there are spaces in a  
3 parking lot?

4 A Then they'll be lined out into the streets. We'll do --  
5 you know, these are all things that we have to consider.

6 Q You're aware, aren't you, that in primaries in other  
7 states since the onset of the pandemic that tens of thousands  
8 of voters report not receiving their requested absentee  
9 ballots, is that right?

10 A That is my understanding, yes.

11 Q And similar to our earlier conversation, voters who on  
12 election day have not yet received their absentee ballots have  
13 limited options if they're advised not to go vote in person,  
14 isn't that right?

15 A That's correct.

16 Q You oppose the relief that Plaintiffs seek to use the  
17 Federal Write-In Absentee Ballot if an absentee ballot isn't  
18 received, but that would provide such voters an option to  
19 participate, isn't that correct?

20 A The Federal Write-In Absentee Ballot is intended for  
21 UOCAVA, Uniformed and Overseas Citizens --

22 **THE REPORTER:** I'm sorry. Intended for?

23 **BY THE WITNESS:** I'm sorry. UOCAVA. It's

24 U-O-C-A-V-A. It stands for Uniformed and Overseas Citizens  
25 Absentee Voting Act.

1 **BY MS. RIGGS:**

2 Q But for the voter who has requested an absentee ballot but  
3 not received it on election day, as tens of thousands of voters  
4 in other states report, having that option would allow them to  
5 participate on election day, isn't that right?

6 A We -- that is an option for those particular voters. If  
7 we were to employ that for civilian absentee voters, the  
8 procedures are different. The FWAB does not require a witness,  
9 for example. So we have to -- I mean, there's different  
10 procedures. We would have to know how to proceed with that.

11 Q And Plaintiffs, to your knowledge, don't request that the  
12 Federal Write-In Absentee Ballot be submitted electronically,  
13 do they?

14 A I don't recall.

15 Q Some agencies that are a part of the North Carolina  
16 Department of Health and Human Services have a wet ink  
17 signature on file from North Carolina customers, correct?

18 A There are agencies with wet ink signatures on file, yes.

19 Q Recently, during your tenure, the State Board of  
20 Elections offered online voter registration through the North  
21 Carolina Department of Motor Vehicles, right?

22 A That is in place, yes.

23 Q And the State Board of Elections worked with the NCDMV and  
24 its State-approved vendor PayIt to offer those services,  
25 correct?

1 A Over a series of months, yes.

2 Q But you haven't had any conversations with representatives  
3 from PayIt to see whether they would be willing to contract  
4 with SBOE or DHHS to similarly offer online voter registration  
5 for DHHS customers, correct?

6 A I have not spoken with PayIt. We are not their customer;  
7 DMV is.

8 Q You're part of the National Association of State Election  
9 Directors, is that right?

10 A I am.

11 Q And that group is meeting weekly to share lessons learned  
12 from the novel challenge of conducting elections during a  
13 pandemic, is that right?

14 A Most weeks, yes.

15 Q Through that group and other sources, you've been  
16 following primary elections in other states, yes?

17 A That's correct.

18 Q Including the recent Georgia primary conducted on June 9?

19 A Yes.

20 Q You understand that precinct consolidation in some  
21 jurisdictions in that Georgia primary contributed to long  
22 lines, correct?

23 A I do understand that's a factor that happened in Georgia,  
24 yes.

25 Q Those precinct consolidations and long lines reduced the

1 ability to social distance at polling places in Georgia,  
2 correct?

3 A That is my understanding.

4 Q And that precinct consolidation was caused in part, in  
5 your words, by a mass exodus of poll workers fearing  
6 coronavirus exposure, is that right?

7 A That is one of the factors that I understand, yes.

8 Q And you were not aware of a -- of Georgia Statute  
9 21-2-92(a), which is analogous to the changes which were made  
10 in House Bill 1169, that would allow a majority of poll workers  
11 to be residents of the county as opposed to the precinct, is  
12 that right?

13 A I do not know Georgia law.

14 Q So you were not aware of that statute?

15 A I was not.

16 Q Okay. And while you haven't tracked it, you're aware that  
17 some states only require poll workers to be registered voters  
18 in the state in order to serve as a poll worker, right?

19 A I actually don't know that. I'm sorry? I don't think I  
20 know that other states have that provision.

21 Q Okay. You approved some precinct consolidations in early  
22 May for the June 23 election, is that right?

23 A I did.

24 Q And I believe you testified that your recollection was  
25 that you approved precinct consolidations in six or seven

1 counties in the CD 11 June 23 runoff, is that right?

2 A That's my recollection now as well, yes.

3 Q And those consolidations affected thousands of voters, is  
4 that right?

5 A That's correct.

6 Q One of the reasons offered by counties for needing to  
7 consolidate precincts was poll worker shortage, correct?

8 A That was stated by some of the counties. That was not the  
9 only factor that we considered.

10 Q It was one of the reasons offered by the counties,  
11 correct?

12 A Correct.

13 Q You are -- and North Carolina will need substantially more  
14 poll workers for the general election in November, correct?

15 A We always use more poll workers in a presidential  
16 election.

17 Q You are not confident that North Carolina county boards of  
18 elections will be able to adequately staff early voting sites  
19 and polling locations on election day, isn't that true?

20 A I'm concerned about election day in particular. I do  
21 think we have the means to staff our one-stop early voting  
22 sites.

23 Q Are you testifying today that you are confident you will  
24 be able to staff early voting sites?

25 A I'm more assured that we can do that. I can't be



1 confident. We're working on that.

2 Q The average age of poll workers in North Carolina is  
3 around 70, and the role requires significant interaction with  
4 the public. So you anticipate that poll workers in at-risk  
5 categories may be advised not to serve or may be unable to  
6 serve this year, correct?

7 A I'm aware that we may have poll workers who are unable to  
8 serve, correct.

9 Q And you've only run one statewide election, a primary, in  
10 your tenure as the State Board of Elections director, and  
11 that's the basis of your knowledge about how counties statewide  
12 will deal with potential poll worker shortages, correct?

13 A I don't know that that's actually the basis. I've worked  
14 in elections administration for 14 years. I've had to recruit  
15 poll workers myself, and we did not have a pandemic on March 3.  
16 So I'm basing it more on the experience of other states and  
17 also what we experienced for June 23.

18 Q Which was not a statewide election, correct?

19 A That's correct. It was 18 counties that were involved.

20 Q Okay. And you've never administered a statewide  
21 presidential general election, isn't that correct?

22 A Not as Executive Director. I have actually been in  
23 election administration for two other presidential elections as  
24 a State Board staff member and as a county director.

25 Q And you discussed those roles with Mr. Peters earlier,

1 isn't that right?

2 A I did identify those roles, yes.

3 Q North Carolina has approximately 2,700 precincts, isn't  
4 that right?

5 A That's correct.

6 Q And in order to provide each precinct with five to nine  
7 workers, you anticipate needing 20- to 25,000 workers for  
8 election day across the state, isn't that right?

9 A That's correct.

10 Q And as of last week through the State Board's Democracy  
11 Heroes Campaign, the State Board had enlisted 600 of the 20,000  
12 to 25,000 of the necessary poll workers, isn't that right?

13 A As of last week, and then we issued another -- we'll  
14 continue to update the counties, and another about 500 were  
15 sent out yesterday. So approximately in a week, week and a  
16 half, two weeks, we had had another 500 sign up, and that's  
17 without doing all of the provisions and steps that we're  
18 planning to take with Democracy Heroes.

19 Q So you now have about 1,100 -- am I understanding your  
20 testimony correctly that you have about 1,100 people signed up  
21 to do that?

22 A A thousand to 1,100 through our efforts. I don't know  
23 what the efforts of the counties has actually generated.

24 Q And the State Board of Elections has access to the contact  
25 information from all the individuals who sign up through this

1 centralized Democracy Heroes enrollment site, correct?

2 A If they provide that on the survey, yes, we have that  
3 information.

4 Q You couldn't provide them to the counties if they didn't  
5 provide their contact information, correct?

6 A That's correct.

7 Q All right. So I want to ask you about uniform hours now.

8 In your letters to the North Carolina General  
9 Assembly, you recommended that the legislature consider  
10 changing or modifying the uniform hours requirement for  
11 one-stop early voting sites, correct?

12 A There was a recommendation that indicated that we should  
13 consider the one-stop sites, yes.

14 Q And you recommended that because, and I quote, "county  
15 boards of elections need flexibility to determine hours because  
16 they are affected directly by and respond differently to the  
17 COVID-19 pandemic," is that right?

18 A That's correct.

19 Q Mr. Peters didn't number it, but you recall the second  
20 letter you sent to the legislature on April 22, correct?

21 A I did send another letter on the 22nd of April, yes.

22 **MS. RIGGS:** Okay. I want to mark that just so we can  
23 see that. Mark that as Exhibit 2, and I'll just put it on the  
24 ELMO for you to look at.

25

1 **BY MS. RIGGS:**

2 Q Director Bell, I want to ask you about your recommendation  
3 with respect to considering modifying one-stop site and hours  
4 requirements. You said in this letter that you expected a  
5 change would reduce costs for county boards of elections, isn't  
6 that right?

7 A It's stated there, yes.

8 Q And you're generally aware that some county boards of  
9 elections feel that complying with the uniform hours  
10 requirement has cost their county board of elections money, is  
11 that right?

12 A Could you state your question again, please?

13 Q Absolutely.

14 You're generally aware that some county boards of  
15 elections feel that complying with the uniform hours  
16 requirement currently in place has cost their county board of  
17 elections money?

18 A Some have stated that, yes.

19 Q And you're aware that the additional cost has influenced  
20 some county boards of elections' decisions to reduce the number  
21 of early voting sites, particularly from 2014 to 2018, isn't  
22 that right?

23 A I think I've stated I don't know if that's a direct  
24 correlation.

25 Q You don't remember -- do you -- so you're testifying today

1 that you don't know or haven't -- it hasn't been reported to  
2 you that the additional cost influenced some county boards of  
3 elections' decisions to reduce the number of early voting  
4 sites?

5 A I don't recall what I said in the deposition. You can  
6 state it for me.

7 **THE COURT:** Well, first of all, there's a question  
8 out there. Have some county boards reported to you or were you  
9 aware that some county boards have reported to the State Board  
10 of Elections that the uniform hours requirement had cost the  
11 counties money?

12 **THE WITNESS:** They have to factor in their budgets,  
13 and so if the uniform hours meant that they would be open more  
14 hours than previous, then, you know, they may have factored  
15 that in to changing their sites, but they look at usage and  
16 determine whether it's -- you know, whether they actually had  
17 enough participation to justify being open. I mean, there's a  
18 lot of variables to why.

19 **THE COURT:** Okay. I didn't quite capture your  
20 question. You can finish it up, if you want to.

21 **BY MS. RIGGS:**

22 Q And so sitting here today, you're testifying that --  
23 sitting here today, you're testifying that you're not aware  
24 that some county board of elections officials -- that that  
25 additional cost has influenced their decision to reduce the

1 number of early voting sites?

2 A That may be a factor. I don't have a specific report or  
3 study or anything where they've said that, but there are  
4 indications that there have been some in 2016 where they didn't  
5 open as many sites.

6 Q Because of the cost associated with the uniform hours  
7 requirement?

8 A That may be why they chose to not.

9 Q Would it refresh your recollection if I showed you your  
10 deposition testimony on this topic?

11 A Feel free.

12 Q I'm reading from page 97, line 25, to 98, line 6. And,  
13 Director Bell, I asked you:

14 "And sitting here today, are you aware that -- of --  
15 that some county board of elections officials -- that  
16 additional cost has influenced their decision to reduce the  
17 number of early voting sites, particularly from 2014 to 2018?"

18 And you testified:

19 "I -- that has been presented to me or stated to me,  
20 yes."

21 A That's right. I just said that it could have been a  
22 factor, and there have been conversations. There's not been a  
23 specific study or report presented to me to that effect.

24 Q Yeah, I wasn't asking about a report. Thank you, though.

25 I want to ask you now a few questions about your

1 emergency order from this past Friday that Mr. Peters discussed  
2 with you, and it's been marked as Exhibit 2.

3 I understood -- oh, I'll give you a minute to find  
4 it.

5 A I'm sorry. I have a stack of papers here.

6 Okay.

7 Q I understood from your discussion with Mr. Peters that  
8 this order extended the deadline previously set as July 31 for  
9 the submission of early voting plans to August 7. Can you  
10 point me to where that order moves that deadline? I'm sorry if  
11 I'm missing it.

12 A I believe that it was actually -- General Counsel Katelyn  
13 Love sent this out on my behalf, and I believe it was in her  
14 email that this -- or this was attached that she stated August  
15 the 7th would be the date.

16 Q Okay. But it's not in this order?

17 A I don't believe so, not specifically.

18 Q So on Friday, you moved that deadline back a week?

19 A That's right, for the counties.

20 Q You're generally aware, aren't you, that because of a  
21 July 29, 2016, Fourth Circuit ruling affecting the early voting  
22 period, county boards of elections were resubmitting their  
23 early voting plans in late August of 2016, aren't you?

24 A That's my understanding, yes.

25 Q You issued this emergency order because in your judgment

1 the current electoral scheme with respect to one-stop early  
2 voting and in light of other states' experiences is not  
3 sufficient to accommodate the disruptions caused by COVID-19,  
4 is that right?

5 A Correct.

6 Q And your July 17 emergency order does not lift the uniform  
7 hours requirement, does it?

8 A It does not.

9 Q And your emergency order creates a waiver process for  
10 counties in their one-stop early voting plans submitted to the  
11 State, is that right?

12 A Yes.

13 Q The waiver goes to the Executive Director, you, not the  
14 State Board, is that right?

15 A Correct.

16 Q What is the process by which you will decide whether or  
17 not to grant a waiver?

18 A We state in this emergency order that factors will be the  
19 length of lines, the ability to do social distancing; and if I  
20 were not here today, I could probably finish the numbered memo  
21 that gives it more clarity, but, fortunately, I have others who  
22 are working on that.

23 Q Okay. Is that an exhaustive list?

24 A Those are the primary factors.

25 Q Will the numbered memo explain the weight you'll give to



1 each of those factors?

2 A It will define the criteria more and provide them with  
3 either a form or the questions that they will need to respond  
4 to.

5 Q And I understood your testimony earlier to be that  
6 unanimous plans that are compliant with the emergency order  
7 will just -- there won't be any State Board of Elections  
8 review, is that right?

9 A We provide a general review; but if it's unanimous and  
10 compliant, then there's no reason to not allow for it.

11 Q What about plans that are unanimous but a waiver is  
12 needed? Will those be -- how will those be reviewed by the  
13 State Board of Elections?

14 A If they are unanimous but request a waiver?

15 Q Yes.

16 A Then, as we are planning, it will go under my review  
17 because they are unanimous. The waiver would be under my  
18 review.

19 Q What if you denied the waiver?

20 A That is actually something that the general counsel and I  
21 have been discussing, but we have not come to a decision.

22 Q I want to ask you about a part of the emergency order that  
23 is on the bottom of page 6, No. 3. It says:

24 "Any county board of elections that only has one  
25 one-stop early voting site shall arrange for a backup and

1 backup staff in the event that its site must be shut down or in  
2 the event that there is lack of sufficient staffing due to  
3 COVID-19."

4           If there's lack of sufficient staffing due to  
5 COVID-19, how would a county board have backup staff?

6 A       That's meaning if the individuals who were assigned to  
7 that site and working -- if someone became ill or unable to  
8 fulfill their duties, then there's not a sufficient staff at  
9 that site. So we would bring in the backup team.

10 Q       The emergency order also notes that the State Board of  
11 Elections will provide a centralized location on its website  
12 for precinct consolidation information throughout the voting  
13 period. Will that be before you approve those precinct  
14 consolidations?

15 A       The reason we would post it to the State site is because I  
16 have approved the consolidation. The discussion of those  
17 consolidations happens at the county board level.

18 Q       But your approval -- the county can't just consolidate  
19 precincts without your approval, isn't that right?

20 A       That's correct.

21 Q       So how would a voter find out about proposed precinct  
22 consolidations?

23 A       Proposed precinct consolidations are part of a county  
24 board meeting.

25 Q       So they have to attend a county board meeting?

1 A They are public meetings.

2 Q Are they accessible by -- is every county board of  
3 elections meeting currently accessible by some virtual  
4 mechanism?

5 A If they do not meet in person, they've been instructed to  
6 hold a telephonic or some sort of platform where they -- people  
7 can remote in.

8 Q I understand they've been instructed to do that. Are you  
9 aware if they are actually doing that?

10 A They've been instructed to do so and reminded to do so.

11 Q It's a yes or no question. Are you aware if they have  
12 been doing it or not? You can say, "I don't know."

13 A I don't know.

14 Q Okay. Thank you.

15 You issued personal protective equipment for the  
16 June 23 election, is that right?

17 A Yes.

18 Q To poll workers and offered it to voters, is that right?

19 A There were sufficient masks for every voter if they chose  
20 to wear one.

21 Q Those were not N95 masks, were they?

22 A No, they were similar to what your colleague is wearing.

23 Q What would you classify that kind of mask as?

24 **THE CLERK:** Plaintiffs have 5 minutes remaining.

25 **MS. RIGGS:** Thank you.

1           **THE WITNESS:** I don't know the exact term. I think  
2 they're considered disposable or surgical masks, or something  
3 to that nature.

4 **BY MS. RIGGS:**

5 Q       And were the PPE masks provided to voters of the same  
6 quality as that provided to the poll workers?

7 A       Yes. Poll workers were also provided with face shields,  
8 D-65s.

9 Q       There's no statutory right for a voter to seek to cure a  
10 deficient absentee application, is that correct?

11 A       Meaning the return envelope, the container envelope?

12 Q       Yes.

13 A       Is there a cure?

14 Q       Is there a statutory cure?

15 A       No.

16 Q       And, in fact, the statute says the county board of  
17 elections -- there's no appeal from a decision from the county  
18 board of elections whether or not to accept an application, is  
19 that correct?

20 A       There is not an appeal in a statute, correct?

21 Q       And did I understand your testimony to be that counties  
22 are already always offering voters an opportunity to cure a  
23 deficient absentee application?

24 A       It is my knowledge of the practice that they do seek to  
25 try to remedy that with the voter, if that's possible. You

1 can't have -- there's certain things that cannot be cured.

2 Q Such as?

3 A If the board determines that there was no witness  
4 signature, then you can't say fix this envelope by bringing in  
5 a witness because that would not mean that the witness actually  
6 witnessed them voting.

7 Q Okay. So there's no ability for those voters -- if they  
8 misunderstood the witness requirement and didn't have a  
9 witness, for those voters to cure their absentee ballots?

10 A We could contact them and spoil that particular ballot.

11 Q Do you know if that's the regular practice right now?

12 A That was a procedure in my county office.

13 Q Do you know if that's a regular practice across the 100  
14 county boards of elections you and your office currently  
15 supervise?

16 A I don't know, but I believe many do.

17 **MS. RIGGS:** No further questions.

18 **THE COURT:** Who goes next?

19 **MS. MOSS:** I just have two follow-ups.

20 REDIRECT EXAMINATION

21 **BY MS. MOSS:**

22 Q Director Bell, do you know whether Davidson County will  
23 have a MAT for the November election?

24 A I don't know at this time.

25 Q Do you know whether any of the 100 counties will lack a

1 MAT in the upcoming general election?

2 A I don't know one way or the other at this time.

3 Q And do you know definitively that any county closed an  
4 early voting polling site in 2018 that was open in 2016 because  
5 of the uniform hours requirement?

6 A I would not -- I don't have specific indication one way or  
7 the other, other than conversations, but I do believe there are  
8 other -- there are many factors as to whether someone keeps a  
9 polling place open or not.

10 Q So if I asked you to identify a polling place and a county  
11 that you know was closed because of the uniform hours  
12 requirement, you can't provide an example?

13 A Not at this time, no.

14 **MS. MOSS:** That's all I have. Thank you.

15 **THE COURT:** Mr. Peters?

16 **MR. PETERS:** Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 **BY MR. PETERS:**

19 Q Ms. Bell, a couple follow-up questions.

20 You've been asked some questions about MATS,  
21 Multipartisan Assistance Teams. Can you tell us generally is a  
22 MAT something -- that a county would have a standing MAT for  
23 all of its elections, or is it something that's recruited  
24 election by election?

25 A I think it depends on the county, but if -- that would be

1 something that they would recruit election by election. I  
2 would say that there are returning people, but it can be  
3 election by election.

4 Q So would it be fair to say that if a county did not have a  
5 MAT for, say, the primary, that that doesn't mean there's not  
6 -- won't be one in place for the general election?

7 A Correct.

8 Q Now, you were asked some questions about curbside voting.  
9 Do you -- by "you," I mean the State Board and you as the  
10 Executive Director. Do you provide information to voters about  
11 how they can vote?

12 A Yes. We have our website. We have the judicial guide  
13 that goes out. I've been giving presentations. We have an  
14 outreach team that gives presentations. And the counties do  
15 their own efforts similar to that.

16 Q And does that guidance and education you regularly  
17 provide -- does it include things like how to do curbside  
18 voting?

19 A Yes.

20 Q You were asked some questions about printing of the  
21 containers and whether or not you could print in batches and  
22 that sort of thing.

23 Does it create a problem if you change the ballot --  
24 or the container design midway through such that the containers  
25 you send out to people at the beginning of September are

1 different from the ones you're sending out at the end of  
2 September? Does that create problems from an election  
3 administration standpoint?

4 A I think there's two factors there. Yes, you're then  
5 administering voting differently for, you know, the first  
6 voters versus the second group of voters.

7 Also, when we talk about batch printing, depending on  
8 the print house, many of these large-scale printers, it's not  
9 like the way we put envelopes into our personal printers.  
10 They're not existing envelopes. A lot of times what these  
11 printers are doing is a big sheet of paper that they print, and  
12 so the information, you know, that's on the front of the  
13 envelope is being printed at the same time as the back of the  
14 envelope, and so then they cut and fold them into envelope --  
15 you know, seal them and glue them to create an envelope. So  
16 it's a sheet of paper that is created into an envelope. So if  
17 we were to make changes, then there could also be the need for  
18 the county to get a whole new batch of design and not be able  
19 to use the previous batch.

20 Q And does that have cost implications?

21 A Absolutely. I mean, you pay for what they've printed or  
22 you pay for what they've ordered for you, and, you know, they  
23 could just be tossed, and we've done that before, and it's not  
24 a fun thing to say to your commissioners, "I truly threw that  
25 out with the recycle bin."



1 Q And do you have any experience as to in the past, when  
2 there had been printing done in batches, why it was done in  
3 batches?

4 A I have a personal experience. The staff member thought  
5 that they had ordered an adequate supply and had that on the  
6 shelf, and it turned out to not be the envelopes that we  
7 needed. So I contacted a printer. He did a small batch and  
8 made it readily available, but I paid for that because it was a  
9 smaller quantity than if I had been able to order in bulk,  
10 which we did do.

11 But I'm also very mindful that, you know, when I look  
12 back at that point in time -- you know, if we think about the 4  
13 to 5 percent participation that we normally have, we also order  
14 in smaller batches, and now we're talking about larger volumes,  
15 which is something else the counties have to consider and the  
16 printers have to consider. And they're also working under the  
17 same constraints of COVID-19 and protection for their employees  
18 and the supply chain that even makes paper available to us  
19 right now. It's the same trees that we have to have for paper  
20 towels and toilet tissue. So there's a lot of factors in how  
21 we're getting our envelopes.

22 And the indication from the two printers that I know  
23 staff has been in contact with is that they need a 4-week  
24 turnaround to make this happen, at least.

25 Q And you mentioned the supply chain. Has it been the case

1 at times that the reason that printing has happened in batches  
2 is not because of any need from the board of elections, county  
3 or state, but because the printer only had so much paper  
4 available and was waiting for more paper to come in?

5 A That's right. They will quote us a price. If you order a  
6 thousand, this is what your cost is, and maybe they only have  
7 enough to print 250 -- and I probably should go with higher  
8 numbers, but let's just say they can get the 250 to you right  
9 here and now. If you're agreeable that they could come --  
10 continue to fulfill the order, they will do that.

11 Q All right. You've been asked some questions about the  
12 emergency order that you issued last week. That order does not  
13 waive the uniform hours requirement, does it?

14 A It does not.

15 Q So what is the purpose of that order and particularly what  
16 the order directs with regard to weekend hours?

17 A We maintain the uniform hours. We did have an  
18 interpretation -- a legal interpretation that the uniform hours  
19 are 8:00 to 7:30 weekdays and then that final Saturday of 8:00  
20 to 3:00. A county during the week can expand their hours  
21 before 8:00 a.m. and after 7:30 p.m., or after 7:30 p.m., if  
22 they choose, but they'll still be uniform in that application.

23 In terms of the weekends, what we recognize is that  
24 we have to be able to get as many voters -- let me -- we can  
25 have -- if we increase the number of hours and the number of

1 sites available to them and the number of options available to  
2 them and spread that across the county and spread that across  
3 the 17-day period, then we will be able to vote more people  
4 during the one-stop period.

5           And what becomes so critical about that is that if  
6 we're now voting instead of 4 or 5 percent during absentee by  
7 mail and now we're up to 20, 30, or 40 percent, and now during  
8 our one-stop period, when we have the most participation in  
9 most counties in our state -- that's how most people choose to  
10 vote. So if we can still get 40, 50, or 60 percent of the  
11 voters participating then, spreading it over the 17 days where  
12 we don't need as many sites to be open as we do election day --  
13 therefore, we don't need as many workers in that period of  
14 time -- but yet we've got the additional hours on the weekend,  
15 we've got, you know, the requirement that they have more sites  
16 based upon that number of voters, then we are spreading the  
17 opportunity.

18           We're also helping to ensure that when we get to  
19 election day, that we have a very small amount of voters that  
20 are left; and when we have situations where we don't have  
21 enough workers on election day and we don't have enough sites  
22 available -- we're planning to be completely open. We're  
23 planning to be completely staffed, but things will happen. And  
24 so that's why we've even got enhancements within our SEIMS  
25 system so that if we do have to move one of those polling

1 places on election day, that it will not impact as many voters.  
2 We've spread it over that early voting period, and we've  
3 absorbed it with the absentee period.

4 Did that make sense? I said a lot. I'm sorry.

5 Q That's all right. Thank you.

6 There's been a lot of discussion about whether more  
7 hours are provided, whether more locations are provided and how  
8 that affects voter turnout. As you look at this as an  
9 elections administrator, how do you weigh the more hours versus  
10 more locations?

11 A You have to have both. I mean, it gives us -- it gives us  
12 quantity and quality, because we're also still adhering to the  
13 uniform hours; we're still adhering to the other criteria  
14 within the law that says that we will not favor based on party  
15 or demographics or location. And they can establish those  
16 sites to make it available to as many voters as possible.

17 Q All right. And then one last thing. I believe you  
18 mentioned this, but I just want to make sure that this is  
19 clear.

20 As you plan for things like how the MATS will work  
21 and as you plan for how voting can be conducted in polling  
22 places, is the State Board working with the Department of  
23 Health and Human Services to plan how to do that safely?

24 A We are and with the State Emergency Management who is  
25 helping us. They actually have -- are going to be providing

1 our PPE so that we have more funds available to the counties.  
2 So, yes, we're working with both agencies.

3 **MR. PETERS:** Okay. Thank you. I have no further  
4 questions.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** Okay. A couple of quick things. One,  
7 several times throughout your testimony, you talked about the  
8 majority/minority plan --

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** -- coming from a county board.

11 Would you just generally for the record explain what  
12 you mean by majority/minority plan, like how many members of  
13 the board there are, who appoints them, and how those  
14 majority/minority plans arise?

15 **THE WITNESS:** Yeah, in terms of one-stop, it doesn't  
16 have anything to do with the appointment of the board members.  
17 If, for example -- and we have had this -- we have four members  
18 out of five who vote in favor of the plan that the elections  
19 director generally presents, then those four represent a  
20 majority, and that's how that plan would be presented to the  
21 State Board. That would mean that the one member who didn't  
22 agree then states what they would like. We ask them to provide  
23 a minority --

24 **THE COURT:** So each county board consists of five  
25 members?

1           **THE WITNESS:** Yes, sir.

2           **THE COURT:** And a majority/minority plan just refers  
3 specifically to a majority of the board members, whether it's  
4 4/1, 3/2 --

5           **THE WITNESS:** They liked that plan.

6           **THE COURT:** -- like this plan, and you consider both  
7 plans when you are making those decisions?

8           **THE WITNESS:** The State Board does, yes.

9           **THE COURT:** All right. And, second -- so you talked  
10 about Dowless and the canvass and discovery of the fraud, and  
11 then you talked about an audit. And I got a little bit  
12 confused in terms of whether or not you were saying overall  
13 election fraud is a small thing, or whether under the audit  
14 that was conducted they only -- whatever that audit may have  
15 been, they only discovered two fraudulent ballots out of  
16 4 million, or something like that.

17           So when you said election fraud is a small thing, are  
18 you talking about the audit specifically, or are you talking  
19 about overall? I wasn't clear what you were testifying to.

20           **THE WITNESS:** There have been national reports and a  
21 general consensus that we don't have a voter fraud problem, but  
22 because of concerns, it's my understanding that the previous  
23 election Executive Director ordered an audit in 2017 following  
24 the 2016 election to determine if there were substantial cases  
25 or anything. And so that's where there were about four --

1 there were over 4 million who voted in 2016, so they looked at  
2 that, and that's where they had the two cases where it was  
3 actually, if I recall, two different family members who thought  
4 that they were carrying out the wishes of their relatives.

5 **THE COURT:** So there were -- Tutor who testified  
6 about the Dowless scheme. That was in 2018.

7 **THE WITNESS:** That's right. They had been tracking  
8 him before then, but yes.

9 **THE COURT:** Did he have some issues in 2016 as well?  
10 I think Tutor had mentioned something about 2016.

11 **THE WITNESS:** Yes, I think there were -- there was an  
12 investigation in 2016. I don't think there was enough to  
13 substantiate or move forward. There was nothing substantial  
14 enough to present a case to the State Board and then to refer  
15 it to the DA is my understanding.

16 **THE COURT:** All right. So in terms of -- so you look  
17 at Dowless, and in terms of voter fraud and preventing voter  
18 fraud -- clearly, Mr. Tutor believes if somebody wants to  
19 cheat, they're going to cheat -- what are the things that are  
20 in place that help prevent voter fraud in your experience?

21 **THE WITNESS:** So I think the case with McCrae Dowless  
22 in '18, he manipulated the system in terms of how they were  
23 collecting the ballots from those who were voting absentee.  
24 Obviously, we had witnesses at that point, and that didn't stop  
25 him.

1           So we have made recommendations following that case,  
2 and some of those have been put into law. And, you know, it's  
3 things like the absentee request log being very specific as to  
4 who can assist with an absentee request. It removed the  
5 ability for nonrelatives, legal guardians, or the voter  
6 themselves or the MAT team -- people outside of those  
7 individuals can no longer assist with that absentee request  
8 form, for example. So we logged that so that we're aware of  
9 who was turning in those forms. So we monitor that.

10           There's been some other provisions that were passed  
11 back in the fall where we maintained the confidentiality of who  
12 has returned the absentee ballot until election day so that  
13 they can't go around harvesting them and altering them, and  
14 that will stay in place. The Intelligent Mail barcoding that I  
15 was talking about, the voter has the ability to track. That's  
16 not something that is made public as to anyone.

17           **THE COURT:** All right. At the start, you mentioned  
18 kind of the standard appear at the polling place and vote: You  
19 have a precinct worker there, you identify yourself, your  
20 address, and then you sign the little form, and then they  
21 witness your -- essentially witness your signature.

22           What's the purpose of all that?

23           **THE WITNESS:** When I present myself to vote, then I'm  
24 indicating who I am and this is my residence, and by stating  
25 that, that I am who I say I am. And if not, then someone has



1 the ability to challenge me.

2           **THE COURT:** Okay. Anything in response to my  
3 questions?

4           **MR. PETERS:** Just one quick one that I think you may  
5 have touched on earlier, but since you're asking, I want to  
6 make sure it's clear.

7 **BY MR. PETERS:**

8 Q       The judge asked about the majority and minority plans that  
9 were submitted to the State Board of Elections. When the State  
10 Board considers a nonunanimous vote and is looking at a  
11 majority plan or a minority plan, am I correct that it can  
12 choose to approve the majority plan, it can choose to approve  
13 the minority plan, or it can choose to adopt a new plan  
14 altogether?

15 A       They can adopt a new plan altogether, and that's part of  
16 why we have a period of time between when the counties submit  
17 and the State Board consider -- State Board Members consider is  
18 we actually provide them with some pretty extensive data so  
19 that they can see how these two plans that were presented to  
20 them -- how they map out and if they want to take a different  
21 course of action, and I have actually seen them do that.

22           **THE COURT:** All right.

23           **MR. PETERS:** That's it. Thank you.

24           **THE COURT:** Anything further?

25           **MS. RIGGS:** Sorry, Your Honor. May I ask two

1 questions in follow up to your questions?

2 **THE COURT:** You may.

3 **MS. RIGGS:** Thank you, Your Honor.

4 RE CROSS-EXAMINATION

5 **BY MS. RIGGS:**

6 Q Director Bell, would you agree with me that the fact that  
7 an absentee request form must provide the voter's Social  
8 Security number or driver's license number -- and it might be  
9 the last four -- is -- impedes the ability of voter -- folks to  
10 fraudulently submit absentee requests?

11 **MR. PETERS:** Your Honor, I object to this to the  
12 extent that there's been no testimony previously and nothing  
13 from your questions about Social Security numbers.

14 **MS. RIGGS:** Well, I think -- and I'll stand to be  
15 corrected, but I understood you wanted -- the Court wanted to  
16 understand --

17 **THE COURT:** What are the things in place to help  
18 prevent fraud? And she indicated we've changed the -- I think  
19 her answer was something along the lines of we've changed the  
20 process for requesting an absentee ballot. And so in terms --  
21 and then we know what the statute requires.

22 I'll overrule. You can answer, if you know.

23 **THE WITNESS:** I'm trying to recall whether that was  
24 already in place, but that is part of the form, and as I had  
25 mentioned, I mean, there were a series of things. We also knew

1 some things --

2 **THE COURT:** That's another factor that would help  
3 prevent absentee ballot fraud --

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** -- would you agree with that?

6 **THE WITNESS:** Yes, sir.

7 **BY MS. RIGGS:**

8 Q And do you agree that the recent change to not make public  
9 who has requested an absentee ballot until after that absentee  
10 ballot has been received by the county board of elections is  
11 another factor that would deter absentee theft and respond to  
12 the situation like with the CD 9 Dowless issue?

13 A That was done in response to CD 9 is my -- yes.

14 **THE COURT:** Have you given any thought to the fact  
15 you're mailing an absentee ballot request to every household  
16 and what may happen with that?

17 **THE WITNESS:** Since it's a publicly available form,  
18 that's how we chose --

19 **THE COURT:** I'm not criticizing.

20 **THE WITNESS:** Right.

21 **THE COURT:** Rural mailbox, nothing to prevent people  
22 from riding around and taking them, is there?

23 **THE WITNESS:** There's not, but, you know, it's the  
24 return of those to us. So anyone could complete one, I  
25 suppose, but it's --

1           **THE COURT:** I think we've got a timer going off. Is  
2 Ms. Welch over there scrambling around?

3           **THE WITNESS:** Whether we mail them to a household or  
4 whether they download it off of a website, someone could  
5 complete it. It's just the part of how we receive it and the  
6 indications on those request forms that we're tracking.

7           **THE COURT:** Okay. Anything else?

8           **MS. RIGGS:** Nothing, Your Honor.

9           **THE COURT:** Okay. You may step down.

10           (Witness excused.)

11           **THE COURT:** Anything else we need to do today?

12           **MR. THOMPSON:** Not from our perspective, Your Honor.

13           **MR. PETERS:** I'm not aware of anything.

14           **MS. KLEIN:** Nothing from the Plaintiffs, Your Honor.

15           **THE COURT:** We'll be in recess until tomorrow morning  
16 at 9:00.

17           (At 5:19 p.m., proceedings adjourned.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: 07/26/2020 Joseph B. Armstrong  
Joseph B. Armstrong, FRR  
United States Court Reporter  
324 W. Market Street  
Greensboro, NC 27401

# EXHIBIT 6

North Carolina State Board of Elections  
PO Box 27255  
Raleigh, NC 27611-7255

September 23, 2020

To: Chairman Damon Circosta

Dear Mr. Chairman,

I am submitting my resignation to the State Board of Elections effective immediately. However, I would like to clarify some of the issues that came before this board and the reason for my decision.

In particular, the recent memo outlining the new absentee ballot "cure" for the witness requirement. It was not my understanding that the cure would simply mean an affidavit, or cure document, would be sent to the voter for a confirmation that this ballot was their own. No further information but a signature by the voter affirming the ballot was theirs would be required. My understanding was the witness requirement would stay as it is currently with the exception that only one witness signature would be required. Not only was I taken aback by this but I am sure many county directors will be too.

Many of the new rules for the elections this year have been brought about by lawsuits filed against the NCBOE and the opinion from the NC Attorney General's Office that the likelihood of prevailing in court would be slim. A negotiated settlement would be the best option for our agency to pursue. Part of this thinking was that if we waited for a 3-panel judge to rule, that the ruling might occur during the voting period and would cause disruption to the process. Even if that didn't happen, my thought was that a ruling might be more detrimental than what could be negotiated.

I also disagreed vehemently with the one-stop requirement equation to determine the number of one-stop sites. My argument was that it would lead to higher costs to the county by forcing them to open additional sites and not relying on the county boards to use their knowledge of their own county voters in determining how many sites they felt were needed. While waivers were offered by the NCSBOE to the counties, it was in my view, over-reach by the agency.

It was also misleading by the agency to send out a memo requiring the weekend hours at one-stop sites requiring a minimum of 10 hours for the one-stop sites to be open. My take on the initial communication sent to county BOE's was that implied that Sunday voting be included. This was amplified by requiring counties that had already submitted plans to re-submit them based on the new requirements. My protestation to the agency was met with the response that they would be sending out a memo giving examples for the counties to use that would not included Sunday voting. While that was done by the agency, in later meetings where non-unanimous county one-site stop sites were mediated by our Board, it was stated by at least one county that they thought that Sunday voting would be required. I myself received two phone calls from local board members from separate county boards asking if Sunday voting was now required.

These are all items I discussed with our Director and offered my opinion.

In my time on the board we have:

- 1) Undertaken the 9<sup>th</sup> Congressional hearing on the first full day I was appointed to the board
- 2) Fired Kim Strach, which I voted against
- 3) Hired Karen Brinson Bell, which I voted against. Note: While I voted against hiring Director Brinson Bell, I want to commend her for re-organizing the office to operate more efficiently and improving communication with the county BOE offices, which was goal of mine.
- 4) Certified new voting equipment which at least allowed more than one vendor to compete. Hopefully, in the future, by opening competition between vendors will result in better systems at a competitive price.
- 5) Dealt with our usual hurricane preparedness but threw in a earthquake for good measure.
- 6) Lost one chairman (Chairman Cordle) and gained another (Chairman Cirosta).
- 7) Currently dealing with COVID-19, an unprecedented pandemic that has forced us all to look at how elections will be conducted for now.

I can only offer that I did my best to act to reach consensus to make sensible decisions while knowing that the vote most likely would end up 3-2. These recent decisions have made it untenable for me to remain as member.

Sincerely,

David Black



# EXHIBIT 7

September 23, 2020

Everyone,

Effectively immediately, I hereby submit my resignation to the North Carolina State Board of Elections.

It has been a great honor for me to serve the people of North Carolina on the board, however I cannot, in good conscious, continue for the following reasons:

Regarding the settlement agreement with the plaintiffs in the lawsuit filed by the North Carolina Alliance for Retired Americans against the State Board of Elections, attorneys from AG Josh Stein's office did not advise us of the fact that a lot of the concessions made in the settlement have already been denied in a prior case by a federal judge and another case by a state court three-judge panel.

Secondly, we were led to believe that refusal to make a deal that included the extension of mail-in absentee ballots, past the legal acceptance date, would also result in the elimination of the one-witness requirement for residents voting absentee by mail.

Additionally, we were led to believe the effective administration of the election itself rested upon a settlement. And if a judicial order were issued as voters cast their ballots, the effective administration of the election would be impossible.

To preserve the trust of the voters, I acted to keep the one-witness requirement and mitigate the possibility the election being disrupted by a judicial order by compromising on the acceptance date of absentee ballots.

It is impossible to have true bipartisanship when both sides of the political aisle do not have the important and vital information needed to make the right decisions.

Sincerely,

Ken Raymond

# EXHIBIT 9

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILED  
2019 AUG 18 P 2:23  
WAKE CO., C.S.C.  
NORTH CAROLINA ALLIANCE FOR  
RETIRED AMERICANS; BARKER  
FOWLER; BECKY JOHNSON; JADE  
JUREK; ROSALYN KOCIEMBA; TOM  
KOCIEMBA; SANDRA MALONE; and  
CAREN RABINOWITZ,

No. 20-CVS-8881

Plaintiffs,

v.

**AMENDED COMPLAINT**

THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS; and DAMON CIRCOSTA,  
in his official capacity as CHAIR OF THE  
NORTH CAROLINA STATE BOARD OF  
ELECTIONS,

Defendants, and,

PHILIP E. BERGER, in his official capacity as  
President Pro Tempore of the North Carolina  
Senate, and TIMOTHY K. MOORE, in his  
official capacity as Speaker of the North Carolina  
House of Representatives,

Intervenor-Defendants.

Plaintiffs, complaining of Defendants, say and allege:

**INTRODUCTION**

1. The current public health crisis caused by the novel coronavirus (hereinafter, "COVID-19") has upended daily life in North Carolina and threatens to wreak havoc on its electoral system. On March 10, Governor Roy Cooper declared a state of emergency and has since issued orders requiring North Carolinians, consistent with guidance from public health officials, to "[m]aintain at least six (6) feet social distancing from other individuals"; wear face coverings when leaving home; and minimize unnecessary interactions with individuals outside of

their homes in an effort to slow the rapidly increasing number of positive COVID-19 cases.<sup>1</sup> Because there is no known cure for COVID-19, and infections continue to rise, these measures designed to slow the spread of the virus are likely to continue through the November 3, 2020 general election (“November election”).

2. For these reasons, the State Board of Elections (the “State Board”) has acknowledged that voting by mail will expand dramatically, predicting an 800-percent increase in upcoming elections. The State Board has further acknowledged that in-person voting will be significantly impacted due to a shortage of poll workers and polling sites that can accommodate large numbers of voters while complying with social distancing guidelines. With the November election fast approaching, the State is woefully underprepared, not only for the rapid expansion of absentee voters, but also for voters who will attempt to cast their ballots in person and may be forced to choose between their health and their constitutional right to vote.

3. Plaintiffs Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn and Tom Kociemba, Sandra Malone, and Caren Rabinowitz bring this lawsuit to eliminate the barriers to a free and fair election and to ensure that they, along with all other eligible North Carolinians, have a meaningful opportunity to exercise their constitutional right to vote in November.

4. Specifically, Plaintiffs challenge the State’s failure to provide sufficiently accessible in-person voting opportunities that comply with social distancing guidelines during the COVID-19 pandemic, and its continued enforcement of several absentee voting restrictions and procedures that will unduly burden or deny the franchise to countless voters if applied during the November election, while the COVID-19 outbreak still threatens public safety.

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<sup>1</sup> See Governor Roy Cooper, Exec. Order No. 141 (May 20, 2020), <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf> [hereinafter Exec. Order No. 141]; Governor Roy Cooper, Exec. Order No. 147 (June 24, 2020), <https://files.nc.gov/governor/documents/files/EO147-Phase-2-Extension.pdf>.

5. These challenged laws and procedures include: (1) limitations on the number of days and hours of early voting that counties may offer, N.C.G.S. § 163-227.2(b); (2) the requirement that all absentee ballot envelopes must be signed by a witness, despite recommendations from medical professionals and the government that all residents should practice social distancing and minimize unnecessary contact with individuals outside of the home, Bipartisan Elections Act of 2020, 2020 N.C. Sess. Laws 2020-17, § 1.(a) (“HB 1169”) (the “Witness Requirement”); (3) the State’s failure to provide pre-paid postage for absentee ballots and ballot request forms during the pandemic, *id.* § 163-231(b)(1) (the “Postage Requirement”); (4) laws requiring county boards of elections to reject absentee ballots that are postmarked by Election Day but delivered to county boards more than three days after the election, notwithstanding the United States Postal Service’s (“USPS”) well-documented mail delivery delays and operational difficulties, *id.* § 163-231(b)(2) (the “Receipt Deadline”); (5) the practice in some counties of rejecting absentee ballots for signature defects, or based on an official’s subjective determination that the voter’s signature on the absentee ballot envelope does not match the signature on file with election authorities, without providing sufficient advance notice and an opportunity to cure (the “Signature Matching Procedures”); (6) laws prohibiting voters from receiving assistance from the vast majority of individuals and organizations in completing or submitting their absentee ballot request forms, 2019 N.C. Sess. Laws 2019-239, § 1.3(a) (“SB 683”), (the “Application Assistance Ban”); and (7) laws severely restricting voters’ ability to obtain assistance in delivering their marked and sealed absentee ballots to county boards, and imposing criminal penalties for providing such assistance, N.C.G.S. § 163-226.3(a)(5) (the “Ballot Delivery Ban”).

6. Taken together, these barriers (the “Challenged Provisions”) to in-person and

absentee voting are not only unduly burdensome, as applied to the November election, but they also pose significant risks to voters' health and safety and will result in the disenfranchisement of untold numbers of North Carolinians, especially those who are medically and financially vulnerable. Protecting the safety of all North Carolinians during a public health crisis, while enforcing the constitutional rights to vote and to a free and fair election, will require advance planning and immediate proactive measures and accommodations to ensure adequate opportunities to cast an effective ballot (by mail or in person) notwithstanding the COVID-19 pandemic.

7. Plaintiffs therefore request that this Court issue an Order protecting the rights of North Carolina voters to participate in the November election by: (i) permitting counties to expand the early voting days and hours during the pandemic in order to increase opportunities to vote in person and minimize crowding, long lines, and the risk of exposure to COVID-19; (ii) suspending the Witness Requirement for single-person or single-adult households; (iii) requiring the State to provide pre-paid postage on all absentee ballots and ballot request forms; (iv) requiring election officials to count all absentee ballots mailed through USPS and put in the mail by Election Day if received by county boards up to nine days after Election Day, which coincides with the earliest deadline for the receipt of uniformed-service or overseas voters' ballots; (v) enjoining election officials from rejecting ballots based on alleged signature discrepancies or mismatches without adequate guidance and training from the State Board and without providing voters notice and an opportunity to cure their ballots; (vi) allowing voters to obtain assistance from other individuals or organizations of their choice in completing and submitting their absentee ballot applications; and (vii) allowing voters to obtain assistance from other individuals or organizations of their choice in delivering ballots to election officials, and

allow third parties to provide such assistance without fear of incurring criminal penalties.

### **PARTIES**

8. Plaintiff North Carolina Alliance For Retired Americans (“the Alliance”) is incorporated in North Carolina as a 501(c)(4) nonprofit, social welfare organization. The Alliance has over 50,000 members across all 100 of North Carolina’s counties. Its members are comprised of retirees from public and private sector unions, community organizations, and individual activists. Some of its members are disabled, and many are elderly. It is a chartered state affiliate of the Alliance for Retired Americans. The Alliance’s mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work. The Challenged Provisions frustrate the Alliance’s mission because they deprive individual members of the right to vote and to have their votes counted, threaten the electoral prospects of Alliance-endorsed candidates whose supporters will face greater obstacles casting a vote and having their votes counted, and make it more difficult for the Alliance and its members to associate to effectively further their shared political purposes. Because of the burdens on absentee and in-person voting created by the Challenged Provisions, the Alliance will be required to devote time and divert resources from other efforts to educating its members about these requirements and assisting them in complying so that their votes are received by Election Day, accepted, and counted. These efforts will reduce the time and resources the Alliance has to educate its members and legislators on public policy issues critical to the Alliance’s members, including the pricing of prescription drugs and the expansion of Social Security and Medicare and Medicaid benefits.

9. The Alliance also brings this action on behalf of its members who face burdens on their right to vote as a result of the Challenged Provisions. Because all of the Alliance’s members are of an age that places them at a heightened risk of complications from coronavirus, they are



overwhelmingly likely to vote absentee this year and consequently face the burdens that the Challenged Provisions place on absentee voters. For example, some of the Alliance's members live in parts of the State where access to the Internet is sporadic and therefore cannot easily request an absentee ballot without assistance. Others are likely to face difficulty finding a witness, acquiring postage, or delivering an absentee ballot themselves should they be unable to return it through the mail in sufficient time for their ballot to be counted. Additionally, many of the Alliance's members will be absentee voting for the first time, and thus will be more susceptible to disenfranchisement by the Receipt Deadline and Signature Matching Procedures. Finally, those of the Alliance's members who are committed to voting in person, or forced to because they do not receive their absentee ballots on time, will have to choose between their health and their right to vote due to a shortage of safe, in-person voting opportunities.

10. Plaintiff Barker Fowler is a 22-year-old registered voter in Rowan County, North Carolina. Ms. Fowler is a college senior at the University of Mississippi in Oxford, Mississippi, though she is currently at home in Salisbury, North Carolina with her parents due to the pandemic. She is finishing her degree this summer and is uncertain of where she will be this October and November, as she is applying for seasonal jobs out of state. Ms. Fowler typically votes absentee because she attends school in Mississippi, and she will likely have to do so again for the November election. Nevertheless, she is concerned about her ballot arriving in time to be counted, particularly given her experience attempting to vote absentee in the March 3 presidential primary, for which she requested an absentee ballot a month before the election but did not receive it until approximately five days after the election had already passed. Her ballot was postmarked in early February, meaning that it was in transit for more than three weeks. Given her experience attempting to vote absentee in March, Ms. Fowler is very concerned about

North Carolina's Receipt Deadline, as she is not confident that, even if she were to receive her ballot on time to postmark it by Election Day, that it would arrive within three days. Moreover, she does not typically keep stamps and, as a college student facing economic uncertainty due to the pandemic, is concerned about the added time and expense required to procure proper postage.

11. Plaintiff Becky Johnson is a 73-year-old registered voter in Forsyth County, North Carolina. Ms. Johnson is a dedicated voter who usually casts her ballot in person during the early voting period. Given her age and the risks of contracting COVID-19, Ms. Johnson has been extremely careful and does not regularly leave her home, nor does she invite others into her house. When she needs to venture into the public, she engages in strict social distancing practices and always carries a mask with her. She even orders her groceries online because she does not want to expose herself to the virus through contact with others. For the same reason, Ms. Johnson plans to vote by mail in the November election; she cannot be sure that others at the polls will be as careful as she is, and she does not want to risk exposure to COVID-19. Ms. Johnson is worried, however, that her absentee ballot may not count. She is well aware of the USPS's operational difficulties and the resulting mail delays that have occurred during the pandemic, which could prevent her ballot from being delivered on time, even if she mails it well before Election Day. Given these concerns, Ms. Johnson would prefer to seek contactless assistance from a trusted friend or neighbor to return her sealed ballot. Additionally, Ms. Johnson lives alone, and she is unsure how she will comply with the Witness Requirement. She does not want to risk exposure to COVID-19 in order to have her ballot signed by a third party. Further, Ms. Johnson knows that her signature has changed over time and now looks different each time she signs a document, and she is concerned that her ballot will be rejected if her absentee ballot envelope signature does not exactly match the signature on file with her county board of

elections.

12. Plaintiff Jade Jurek is a 60-year-old registered voter in Wake County, North Carolina. Ms. Jurek has multiple sclerosis which can make voting difficult for her. Though she has voted by absentee ballot a few times in the past, she strongly prefers voting in person. Ms. Jurek usually votes during the early voting period, so that she can cast her ballot when she is feeling her best. Ms. Jurek initially considered voting by mail in the November election, but she is concerned about USPS delays and the risk of disenfranchisement. To ensure that her ballot gets counted, she is committed to voting in person, as she usually does. Ms. Jurek voted in person during the primary election and encountered long lines, a crowded polling place, and extended wait times. Though some voters at the polls were taking necessary precautions to prevent the spread of COVID-19, many were not wearing masks or gloves, and Ms. Jurek found that it was not possible to remain socially distant for the full duration of the voting process. She would be much more comfortable casting her ballot if the State were to expand early voting days and hours, so that she would have the opportunity to select a day and a location that is less crowded, which will allow her to adhere to social distancing guidelines through the entire voting process.

13. Plaintiff Rosalyn Kociemba is a registered voter in Buncombe County, North Carolina. She is a 77-year-old member of the Buncombe County Senior Democrats, and she typically votes absentee so that she can spend Election Day working at the polls. For the past five years, she has served as an official poll worker on Election Day, but this year, she plans to stay home due to the COVID-19 pandemic. Ms. Kociemba and her husband both have underlying health conditions that make them especially vulnerable to COVID-19. Therefore, Ms. Kociemba plans to vote absentee again in the November election. Although she usually hand-delivers her

absentee ballot to her county board of elections, she would prefer a contactless option this year given the potential health risks. Ms. Kociemba is also worried about slowdowns in mail delivery service given the USPS's operational difficulties during the pandemic, which could prevent her ballot from being delivered by USPS before the Receipt Deadline. As a result, she would like to seek assistance from trusted neighbors and community members to return her sealed ballot.

14. Plaintiff Tom Kociemba is a registered voter in Buncombe County. He is 75 years old, a sales and marketing professional, and a member of the Buncombe County Senior Democrats. Mr. Kociemba typically votes absentee because he is busy working at the polls on Election Day. Due to the COVID-19 pandemic, however, Mr. Kociemba does not want to take the unnecessary risk of being at an in-person voting location, particularly because he has underlying health conditions that make him vulnerable to serious illness from a COVID-19 infection. Therefore, Mr. Kociemba withdrew from serving as a poll worker (a role in which he has served for the past seven years) and will vote absentee in November. Although he usually hand-delivers his absentee ballot to his county board of elections, he would prefer a contactless option this year in order to avoid interacting with those who may not be following all the precautions necessary to prevent the spread of COVID-19. Nevertheless, he is worried that his ballot may not be delivered by the Receipt Deadline due to slowdowns in mail delivery service and the operational difficulties that USPS has encountered during the pandemic. Mr. Kociemba would like to seek assistance from trusted neighbors and community members to ensure that his sealed ballot is delivered on time.

15. Plaintiff Sandra Malone is a 53-year-old registered voter in Wake County. Ms. Malone usually votes in person and she would like to continue voting in person this year. However, she is concerned about the safety of polling places during the COVID-19 pandemic,

and the lack of adequate options for early voting sites and hours that would allow her to pick a date and time with fewer voters, which would allow her to follow social distancing guidelines through the entire voting process. Ms. Malone is also concerned that if she opts to vote by mail instead, her absentee ballot may not reach election officials by the Receipt Deadline, given evidence of the USPS's overcapacity and operational difficulties. Moreover, she is worried that her ballot may be rejected for a signature mismatch, as her signature changes every few years and rarely looks exactly the same.

16. Plaintiff Caren Rabinowitz is a 69-year-old registered voter in Guilford County. Ms. Rabinowitz recently moved to North Carolina from New York. As a new resident, this will be her second time voting in the State. She voted in person in the March 3 primary. Because Ms. Rabinowitz has underlying health conditions that place her at high risk for serious illness if she contracts COVID-19, she plans to vote by mail in the November election to avoid exposure to the virus. Dropping off her absentee ballot in person would be especially difficult because she does not drive and must rely on public transportation. Ms. Rabinowitz is concerned that her vote will not be counted if, for reasons outside of her control—like the USPS's ongoing mail delivery delays—her absentee ballot arrives after the Receipt Deadline. Further, Ms. Rabinowitz lives alone, and because she recently moved to the State, she does not have any friends or family nearby and is concerned about having to venture out in public or invite a stranger into her home to satisfy the Witness Requirement.

17. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina, including voting absentee.

18. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

## JURISDICTION AND VENUE

19. This Court has jurisdiction of this action pursuant to Article 26 of Chapter 1 of the General Statutes.

20. Under N.C.G.S. § 1-81.1(a1), the exclusive venue for this action is Wake County Superior Court.

## FACTUAL ALLEGATIONS

### **I. COVID-19 has upended the electoral process in North Carolina.**

21. COVID-19 has caused widespread disruption to daily lives and routines across the globe, which has impacted elections around the country and in North Carolina. By March 10, North Carolina had reported five confirmed cases of COVID-19. Since then, the number of confirmed cases in the State has skyrocketed, and the virus has spread to all of North Carolina's 100 counties. *Id.*

22. On March 14, four days after Governor Cooper issued his first executive order declaring a state of emergency—which remains in effect as of this filing—the Governor closed public schools statewide and imposed social distancing guidelines. Since then, the Governor has issued no fewer than 29 executive orders designed to keep North Carolinians safe during the ever-evolving public health crisis.

23. Even as North Carolina gradually begins to reopen, efforts to prevent the spread of COVID-19 remain in place, including executive orders prohibiting mass gatherings—defined as “an event or convening that brings together more than ten (10) people indoors or more than twenty-five (25) people outdoors at the same time in a single confined indoor or outdoor space,

such as an auditorium, stadium, arena, or meeting hall.”<sup>2</sup>

24. Governor Cooper has also strongly advised residents 65 years of age and older, or who are immunocompromised, to stay home. *Id.* Visitation to long-term care facilities, including nursing homes, adult care homes, family care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities has been limited to “compassionate care situations.” *Id.*

25. Efforts to minimize the spread of the virus or the risk of infection will require North Carolinians to exercise caution by following social distancing guidelines and avoiding large group gatherings, which “offer more opportunity for person-to-person contact with someone infected with COVID-19[.]”<sup>3</sup> The need for such precautions shows no signs of easing as COVID-19 cases continue to rise, even though the State is still experiencing what some have termed the first wave of infections.

26. The State Board has announced that it expects a surge in absentee ballots from approximately four percent during previous elections to 40 percent for the November election, and that it anticipates a total of 4.5 million individuals will vote by mail and in person this November. As a result, the Board has asked the General Assembly to eliminate certain restrictions that reduce access to voting by mail.

27. In a March 26, 2020 letter to Governor Cooper and the General Assembly, the State Board’s Executive Director urged the General Assembly to: (1) alter early voting sites and hours requirements to allow counties to better accommodate in-person voters during the COVID-

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<sup>2</sup> Governor Roy Cooper, Exec. Order No. 151 (July 16, 2020), <https://files.nc.gov/governor/documents/files/EO151-Phase-2-Extension-1.pdf> [hereinafter Exec. Order No. 151]; Governor Roy Cooper, Exec. Order No. 147 (June 24, 2020), <https://files.nc.gov/governor/documents/files/EO147-Phase-2-Extension.pdf>; Exec. Order No. 141 (May 20, 2020).

<sup>3</sup> See Exec. Order No. 151.

19 pandemic; (2) relax or eliminate the Witness Requirement, as well as restrictions on third-party assistance of voters in care facilities; (3) establish a fund to pay for outbound and returned absentee ballots; (4) create an online option for requesting absentee ballots, and allow them to be submitted by fax and email; and (5) enable county boards of elections to assist voters by pre-filling their information on absentee ballot request forms.

28. The State Board's Executive Director renewed this plea on April 22, 2020 and April 29, 2020, also requesting funds to account for the unprecedented expansion of absentee voting and to make polling places accessible to voters during the public health crisis—a need which the State is woefully unprepared to meet.

29. Although the General Assembly has reduced the number of signatures necessary to satisfy the Witness Requirement from two to one, allowed the State Board to create an online portal for absentee ballot requests, and permitted voters to return their absentee ballot request forms via email or fax this year, it has yet to adopt any of the above-referenced measures in full.

30. North Carolina's inaction, despite the imminent risk of widespread disenfranchisement under the State's current election procedures, threatens to repeat the chaos and disorder that has played out in one election after another across the country since the pandemic began.

31. In Wisconsin's April 7 primary, for instance, election officials knew ahead of time that in-person voting opportunities would be significantly limited due to the loss of poll workers who were over the age of 65 and feared exposure to COVID-19, and the severe reduction in the number of available polling locations. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, at \*1 (W.D. Wis. Apr. 2, 2020). Like here, the likely consequences of holding an election in that context were clear: "(1) a dramatic



shortfall in the number of voters on election day . . . , (2) a dramatic increase in the risk of cross-contamination of the coronavirus among in-person voters, poll workers and, ultimately, the general population in the State, or (3) a failure to achieve sufficient in-person voting to have a meaningful election *and* an increase in the spread of COVID-19.” *Id.*

32. When Wisconsin proceeded to conduct its primary election in April without adequate safeguards to address these issues, chaos and widespread disenfranchisement ensued, and cities throughout Wisconsin were forced to close polling places. In Milwaukee, more than 18,000 voters cast their ballots in person at only five polling locations, resulting in large crowds, long lines, and excessive wait times, often without regard for social distancing protocols. USPS struggled to keep up with the dramatic increase in mail voting, resulting in thousands of voters who did not receive their requested absentee ballots in time to vote and return them by Election Day, and over 100,000 more whose ballots were submitted by mail but were not delivered to election officials until well after Election Day. The disruptions in the mail delivery of absentee ballots—both in the initial distribution to voters and their return to municipal clerks’ offices—were so extensive that Wisconsin’s U.S. Senators wrote to the Inspector General for the USPS seeking an investigation into “absentee ballots [not] reach[ing] Wisconsin voters in time for the spring election.”<sup>4</sup>

33. Ohio encountered similar issues in its April 28 primary. The Ohio Secretary of State reported that election officials were experiencing “missed mail deliveries” as well as delivery times “in excess of ten days” for first-class mail.<sup>5</sup>

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<sup>4</sup> WBAY.com, *Senators Johnson, Baldwin call for investigation of Wisconsin absentee ballots* (Apr. 9, 2020), <https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html>.

<sup>5</sup> Letter from Frank LaRose, Ohio Sec’y of State, to Ohio Congressional Delegation (Apr. 23, 2020), available at <https://www.dispatch.com/assets/pdf/OH35713424.pdf>.

34. In Pennsylvania's June 2 primary, USPS's operational difficulties delayed the delivery of mail ballots in both directions—from election officials to voters and from voters back to county election offices. As one county elections department explained, “[t]he source of this slowdown is a combination of systems operating at a slower rate due to the circumstances created by the COVID-19 pandemic and USPS prioritizing official election mail coming from [the County] in a manner that is not consistent with protocols that the County was informed would be in place.”<sup>6</sup> Some county election officials went so far as to advise voters to avoid mailing back their ballots altogether and instead to hand-deliver them directly to their county board of elections, or risk disenfranchisement.

35. Pennsylvania's primary was also marred by long lines and confusion over consolidated polling places, and tens of thousands of vote-by-mail ballots that never made it to voters, which led the Governor to issue an executive order on the eve of the election, granting a seven-day extension of the deadline for the receipt of mail ballots in six counties.

36. In Georgia's June 9 primary, polling place consolidations and closures due to COVID-19 combined with malfunctioning voting machines created long lines at polling places throughout the State, with some voters casting their ballots after midnight.

37. In Kentucky's June 23 primary, the city of Louisville—with a population of approximately 600,000, 20 percent of whom are Black—had only one polling place. Long lines and traffic jams predictably followed, and a court order was required to re-open the lone polling place after it had closed for the day to allow voters who were stuck in traffic to cast their ballots.

38. In Washington, D.C.'s primary on June 2, some voters waited in line for over four

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<sup>6</sup> Harri Leigh, *A record number of mail-in ballot applications, but will they arrive in time?* FOX43 (May 26, 2020), <https://www.fox43.com/article/news/politics/elections/a-record-number-of-mail-in-ballot-applications-but-will-they-arrive-in-time/521-de6f5ff0-38eb-47a5-a935-313e6a6a1ee3>.

hours, many of whom had requested absentee ballots but did not receive them in time to submit them by Election Day.

39. Michigan's August 4 primary further underscored the effect of mail delays on voting during the pandemic. As of August 6, about 10,000 absentee ballots that had been cast in the primary just two days earlier had been rejected for arriving after Election Day or due to signature mismatch. The Michigan Secretary of State's office said the number of rejected ballots would likely rise as more ballots arrived.

40. Recent statements from the USPS strongly suggest that North Carolinians will face similar challenges in submitting and receiving election mail this fall. A recent report by the Inspector General of the U.S. Postal Service confirmed that USPS "cannot guarantee a specific delivery date or alter standards to comport with individual state election law."<sup>7</sup> Just weeks ago, USPS announced "major operational changes" "that could slow down mail delivery" *even further*.<sup>8</sup> USPS will no longer pay overtime and is slashing office hours. Carriers are being directed, for the first time in USPS history, *to leave mail behind* at distribution centers if it would delay them from their routes instead of "mak[ing] multiple delivery trips to ensure timely distribution of letters and parcels," as they have historically done.<sup>9</sup> Since the announcement, some Americans have gone "upwards of three weeks without packages and letters, leaving them without medication, paychecks, and bills."<sup>10</sup>

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<sup>7</sup> Office of the Inspector General, *Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area*, USPS (July 7, 2020), <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-235-R20.pdf>.

<sup>8</sup> Jacob Bogage, *Postal Service memos detail 'difficult' changes, including slower mail delivery*, WASH. POST (July 14, 2020), <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/> [hereinafter Bogage, *Postal Service memos detail 'difficult' changes*].

<sup>9</sup> *Id.* Bogage, *Postal Service memos detail 'difficult' changes*.

<sup>10</sup> Ellie Rushing, *Mail delays are frustrating Philly residents, and a short-staffed Postal Service is struggling to keep up*, Philadelphia Inquirer (Aug. 2, 2020),

41. The November election in North Carolina will encounter the same obstacles that have derailed other elections around the country and, unless the Challenged Provisions are enjoined, the result will be widespread disenfranchisement of countless lawful North Carolina voters.

**II. The Challenged Provisions impose barriers to in-person voting during the COVID-19 pandemic.**

42. Because polling places draw large numbers of individuals into enclosed spaces where, during the pandemic in particular, they have often been required to wait for hours in long lines, in-person voting presently poses a risk of transmission that can be mitigated—though not eliminated—only through the implementation of strict social distancing requirements among other health and safety measures.

43. In-person voting involves certain variables, including the physical space in which the polling place is located and the time it takes for individuals after they arrive at the site to vote their ballots, that directly operate to increase (or decrease) a voter's risk of becoming infected with or transmitting COVID-19 at the polling place.

44. Safety measures necessary to mitigate (although not eliminate) the risk of transmission include: (1) maximizing the number of polling places and expanding voting opportunities to minimize crowding and long lines; (2) ensuring social distancing is strictly enforced among poll workers and voters; and (3) ensuring availability and widespread use of personal protective equipment, hand sanitizer, and other appropriate disinfecting products.

45. Such procedures are essential in ensuring access to the franchise because North Carolinians have historically relied heavily on in-person voting, and many are expected to

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<https://www.inquirer.com/news/philadelphia/usps-tracking-in-transit-late-mail-delivery-philadelphia-packages-postal-service-20200802.html>.

continue to do so in 2020. In the 2018 general election, for example, less than three percent of all votes were cast by mail.

46. Despite the need for expanded in-person voting opportunities and reduced crowds, voters in the November election will encounter just the opposite: fewer voting locations and hours, packed polling places, and long lines.

47. In the June 23, 2020 Republican primary, for example, Haywood County reduced the number of polling sites from 29 to 11, and Macon County consolidated 15 polling places into just 3 sites. The State Board's Executive Director has also expressed concerns that COVID-19 will result in polling place consolidation and relocation to allow for adequate social distancing.

48. Notably, the State Board has recognized the need for expanded early voting sites to allow county boards to "reduce crowd density, shorten the time voters spend in line and at polling locations, and improve sanitation and cleanliness" so that "every eligible North Carolinian has the ability to vote without endangering herself."

49. As a result, the State Board recently issued an emergency order requiring all county boards to open at least one early voting site for a minimum of 10 hours in the first and second weekends of the early voting period and requiring county boards to offer at least one early voting site per 20,000 registered voters.

50. While these reforms are certainly a step in the right direction, without an expansion of the early voting period, county boards that offer only the minimum required number of early voting sites during the fixed 17-day early voting schedule will not alleviate the crowding, long lines, and attendant health risks that the State Board sought to avoid.

51. The COVID-19 pandemic will force counties to offer fewer polling locations than they otherwise would have under normal circumstances. Faced with poll workers unwilling to

risk exposure and potential voting sites that are either reluctant to open their doors to large crowds or inadequately equipped to follow social distancing guidelines, the State has already seen significant polling place consolidation. Indeed, it will be increasingly difficult for many counties to operate more than a few satellite early voting sites, which means that fewer cumulative early voting hours, larger crowds, and long lines await those who attempt to vote in person, creating public health risks and imposing severe burdens on the right to vote.

52. To alleviate the inevitable crowds and long lines that await in-person voters for the November election, the State must expand opportunities to cast a ballot in person, including by extending the early voting period.

53. Increasing the number of early voting days not only offsets the reduction in cumulative voting hours caused by the COVID-19 pandemic, but also minimizes the risk of daily congestion and affords North Carolinians additional options in selecting an early voting day when their polling site will be less crowded and allow for adequate social distancing.

### **III. The Challenged Provisions unlawfully restrict access to absentee voting during the COVID-19 pandemic.**

54. Adopted in 2001, “no-excuse” absentee voting, which allows any qualified citizen to vote by mail without justification, was one of several measures adopted by the State to alleviate crowds at the polls on Election Day and expand access to the franchise. N.C.G.S. § 163-226(a). Because of absentee voting and other reforms, North Carolina saw a five-percent increase in overall voter participation—from 59 to 64 percent—between the 2000 and 2004 general elections.

55. Under normal circumstances, voting by mail expands access to the ballot box for voters whose work schedules, health conditions, family obligations, or lack of transportation make in-person voting difficult.

56. But these are not normal times. As discussed above, the COVID-19 pandemic has upended daily life in North Carolina, and voters in the upcoming November election will encounter unprecedented barriers to the ballot box, which will require the State to adopt additional safeguards and suspend restrictions that will otherwise deny voters access to a free and fair election.

**A. The Witness Requirement forces voters who live alone or in single-adult households to endanger their health in order to vote in the November election.**

57. The Witness Requirement mandates that each voter who returns a mail ballot must have the envelope in which that ballot is submitted to elections officials signed by both the voter and another individual 18 years of age or older certifying that they witnessed the voter complete the ballot. N.C.G.S. § 163-231(a)(1)–(4).

58. This means that, once a voter receives their absentee ballot, North Carolina law requires them to complete it in front of another adult—which often requires the voter to solicit a witness from outside their household—notwithstanding the public health risks posed by the ongoing COVID-19 pandemic.

59. As the State Board acknowledged in its March 26 memorandum, which recommended a reduction in the number of witnesses required to cast an absentee ballot from two to one, “[e]liminating the witness requirement altogether . . . would further reduce the risk” to public health posed by COVID-19.<sup>11</sup>

60. In April, the Board reiterated its request to amend the Witness Requirement, recognizing that voters who did not have other available witnesses in the household would be

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<sup>11</sup> See March 26, 2020 Letter from Karen Brinson Bell, Exec. Dir., N.C. State Bd. of Elections, to Gov. Roy Cooper, et al. (Mar. 26, 2020), *available at* [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations\\_COVID-19.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf).

forced to “invite another adult into [their] home to complete the voting process,” which “increases the risk of transmission or exposure to disease.”<sup>12</sup>

61. While the General Assembly, through HB 1169, reduced the number of required witnesses from two to one (for elections held in 2020 only), the Witness Requirement, even in its current form, still imposes a significant burden on many North Carolinians.

62. More than one-fourth of North Carolina households are one-member households, as is the case for Plaintiff Caren Rabinowitz.

63. Even voters living in multi-member households will struggle to meet the Witness Requirement because it mandates that a witness must be at least 18 years old and not otherwise barred from serving as a witness.<sup>13</sup>

64. The burden of the Witness Requirement is exacerbated by the fact that the witnesses must be present at the time the voter marks their ballot, places it in and seals the container envelope, and completes the envelope’s certification. N.C.G.S. § 163-231(a)(1)–(4).

65. Thus, voters who live alone or in a household without eligible witnesses cannot vote until they find a witness, or invite a third party into their home, at a time when it is essential

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<sup>12</sup> See April 22, 2020 Letter from Karen Brinson Bell, Exec. Dir., N.C. State Bd. of Elections, to Gov. Roy Cooper, et al. (Apr. 22, 2020), *available at* <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>. Although the State Board requested a reduction of the number of witnesses required from two to one, its reasoning—that voters “would have to invite another adult into [their] home”—applies equally to even a single witness requirement if the voter does not reside with another adult.

<sup>13</sup> Under N.C.G.S. §§ 163-226.3(a)(4) and 163-237(b), an individual who is a candidate for nomination or election cannot serve as a witness unless the voter is the candidate’s near relative. In addition, the following individuals are prohibited from serving as witnesses if the voter is a patient or resident of a hospital, clinic, nursing home, or rest home: An owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident; an individual who holds any elective office under the United States, this State, or any political subdivision of this State; and an individual who holds any office in a State, congressional district, county, or precinct political party or organization, or who is a campaign manager or treasurer for any candidate or political party; provided that a delegate to a convention shall not be considered a party officer.



for North Carolinians to minimize unnecessary interactions with individuals outside of their homes and to follow social distancing guidelines, both for their own health and the safety of the general public.

66. Complying with this requirement is impractical for many North Carolinians, and it forces them to choose between either protecting their health or exercising their right to vote.

67. Meanwhile, the State's interest in enforcing the Witness Requirement is minimal at best. Witness signatures are ineffective fraud prevention measures, illustrated by the fact that North Carolina is one of only five states that still enforces them.

68. Notably, North Carolina does not impose the same Witness Requirement upon uniformed-service voters or overseas voters registered in North Carolina who vote mail ballots.

69. It also defies logic to suggest that the Witness Requirement will deter individuals who plan to commit perjury and cast an absentee ballot fraudulently. Such individuals are unlikely to draw the line at forging a witness's signature. Instead, the requirement burdens and punishes those who attempt to follow the letter of the law and are least likely to be engaged in any misconduct.

**B. The Postage Requirement imposes monetary and transaction costs which are exacerbated by the pandemic.**

70. A significant number of voters will be forced to mail their absentee ballots (because they either lack access to transportation or are unwilling to risk potential exposure to COVID-19 in order to deliver their ballots in person) and must pay a postage fee to do so.

71. Thus, in order to submit their absentee ballots while minimizing the risk of COVID-19 infection, many North Carolinians must incur monetary expenses and other transaction costs that bear most heavily on financially vulnerable members of the electorate who are least able to navigate these burdens.

72. This burden does not fall on all absentee voters in North Carolina. Uniform-service and overseas voters may submit absentee ballot requests by email, thereby avoiding incurring the postage to do so. *Id.* § 163-258.4(c). Moreover, these same voters need not pay for postage to mail back their completed absentee ballots, because “[a]ny American voter living overseas can mail his or her completed ballot back to the United States *free of charge* at the nearest American embassy, consulate, or Diplomatic Post Office (DPO). If the voter has authorized access to a military base, they can mail a ballot *free of charge* at the nearest Army Post Office (APO) or Fleet Post Office (FPO).” *Id.* (emphasis added).<sup>14</sup>

73. As unemployment rates skyrocket in response to COVID-19’s devastating impact on the economy, the burden imposed by the Postage Requirement will create obstacles to voting for the growing number of North Carolinians now facing financial hardship.

74. As of this filing, well over 1.2 million North Carolinians have already applied for unemployment insurance with the State since March 15, with a staggering number of applicants citing the COVID-19 crisis as the reason for the loss of their employment. During normal times, North Carolina typically processes around 200,000 unemployment claims per year. Without question, COVID-19-related unemployment and other collateral consequences of the public health emergency will also increase the percentage of North Carolinians living in poverty, which already exceeded 14 percent before the pandemic began.

75. But the monetary cost of stamps is not the only burden that the Postage Requirement will impose upon voters in the November election. Voters who do not already possess stamps must risk their health by either venturing out to the post office or other

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<sup>14</sup> See U.S. Postal Serv., *Election Mail*, [https://about.usps.com/postal-bulletin/2020/pb22539/html/cover\\_006.htm](https://about.usps.com/postal-bulletin/2020/pb22539/html/cover_006.htm).

establishments that sell stamps, or by delivering their ballots in person. While there are some services that allow voters to print postage online, these services also require a printer, scale, and paid subscription.

76. And although a voter can order stamps online through the USPS website, delivery of those stamps takes five to seven days under *normal* circumstances, such stamps are not sold individually but must be purchased on a sheet of stamps that costs a minimum of \$11.00, and the purchaser must pay for the shipping and handling of the stamps themselves.

77. Unless the State provides pre-paid postage for absentee ballots, both the monetary and transaction costs of submitting a ballot by mail will burden and deter voters in the upcoming election.

**C. The Receipt Deadline will result in large-scale disenfranchisement for voters who must rely on USPS to deliver their ballots.**

78. After a ballot has been deposited in the mail, the voter has no control over when that ballot arrives, but may nonetheless have their ballot rejected and their right to vote denied if the mail service—in most cases, USPS—fails to deliver the ballot to local election officials by the Receipt Deadline.

79. Under N.C.G.S. § 163-231(b)(1), (2), an absentee ballot is timely only if it is *received* by election officials no later than 5:00 p.m. on Election Day. If the ballot envelope is postmarked by Election Day, then the Receipt Deadline extends to 5:00 p.m. on the third day after the election.

80. In other words, whether an absentee ballot is counted in North Carolina will depend largely on the postal service's delivery timelines, which have been compromised due to the COVID-19 pandemic and large-scale restructuring of USPS.

81. As has been widely reported in the news, USPS is experiencing significant

budgetary shortfalls and personnel shortages that could severely compromise the agency's capacity to process an increasing volume of election mail.

82. The agency is also hard hit by the COVID-19 pandemic. As of July, around 5,400 postal workers across the country, including at least four in North Carolina, had tested positive for COVID-19, at least 75 had died, and more than 6,300 were self-quarantined because of prior exposure to COVID-19.

83. USPS's struggles have serious implications for North Carolina's absentee voters. Over the next few months, the USPS will be called upon to deliver an unprecedented number of absentee ballots across the country—from county election officials to voters, and then back again—yet the agency's ongoing budgetary crisis, which has already led to capacity shortages and delivery delays, means that additional cuts to routes, processing centers, or staff are likely to follow, further exacerbating the ongoing mail processing delays caused by COVID-19.

84. Depending on where in North Carolina the voter resides (for instance, rural areas often have infrequent mail pick-up times), ensuring timely delivery by the Receipt Deadline could require voters to send their ballots more than a week before the election—and even then, they still may not arrive on time.

85. Short of paying for private mail carriers or the USPS's more expensive expedited delivery options, voters who are late deciders or are otherwise unprepared to make their candidate selections and submit their votes weeks before Election Day have little assurance that the USPS will deliver their ballots on time, thus posing a significant risk of disenfranchisement.

86. While some North Carolinians opt to vote early and are prepared to choose their preferred candidates well in advance, others may not be ready to do so until much later in the election cycle. Forcing these voters to cast their ballots weeks in advance just to avoid mail

service disruptions or delays deprives them of the opportunity to participate fully in the political process and restricts their ability to consider additional or late-breaking information they may need to inform their voting choice.

87. Furthermore, voting by mail far in advance of Election Day also requires that the voter receive their absentee ballot in time to do so. Given the unprecedented number of expected absentee ballots in upcoming elections, as well as the USPS's well-documented struggles, that is far from certain.

88. The deadline to request an absentee ballot is seven days before Election Day, and voters who timely request absentee ballots may not receive them until shortly before or even after the election—a complaint common among voters during the March 3 primary. USPS has expressly warned that this seven-day window is likely insufficient for voters to complete and mail their ballots in time for delivery to election officials before state return deadlines.

89. In contrast to the deadlines placed on voters living in North Carolina and elsewhere in the country, ballots from uniformed-service and overseas voters are considered timely if they are transmitted by Election Day and received before close of business on the day before the county canvass, which cannot occur before 11:00 a.m. on the tenth day after an election. *See* N.C.G.S. §§ 163-258.10, 163-258.12(a), 163-182.5(b).

90. In addition, unlike traditional absentee ballots, uniformed-service and overseas absentee ballots, “[i]f . . . timely received, . . . may not be rejected on the basis that [they have] . . . an unreadable postmark, or no postmark.” *Id.* § 163-258.12(b). But a traditional absentee ballot received by the county boards within three days after Election Day is nonetheless invalid if it lacks a legible postmark. *See id.* § 163-231(b)(2).

91. Thus, in the same election, ballots cast by uniformed-service and overseas voters

can be received and counted for an additional *six* days or more after the deadline imposed on absentee voters in North Carolina. And while the uniformed-service and overseas voter receipt deadline is tethered to the county canvass date, the earlier Receipt Deadline for stateside voters is not supported by a sufficient state interest to justify the burden it imposes on access to the franchise during the COVID-19 pandemic, particularly for those affected by delayed USPS mail service.

92. The later deadlines provided for uniformed-service and overseas absentee voters also demonstrate that the State's election apparatus is fully capable of extending the same allowances to resident North Carolinians in the midst of a public health emergency, and the State's failure to do so cannot be justified by any sufficient governmental interest.

93. In fact, the United States Supreme Court, on an application for a stay of a Wisconsin federal court injunction, recently left intact the district court remedy extending Wisconsin's receipt deadline for all mail ballots that were postmarked by Election Day. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1208 (2020).

**D. Signature Matching Procedures will result in the arbitrary rejection of validly-cast ballots.**

94. For absentee voters whose ballots happen to be delivered before the Receipt Deadline, another hurdle awaits: arbitrary signature verification procedures. Once received, county election officials must review the sealed container envelopes of all absentee ballots to ensure that the voter signed the certification affirming their right to vote, and that the envelope is signed by a witness. *See* N.C.G.S. § 163-231.

95. Election officials may reject an absentee ballot where the voter's signature beneath the certification is missing; but in some counties, election officials further endeavor to verify whether the voter's signature on the ballot "matches" the signature of the voter on file

with the election office, a process otherwise known as “signature matching.”

96. The State Board provides no guidance to county election officials engaged in signature matching, nor is it clear whether signature matching can permissibly occur under current North Carolina law. Thus, counties are left to their own devices in determining whether and how to apply Signature Matching Procedures and, ultimately, if the ballot should be counted.

97. Unsurprisingly, North Carolina counties have developed wildly inconsistent approaches to reviewing and verifying ballot signatures, with some seeming to require only the *presence* of the voter’s signature, while others attempt to compare and match signatures on ballot envelopes with voter records. The counties that engage in signature matching do so without uniform standards or training, resulting in a process that varies even from one election official to the next.

98. This lack of guidance or identifiable standards is problematic because signature matching, as one federal court put it, is inherently “a questionable practice” and “may lead to unconstitutional disenfranchisement.” *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018).

99. Studies conducted by experts in the field of handwriting analysis have repeatedly found that signature verification conducted without adequate standards and training is unreliable, and non-experts are significantly more likely to misidentify authentic signatures as forgeries.

100. Even when conducted by experts, signature matching can lead to erroneous results in the ballot verification context because handwriting can change quickly for a variety of reasons entirely unrelated to fraud, including the signer’s age, medical condition, psychological state of mind, pen type, writing surface, or writing position.

101. It is, thus, inevitable that election officials will erroneously reject legitimate

ballots due to misperceived signature mismatches, which, without notice and a reasonable opportunity to cure, will result in the disenfranchisement of eligible voters. And, indeed, in jurisdictions that broadly require elections officials to engage in signature matching, thousands of lawful voters are regularly disenfranchised as a result.

102. In the November election, Signature Matching Procedures will be applied to hundreds of thousands of absentee ballots (and perhaps more), subjecting voters to the risk that their ballots will be rejected erroneously without notice or an opportunity to cure, or that they will be forced to take additional, unnecessary steps to provide supplemental evidence—in the middle of a pandemic, no less—just to have their ballots counted.

**E. Voters who need assistance to navigate barriers to absentee voting have extremely limited options.**

103. Despite the significant barriers to absentee voting during the COVID-19 pandemic, many North Carolinians will not have any practical means of obtaining assistance to request or submit their absentee ballots.

104. In October 2019, the General Assembly passed the Application Assistance Ban, which imposed new restrictions on the absentee ballot application process.

105. The law states: “A request for absentee ballots is not valid if . . . [t]he completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter’s near relative or verifiable legal guardian,” and requires county boards to invalidate all requests for absentee ballots that are “returned to the county board by someone other than [a near relative, verifiable legal guardian, the multi-partisan assistance team], the United States Postal Service, or a designated delivery service . . . .” SB 683, § 1.3(a) (amending N.C.G.S. § 163-



230.2(c) and (e)).<sup>15</sup>

106. No one else may assist voters to ensure they receive absentee ballots—even if the voter has no near relative or verifiable legal guardian nearby and no accessible multi-partisan assistance team (“MAT”) member available.

107. The only exception to this prohibition is limited to voters who need assistance “due to blindness, disability, or inability to read or write” and do not have “a near relative or legal guardian available to assist.” SB 683, § 1.3(a) (adding N.C.G.S. § 163-230.2(e1)).

108. The law also prohibits organizations and individuals from assisting a voter in *returning* an absentee ballot request form, stating: “The completed request form for absentee ballots shall be delivered to the county board of elections only by any of the following: (1) The voter. (2) The voter’s near relative or verifiable legal guardian. (3) A member of a multipartisan team trained and authorized by the county board of elections . . . .” SB 683, § 1.3(a) (amending N.C.G.S. § 163-230.2(c)).

109. Although recent emergency legislation (HB 1169) now allows voters and a limited group of designated third parties acting on the voter’s behalf (i.e., the voter’s “near relative or verifiable legal guardian”) to submit absentee ballot request forms online beginning in September 2020, these measures fail to address the needs of countless voters who lack the resources to take advantage of them.

110. First, over 20 percent of North Carolina households do not have internet access,

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<sup>15</sup> A “multi-partisan assistance team” (“MAT”) must consist of at least two registered voters of the county who represent the two political parties with the highest number of affiliated voters in the State, as determined by January 1 of the current year. If a MAT has more than two members, voters who are unaffiliated with a political party or affiliated with a political party different than the top two political parties in the State may be team members. To the extent there are not enough registered voters who are affiliated with the top two political parties to serve on the MAT, the county board may appoint someone who is unaffiliated with a party to serve as a team member. HB 1169 § 2.5.(a).

and over 12 percent do not have a computer. Many of these voters do not have fax machines and would be unable to fax their absentee ballot requests either, leaving them with only two options: (1) mail a completed ballot request form, requiring postage which they may not have at their disposal, and risk not having their request delivered in a timely manner, or (2) submit the form in person, assuming the voter has access to transportation, and risk exposure to COVID-19.

111. Second, any assistance voters may obtain from bipartisan assistance teams (“MATs”) is limited at best. HB 1169 requires the North Carolina Department of Health and Human Services (“DHHS”) and the State Board to issue guidance on the use of MATs within hospitals, clinics, nursing homes, assisted living, or other congregate living situations, but is silent on whether and how MATs will be accessible to voters who do not reside in any of the above-referenced facilities.

112. North Carolina law also imposes severe limitations on an absentee voter’s ability to obtain assistance in submitting their ballot, by prohibiting anyone other than the voter’s “near relative or . . . verifiable legal guardian” from “tak[ing] into possession” a voter’s absentee ballot “for return to a county board of elections.” N.C.G.S. § 163-226.3(a)(5).

113. Thus, voters who do not have near relatives or legal guardians available to assist them may only return an absentee ballot “by mail or by commercial courier service, at the voter’s expense, or in person.” *Id.* §§ 163-231(a), 163-229(b), 163-231(b).

114. The law does not even allow voters to obtain ballot delivery assistance from MATs, which are only permitted to help voters with absentee ballot requests. In fact, it is a felony for anyone other than a near relative or verifiable legal guardian to possess for delivery another voter’s absentee ballot. *Id.* § 163-226.3(a)(5).

115. This leaves voters with limited, if any, reliable options for returning their ballots

without risking disenfranchisement due to mail delivery delays, incurring burdensome transaction and monetary costs, or potentially exposing themselves to health risks by submitting their ballots in person.

116. To justify these restrictions, Defendants will most likely point to the fraudulent scheme orchestrated by operatives working for Republican candidate Mark Harris’s campaign in North Carolina’s Ninth Congressional District race during the 2018 general election. Following an investigation, the State Board found “overwhelming evidence that a coordinated, unlawful, and substantially resourced absentee ballot scheme operated during the [election] in Bladen and Robeson Counties[.]” and was led by Harris campaign associate Leslie McCrae Dowless.<sup>16</sup>

117. As the Board explained, Dowless’s scheme was simple and crude: he and his associates forged absentee ballot request forms, collected unsealed ballots from voters, marked the ballots to pad vote totals for Dowless’s clients, and delivered the ballots to election officials by mail. Order ¶¶ 60–65. The Board determined that Dowless “frequently instructed his workers to falsely sign absentee by mail container envelopes as witnesses[.]” *Id.* ¶ 62. “In some cases, Dowless’s workers fraudulently voted blank or incomplete absentee by mail ballots at Dowless’s home or in his office.” *Id.* ¶ 63. And Dowless’s fraudulent scheme appeared to have focused on areas of Bladen and Robeson Counties where minority voters are disproportionately concentrated. *See id.* ¶¶ 47, 122, 124–25, 151.

118. Based on the State Board’s finding that Dowless and his associates coordinated the widespread forgery of absentee ballot request forms and the collection of *unsealed* and *unmarked* absentee ballots, which they fraudulently marked—all actions which were already

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<sup>16</sup> *Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District*, N. C. State Bd. of Elections, March 13, 2019 (“Order”), ¶ 19, [https://dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/Congressional\\_District\\_9\\_Portal/Order\\_03132019.pdf](https://dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf).

prohibited by existing laws criminalizing forgery—the State Board “conclude[d] unanimously that irregularities or improprieties occurred” on behalf of the Harris campaign “to such an extent that they taint[ed] the results of the entire election and cast doubt on its fairness.” *Id.* ¶ 150.

119. The ban on third-party assistance in submitting absent ballot request forms or sealed absentee ballots would have done little to prevent or uncover Dowless’s scheme, and the Ballot Delivery Ban was in place when the fraud occurred. Dowless and his associates forged request forms and ballots and submitted them in the mail as if they had come from the voter. In fact, Dowless’s associates ensured that ballots were mailed from post offices that were geographically close to the voters’ homes. Neither the Application Assistance Ban nor the Ballot Delivery Ban targets the focal point of Dowless’s scheme: forgery and voter impersonation, both of which are already prohibited by State law. Dowless’s actions were revealed when voters either complained about unidentified individuals picking up their ballots or voted in person after Dowless’s team had attempted to submit their forged ballots.

120. The Ballot Delivery Ban further denies voters access to safe and reliable means of returning their ballots—through an assistor of their choice—and forces those who lack the resources to return their ballots in person to rely on the postal service, notwithstanding the operational difficulties that have impaired the agency’s ability to meet its delivery service commitments in the upcoming election. Not only are the restrictions unnecessary to detect or prevent fraud—nor would they have been effective—but they also deprive countless North Carolinians who are especially vulnerable to the effects of COVID-19 of their right to participate in the November election.

121. Rather than simply targeting the Republican operatives’ criminal conduct, the General Assembly’s Application Assistance Ban significantly hindered efforts to assist voters

and mobilize communities with historically depressed turnout rates, particularly during the pandemic in which a disproportionate number of Black North Carolinians are contracting COVID-19.

## CAUSES OF ACTION

### COUNT I

#### **Violation of the North Carolina Constitution Equal Protection, Art. I, § 19 (Unconstitutional Burden on Right to Vote)**

122. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

123. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

124. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

125. Article I, §§ 12 and 14 of the North Carolina Constitution protect the right of voters to participate in the political process, express political views, affiliate with or support a political party, and cast a vote. “Voting, like donating money to a candidate or signing a petition for a referendum, constitutes ‘expressive activity’ that ‘express[es] [a] view’ about the State’s laws and policies.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at \*119 (N.C. Super. Sept. 03, 2019), *aff’d*, 956 F.3d 246 (4th Cir. 2020) (citation omitted).

126. Article I, § 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

127. Collectively, these provisions prohibit the State from imposing burdens on the fundamental right to vote unless they are justified by a sufficiently important state interest.

128. North Carolinians have relied heavily on in-person voting, particularly during the early voting period, to participate in the political process. In-person voting ensures access to the franchise for those who encounter difficulty voting by mail, either due to unreliable mail service, the attendant costs—including the monetary or transactional costs of obtaining postage or securing a witness—or the accompanying risk of disenfranchisement. Moreover, for many North Carolinians, casting a ballot at a polling place will be their preferred method of exercising the franchise due to the historical significance of in-person voting.

129. The COVID-19 pandemic, however, will result in a dramatic expansion of voting by mail, which expands access to the franchise for eligible voters for whom in-person voting is difficult or impossible. For many North Carolinians, voting by mail provides the only feasible opportunity to cast a ballot without putting their health at risk.

130. The barriers to in-person and absentee voting in the November election, which will occur in the midst of a global pandemic, include: (1) limitations on the number of days and hours of early voting that counties may offer; (2) the Witness Requirement, as applied to voters residing in single person or single-adult households; (3) the monetary and transaction costs of the Postage Requirement for absentee ballots; (4) the Receipt Deadline, as applied to voters who submit their ballots by mail through USPS; (5) arbitrary and error-prone Signature Matching Procedures; and (6) restrictions preventing voters from obtaining assistance from most third parties in requesting and submitting absentee ballots. These barriers unconstitutionally burden the fundamental rights of North Carolinians to participate in our democracy, and, when taken together, the cumulative impact of these restrictions creates a severe burden on the right to vote for many eligible citizens.

131. Because the barriers to in-person and absentee voting impose severe burdens on the fundamental right to vote during the COVID-19 pandemic, and because these barriers (and the failure to implement additional safeguards to facilitate access to the franchise) cannot be justified by any sufficiently important state interest, the limitations on in-person voting and the challenged absentee voting restrictions violate the North Carolina Constitution.

**COUNT II**  
**Violation of the North Carolina Constitution’s**  
**Free Elections Clause, Art. I, § 10**

132. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

133. Article I, § 10 of the North Carolina Constitution states, in its entirety, that “[a]ll elections shall be free.” This provision has no counterpart in the U.S. Constitution.

134. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provided that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868) (emphasis added). Another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” N.C. Const. art. I, § 10 (emphasis added). As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” for proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 639, 286 S.E.2d 89, 97 (1982) (internal quotation marks omitted).

135. “[T]he object of all elections is to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915). “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

136. The constitutional obligation to ensure that elections are both free and fair and reflect the will of the people, at a minimum, requires that the State ensure that all North Carolinians have a reasonable opportunity to vote—that is, not only to cast their ballots but to also have their ballots counted—without undue risk to their health and safety.

137. The State has an obligation under the Free Elections Clause to ensure that each step of the voting process, whether by mail or in person, does not unnecessarily endanger voters’ health, subject voters to a significant risk of arbitrary disenfranchisement, or force voters to choose between exercising their fundamental right to vote and safeguarding their health and the health of their communities.

138. The State’s failure to provide safe, accessible, and reliable means for its citizens to vote in the upcoming November election, both in person and by mail, denies Plaintiffs and all North Carolina voters the rights guaranteed to them under the Free Elections Clause. As state election officials have suggested, the COVID-19 pandemic has all but ensured that safe access to in-person voting will be severely restricted due to a significant reduction in the number of polling places and staff, and the health risks posed by packing more voters and poll workers into a small number of consolidated voting sites, for a fixed number of voting days and hours.

139. At the same time, voting by mail presents a significant risk of disenfranchisement. Absentee voters will encounter several unconstitutional barriers, when attempting to vote in the



November election (in the midst of the COVID-19 pandemic), including: (1) the Witness Requirement, as applied to voters residing in single person or single-adult households; (2) the monetary and transaction costs of the Postage Requirement for absentee ballots; (3) the Receipt Deadline, as applied to voters who submit their ballots by mail through USPS; (4) arbitrary and error-prone Signature Matching Procedures; and (5) restrictions preventing voters from obtaining assistance from most third parties in requesting and submitting absentee ballots.

140. The burdens imposed by these restrictions are exacerbated by the ongoing public health crisis and will subject voters to a significant risk of disenfranchisement in the November election for reasons outside their control.

141. The challenged barriers thus obstruct the will of North Carolinians, particularly those who—because of financial insecurity, health concerns, family care responsibilities, lack of transportation, or medical vulnerabilities—are unable to overcome the dramatically increased costs and burdens of participating in the political process during the COVID-19 pandemic. North Carolina’s failure to eliminate these barriers thus violates the Free Elections Clause.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and:

- a. Declare, under N.C.G.S. § 1-253, *et seq.*, that North Carolina’s failure to provide sufficiently accessible in-person voting opportunities for the November election that comply with social distancing guidelines during the COVID-19 pandemic violates the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;

- b. Declare, under N.C.G.S. § 1-253, *et seq.*, that in the context of COVID-19 pandemic and the upcoming November election, the Witness Requirement, as applied to voters residing in single person or single-adult households; the Postage Requirement and Receipt Deadline, as applied to voters who submit their ballots by mail through USPS; the Signature Matching Procedures; and the Application Assistance Ban and Ballot Delivery Ban are unconstitutional, as applied to the November election, and invalid because they violate the rights of Plaintiffs and other North Carolina voters under the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;
- c. Require the State Board and all local election officials to expand the early voting period for the November election by an additional 21 days, and preliminarily and temporarily enjoining the enforcement of N.C.G.S. § 163-227.2(b) to the extent that it prevents the State Board or local election officials from extending early voting for an additional 21 days, or any other law that prevents the State Board or local election officials from expanding the number of early voting days;
- d. Preliminarily and temporarily enjoin the Witness Requirement, as applied to voters residing in single person or single-adult households, for the November election;
- e. Require the State Board to provide uniform standards and training to all election officials that use Signature Matching Procedures to verify absentee ballots;
- f. Enjoin the State Board and all county boards of elections from rejecting absentee ballots through signature matching unless the State Board provides uniform

- standards and training to all counties engaged in signature matching, and voters receive reasonable notice and an opportunity to cure any alleged signature defect;
- g. Require the State Board and all local election officials to provide pre-paid postage for all absentee ballot request forms and absentee ballots for the November election using Qualified Business Reply Mail (QBRM), and temporarily enjoin the enforcement of N.C.G.S. § 163-231(b)(1) to the extent that it requires voters to mail their absentee ballots or applications at their own expense during the COVID-19 pandemic;
- h. Require the State Board to extend the Receipt Deadline, for ballots submitted by mail through USPS by Election Day, to mirror the deadline afforded to uniformed-service and overseas absentee voters for the November election; to define the term “postmark,” in connection with Plaintiffs’ requested relief, to refer to any type of imprint applied by the USPS to indicate the location and date the USPS accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks; to require Defendants to ensure that absentee ballots sent to voters, and the return envelopes provided to voters for sending ballots back, include an Intelligent Mail Barcode using Intelligent Mail Full-Service to assist in ensuring that ballots mailed by Election Day are not erroneously rejected if they lack a postmark; and, where a ballot does not bear a postmark date, to require the State Board and county boards of elections to presume that the ballot was mailed on or before Election Day if it arrives within the Receipt Deadline unless the preponderance of the evidence demonstrates it was mailed after Election Day;

- i. Preliminarily and temporarily enjoin the enforcement of the Application Assistance Ban and Ballot Delivery Ban, including any laws that impose criminal or other penalties for violations of the Application Assistance Ban and Ballot Delivery Ban.
- j. Award Plaintiffs their costs and expenses, under applicable statutory and common law, including N.C.G.S. §§ 6-20 and 1-263; and
- k. Grant Plaintiffs such other and further relief as the Court deems necessary.

Dated: August 17, 2020

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## CERTIFICATE OF SERVICE

I certify that I served the foregoing document by first-class mail to counsel for the defendants, intervenors, and proposed intervenors, addressed as follows:

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This the 18th day of August, 2020.



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