

No. _____

In The Supreme Court of the United States

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,

Applicants,

v.

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

Plaintiff Respondents,

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections,

Defendant Respondents,

&

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT, INC.; and NORTH CAROLINA REPUBLICAN PARTY,

Intervenor Defendants.

On Application for Stay Pending Appeal from
the Supreme Court of North Carolina

APPENDIX

October 27, 2020

(Counsel listed on next page)

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EXHIBIT 1

Supreme Court of North Carolina

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

v

**THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAMON CIRCOSTA, CHAIR OF THE
NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants**

**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**

and

**REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE;
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT, INC;
and NORTH CAROLINA REPUBLICAN PARTY, Intervenor-Defendants**

From N.C. Court of Appeals
(P20-513)
From Wake
(20CVS8881)

ORDER

Upon consideration of the petition filed by Intervenor-Defendants (Phil E. Berger and Timothy K. Moore, in their official capacities) on the 21st of October 2020 for Writ of Supersedeas of the judgment of the Superior Court, Wake County, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 26th of October 2020."

Beasley, C.J., Recused
Newby, J., Recused
Davis, J., Recused

**s/ Earls, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 26th day of October 2020.



Amy L. Funderburk

Amy L. Funderburk
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Nathan A. Huff, Attorney at Law, For Berger, Philip E et al - (By Email)

Ms. Nicole J. Moss, Attorney at Law, For Berger, Philip E et al - (By Email)

Mr. Burton Craige, Attorney at Law, For Barker, Fowler et al - (By Email)

Mr. Alexander McC. Peters, Special Deputy Attorney General, For The North Carolina State Board of Elections, et al. - (By Email)

Mr. R. Scott Tobin, Attorney at Law, For Republican National Committee, et al. - (By Email)

Mr. Narendra K. Ghosh, Attorney at Law, For Barker, Fowler et al - (By Email)

Mr. Terence Steed, Assistant Attorney General, For The North Carolina State Board of Elections, et al. - (By Email)

Mr. Ryan Y. Park, Solicitor General, For The North Carolina State Board of Elections, et al. - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)

Mr. James W. Doggett, Deputy Solicitor General, For The North Carolina State Board of Elections, et al. - (By Email)

Mr. Paul Mason Cox, Special Deputy Attorney General, For The North Carolina State Board of Elections, et al. - (By Email)

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EXHIBIT 2



North Carolina Court of Appeals

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No. P20-513

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

V.

**THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAMON CIRCOSTA, CHAIR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,
DEFENDANTS,**

**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,
AND**

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT, INC; AND NORTH CAROLINA REPUBLICAN PARTY

From Wake
(20CVS8881)

ORDER

The following order was entered:

The 'Petition for Writ of Supersedeas and Motion for Temporary Stay' filed in this cause on 13 October 2020 by Philip E. Berger and Timothy K. Moore, in their respective official capacities as President Pro Tempore of the North Carolina Senate and Speaker of the North Carolina House of Representatives, and the 'Renewed Petition for Writ of Supersedeas and Motion for Temporary Stay and Expedited Review' filed in this cause on 13 October 2020 by the Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Donald J. Trump for President, Inc, and the North Carolina Republican Party, are decided as follows: The petitions for writ of supersedeas are denied except for the purpose of directing the trial court to conduct any hearings it deems necessary and to issue any necessary orders to determine the scope of implementation of the order entered on 2 October 2020 by Judge G. Bryan Collins, Jr. in Wake County Superior Court in light of Numbered Memo 2020-19 and any orders entered by a federal court in any related matters. The temporary stay granted by this Court on 15 October 2020 is dissolved. The Motion for Expedited Review is dismissed without prejudice to re-filing once the appeal has been docketed in this Court.

By order of the Court this the 19th of October 2020.

The above order is therefore certified to the Clerk of the Superior Court, Wake County.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 19th day of October
App. 005

2020.



Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Nathan A. Huff, Attorney at Law, For Berger, Philip E et al
Ms. Nicole J. Moss, Attorney at Law
Mr. David H. Thompson, Attorney at Law
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Mr. Ryan Y. Park, Solicitor General, For The North Carolina State Board of Elections
Hon. Frank Blair Williams, Clerk of Superior Court

EXHIBIT 3

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2020 OCT 16 PM 1: 58

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 20 CVS 8881

C.S.C.

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

PLAINTIFFS,)

v.)

ORDER DENYING MOTION TO STAY

THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS; AND)
DAMON CIRCOSTA, *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, *and*)

REPUBLICAN NATIONAL)
COMMITTEE; NATIONAL)
REPUBLICAN SENATORIAL)
COMMITTEE; NATIONAL)
REPUBLICAN CONGRESSIONAL)
COMMITTEE; DONALD J. TRUMP)
FOR PRESIDENT, INC; AND NORTH)
CAROLINA REPUBLICAN PARTY,)

REPUBLICAN)
COMMITTEE)
INTERVENOR-)
DEFENDANTS.)

In the exercise of the Court's discretion, the Motions to stay the Consent Order pending appeal made by the Legislative Defendants and by the Republican Committee Defendants pursuant to North Carolina Rule of Civil Procedure 62(d), are hereby DENIED.

So Ordered this 16th day of October 2020.

A handwritten signature in blue ink, reading "G. Bryan Collins, Jr.", is written over a horizontal line.

G. Bryan Collins, Jr.
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below by electronic mail, with their consent to receive electronic service, as follows:

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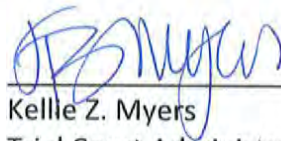
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Counsel for Intervenor-Defendants, the Republican Committees

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 16th day of October 2020.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

EXHIBIT 4



North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk

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From Wake
(20CVS8881)

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No. P20-513

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

V.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; AND DAMON CIRCOSTA, CHAIR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS, DEFENDANTS,

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, AND

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT, INC; AND NORTH CAROLINA REPUBLICAN PARTY

ORDER

The following order was entered:

The 'Petition for Writ of Supersedeas and Motion for Temporary Stay' filed in this cause on 13 October 2020 by Philip E. Berger and Timothy K. Moore, in their respective official capacities as President Pro Tempore of the North Carolina Senate and Speaker of the North Carolina House of Representatives, and the 'Renewed Petition for Writ of Supersedeas and Motion for Temporary Stay and Expedited Review' filed in this cause on 13 October 2020 by the Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Donald J. Trump for President, Inc, and the North Carolina Republican Party, are decided as follows:

The motions for temporary stay are allowed. The judgment entered on 2 October 2020 by Judge G. Bryan Collins, Jr. in Wake County Superior Court is hereby stayed pending a ruling on the petitions for writ of supersedeas. Responses, if any, to the petitions shall be filed no later than Monday 19 October 2020 by 5 p. m. This Court will rule on the petitions for writ of supersedeas upon the filing of responses to the petitions or the expiration of the time for the responses if no responses are filed.

By order of the Court this the 15th of October 2020.

WITNESS my hand and official seal this the 15th day of October 2020.



Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Nathan A. Huff, Attorney at Law, For Berger, Philip E et al
Ms. Nicole J. Moss, Attorney at Law
Mr. David H. Thompson, Attorney at Law
Mr. Peter A. Patterson, Attorney at Law
Mr. Burton Craige, Attorney at Law
Mr. Alexander McC. Peters, Special Deputy Attorney General
Mr. R. Scott Tobin, Attorney at Law, For Berger, Philip E et al
Marc E. Elias, For Barker, Fowler et al
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Lalitha D Madduri, For Barker, Fowler et al
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Uzoma N. Nkwonta, For Barker, Fowler et al
Mr. Narendra K. Ghosh, Attorney at Law, For Barker, Fowler et al
Mr. Terence Steed, Assistant Attorney General, For Berger, Philip E et al
Bobby R. Burchfield, King & Spaulding LLP, For Berger, Philip E et al
Hon. Frank Blair Williams, Clerk of Superior Court

EXHIBIT 5

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY WAKE CO., C.S.C. SUPERIOR COURT DIVISION
20 CVS 8881

RY

NORTH CAROLINA ALLIANCE FOR)
 RETIRED AMERICANS, *et al.*)
)
 Plaintiffs,)
 v.)
)
 THE NORTH CAROLINA STATE)
 BOARD OF ELECTIONS, *et al.*,)
)
 Defendants, and)
)
 PHILIP E. BERGER in his official capacity)
 as President Pro Tempore of the North)
 Carolina Senate, *et al.*,)
)
 Intervenor-Defendants, and)
)
 REPUBLICAN NATIONAL COMMITTEE,)
et al.,)
)
 Republican Committee-)
 Intervenor Defendants.)

**FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
 SUPPORTING OCTOBER 2, 2020
 ORDER GRANTING
 JOINT MOTION FOR ENTRY
 OF CONSENT JUDGMENT**

THIS MATTER CAME ON TO BE HEARD before the Court during the October 2, 2020 Session of the Superior Court of Wake County. All adverse parties received notice and participated. The Court considered the pleadings, arguments, briefs of the parties, supplemental affidavits, and the record established thus far, as well as argument submitted by counsel in attendance.

1. Following the hearing, the Court granted the Joint Motion for Entry of Consent Judgment, whereupon the Consent Judgment was signed by the Court, and filed and served on all parties. The Court sees fit to further explain the basis of its rulings in the Consent Judgment here. The Court heard argument at the October 2, 2020 hearing, considered the arguments made by the

parties, and made a series of oral rulings upon which it based the granting of the Joint Motion and entry of the Consent Judgment. These rulings, which were effective at the time they were announced from the bench, are hereby memorialized and further explained below.

FINDINGS OF FACT

2. This matter involves claims brought by Plaintiffs involving as-applied challenges to the absentee ballot receipt deadline set forth in N.C.G.S. § 163-231(b)(1), (2), enforcement of the witness requirement for absentee ballots set forth in N.C.G.S. § 163-231(a) (as modified by SL 2020-17), the lack of prepaid postage available to absentee-by-mail voters, application of any signature verification requirement, enforcement of elections laws prohibiting individuals and organizations from assisting voters when submitting or filling out absentee ballot request forms or absentee ballots as set forth in N.C.G.S. §§ 163-226.3(a)(5), -230.2(c), (e), and -231(b)(1), and the failure to provide an additional 21 days of early voting.

3. Plaintiff North Carolina Alliance For Retired Americans 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 comprise retirees from public and private sector unions, community organizations, and individual activists. Some of its members are disabled, and all of its members are of an age that places them at a heightened risk of complications from coronavirus.

4. Individual Plaintiffs each have their own hardships as well as shared hardships, which encumber their abilities to vote in the election. These include, but are not limited to, significant concerns regarding the United States Postal Service's ability to timely deliver and return absentee ballots; and health concerns related to voting in person, interacting with a witness,

traveling to and from voting sites, or delivering an absentee ballot, particularly for those deemed high risk for COVID-19.

5. On July 30, 2020, Thomas J. Marshall, General Counsel and Executive Vice President of the United States Postal Service sent a letter to North Carolina's Secretary of State, warning her that North Carolina elections law relating to absentee ballot deadlines was "incongruous with the Postal Service's delivery standards." *Pennsylvania v. DeJoy*, No. 2:20-cv-04096 (E.D.P.A.), Dkt. 1-1 at 53-55. USPS also stated 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 on time or be counted." *Id.* In particular, USPS recommended that elections 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.* Accordingly, in North Carolina, voters can postmark their ballot by Election Day, but because of USPS delays and through no fault of their own, not have their ballots counted because the ballots arrived at the county board of elections office after the statutory deadline.

6. On May 12, 2020, Legislative Defendants noticed their intervention in this case purportedly "as agents of the State" and "on behalf of the General Assembly." LDs' Mot. to Intervene, ¶¶ 9-10.

7. On July 1, 2020, the Republican National Committee, the National Republican Senatorial Committee, the National Republican Congressional Committee, Donald J. Trump for

President, Inc., and the North Carolina Republican Party (the Political Committees) moved to intervene in this case to protect their “specific desire to elect particular candidates,” and “the interests of voters throughout North Carolina,” as well as their “members’ ability to participate in those elections . . . governed by the challenged rules.” Political Committees’ Mot. to Intervene, ¶¶ 1, 25. The Court granted the Political Committees permissive intervention on September 24, 2020.

8. On August 18, 2020, Plaintiffs filed a motion for preliminary injunction.

9. On September 22, 2020, Plaintiffs and State Defendants jointly moved for the entry of a consent judgment as full and final resolution of Plaintiffs’ claims against the State Defendants related to the conduct of the 2020 elections. On October 1, 2020, Plaintiffs withdrew their motion for preliminary injunction.

10. Under the consent order as proposed in the Joint Motion, plaintiffs agreed to forgo many of their demands, including expanded early voting, elimination of the witness requirement for mail-in absentee ballots, elimination of the postmark requirement, and pre-paid postage for mail-in absentee ballot return envelopes. The Executive Defendants agreed: (1) to extend the deadline for receipt of mail-in absentee ballots mailed on or before Election Day to nine (9) days after Election Day to match the UOCAVA deadline, in keeping with the guidance received on July 30, 2020 from the Postal Service; (2) implement the revised cure process set forth in Numbered Memo 2020-19; and (3) establish separate mail-in absentee ballot “drop off stations” staffed by elections officials at each early voting site and at each county board of elections to reduce the congestion and crowding at early voting sites and county board offices. Plaintiffs agreed to accept

these measures, which fell far short of their demands, “as a full and final resolution of Plaintiffs’ claims against Executive Defendants related to the conduct of the 2020 elections.”

11. The consent judgment as proposed does not enjoin any statutes. The proposed consent judgment retains fidelity to the purpose behind these statutes: (1) ensuring that all ballots that are marked in accordance with all state laws are counted so long as the delay in delivery to the county board of elections is no fault of the voter’s, (2) ensuring that there is a log of the person who returns absentee ballots so that, in the event of concerns about fraud, these concerns can be investigated, and (3) ensuring that the voter to whom the absentee ballot was issued is the one who voted the ballot that the county board of elections received. In addition, the consent order is narrowly targeted to modifications that address the exigent circumstances of the COVID-19 pandemic. It therefore does not modify any election procedures beyond the 2020 election cycle.

12. As of September 29, 2020, more than 1,116,696 absentee ballots have been requested. As of October 2, 2020, 325,345 have been submitted, and 319,209 have been accepted. Early voting starts on October 15.

13. The Court hereby incorporates by reference those factual statements made in the Stipulation and Consent Judgment, Part I – Recitals, and entered on October 2, 2020 by this Court, as if set forth fully herein.

CONCLUSIONS OF LAW

14. North Carolina courts have a “strong preference for settlement over litigation.” *Ehrenhaus v. Baker*, 216 N.C. App. 59, 72, 717 S.E.2d 9, 19 (2011).

15. Although North Carolina courts have not articulated a standard for approval of a consent judgment, courts in this State have looked to the federal standard to provide guidance in

similar contexts. *See, e.g., Ehrenhaus*, 216 N.C. App. at 71-72, 717 S.E.2d at 18-19 (adopting federal standard for approval of class-action settlements). Before approving entry of a consent judgment, a federal court has the duty to “satisfy itself that the agreement is ‘fair, adequate and reasonable,’ and is ‘not illegal, a product of collusion, or against the public interest.’” *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999) (quoting *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991)).

16. On June 10, 2020, the North Carolina General Assembly enacted House Bill 1169, which the Governor signed into law as North Carolina Session Law 2020-17 the following day. This law made a number of changes in response to the COVID-19 pandemic. The legislature did not revise, in any way relevant to the Joint Motion or the Consent Judgment, the emergency powers granted to the State Board or its Executive Director under section 163-27.1 or revise powers granted to the State Board to enter into agreements to avoid protracted litigation under section 163-22.2.

17. Joint movants have demonstrated that the plaintiffs are likely to succeed on the merits of their constitutional claims.

18. The Court finds this agreement is fair, adequate, and reasonable. It is not illegal. It is not a product of collusion. On its face, comparing the complaint to the consent order, the plaintiffs did not obtain all the relief that they had sought. On its face, this is a compromise. There exists no evidence to the contrary.

19. The relief imposed by this consent judgment is very limited. It makes only minor and temporary changes to election procedures to accommodate the exigencies of the COVID-19 pandemic, which also makes it reasonable.

20. The Court finds that there is a strong public interest in having certainty in our elections procedures and rules, and the entry of this consent judgment is, therefore, in the public interest.

21. The North Carolina State Board of Elections has a strong incentive to settle this case to ensure certainty on the procedures that will apply during the current election cycle. Settlement will also provide public confidence in the safety and security in this election, in light of all the serious public-health challenges faced at this time.

22. The North Carolina State Board of Elections has authority to enter into this consent judgment under two separate provisions of the North Carolina General Statutes: sections 163-22.2 and 163-27.1.

23. First, section 163-22.2 authorizes the State Board, “upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes.” This section applies here. The proposed consent judgment is an “agreement with the courts.” The State Board, moreover, has made the reasonable decision to enter into this agreement to avoid “protracted litigation” regarding plaintiffs’ claims with an election fast approaching.

24. Second, section 163-27.1 authorizes the Executive Director of the State Board to “exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by” a “natural disaster.” A “natural disaster” includes a “[c]atastrophe arising from natural causes [that] result[s] in a disaster declaration by the President of the United States or the Governor.” 08 NCAC 01.0106. The COVID-19 pandemic constitutes a natural disaster within the meaning of the statute, as shown by the declaration of emergency by the Governor, the

declaration of disaster by the President, and the emergency order that the Executive Director issued under this authority on July 17, 2020. The Executive Director therefore had the statutory authority to issue the Numbered Memoranda that form the basis of this consent judgment pursuant to her emergency powers under section 163-27.1.

25. Accordingly, votes cast and counted pursuant to the Numbered Memoranda and the consent judgment are lawfully cast votes under North Carolina law, because the North Carolina State Board of Elections and its Executive Director validly issued the Numbered Memoranda and entered into the consent judgment under their statutory authority conferred on them by the General Assembly.

26. Sections 1-72.2 and 120-32.6 of the North Carolina General Statutes do not alter the State Board's authority under sections 163-22.2 or 163.27.1. Nor do they provide that the Speaker and the President Pro Tem are necessary parties to the consent judgment in this case. As an initial matter, the authority delegated to the State Board in sections 163-22.2 and 163-27.1 is more specific than the more general grants of authority listed in sections 1-72.2 and 120-32.6. More specific grants of statutory authority control over more general grants. Here, therefore, the more general grants of certain litigation authority in sections 1-72.2 and 120-32.6 do not displace the settlement and emergency powers of the State Board.

27. In addition, sections 1-72.2 and 120-32.6 allow the Speaker and the President Pro Tem to appear and be heard, or in some cases to request to do so, in certain lawsuits on behalf of the legislative branch alone. However, this limited authority does not allow these legislators to represent the interests of the executive branch or of the State, including any interest of the State in the execution and enforcement of its laws. These statutes do not authorize the Speaker and the

President Pro Tem, individually or jointly, to control executive officials' decisions about execution and enforcement of state law, or to prevent executive officials from entering into settlements that affect how statutes are executed or enforced after their enactment. Nor do these statutes make the General Assembly or these legislative officers necessary parties to any such settlement. To read sections 1-72.2 and 120-32.6 otherwise would violate the North Carolina Constitution's separation of powers clause. *See* N.C. Const. art. I, § 6; *Cooper v. Berger*, 370 N.C. 392, 414-15, 809 S.E.2d 98, 111-12 (2018).

28. For all these reasons, therefore, the consent of the Speaker and the President Pro Tem is not needed for this Court to approve and enter this consent judgment.

29. Because the North Carolina General Statutes delegate to the State Board the authority to issue the directives that form the basis for the proposed consent judgment, neither the Numbered Memoranda, nor the consent judgment itself, violates the Elections Clause of the U.S. Constitution, art. I, § 4, cl.1.

30. Neither the Numbered Memoranda, nor the consent judgment itself, violates the Equal Protection Clause of the U.S. Constitution, amend. XIV, § 1. They provide adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them. They do not dilute or discount anyone's vote. Instead, they ensure that all eligible voters have an opportunity to cast their ballots and correct any deficiencies in those ballots under the same, uniform standards.

31. The Numbered Memoranda and the consent judgment are therefore consistent with both the North Carolina Constitution and the U.S. Constitution.

32. Based upon the foregoing, on October 2, 2020, Plaintiffs' and Executive Defendants' Joint Motion for Entry of a Consent Judgment was granted and final judgment was entered.

ISSUED, this 5th day of October 2020, *nunc pro tunc* October 2, 2020.



G. Bryan Collins
Special Superior Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the following parties via email:

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This the 5th day of October, 2020.

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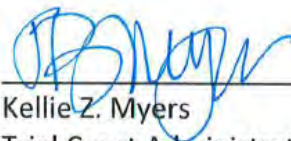
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EXHIBIT 6

FILED

STATE OF NORTH CAROLINA -2 PM 4: 08 IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION

WARE 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,

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.

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”¹;

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;²

¹ *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.³ 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;

² 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.

³ *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 Elections⁴;

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,

⁴ *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 officials⁵;

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.”⁶ 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;⁷

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

⁶ 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).

⁷ *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.

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., Esshaki 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

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Molly Mitchell

App. 047

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

Dated: 10/2/20

Byron Calhoun
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below by electronic mail, with their consent to receive electronic service, as follows:

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 2nd day of October 2020.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

EXHIBIT 7



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

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

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 8



Numbered Memo 2020-19

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

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.¹

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.

¹ 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 name²
- Witness or assistant did not print address³
- 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.

² 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.

³ 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, 2020.⁴ 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.⁵ 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.

⁴ G.S. § 163-231(b).

⁵ 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.⁶ 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.⁷

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.⁸ 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.

⁶ 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).

⁷ 08 NCAC 18 .0102.

⁸ *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.⁹ 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.

⁹ 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.

Voter's Name

Voter's Signature

Voter's Address

EXHIBIT 9

From: [Hilary Harris Klein](#)
To: [Peters, Alec](#); [Narasimhan, Sripriya](#); jsherman@fairelectionscenter.org; george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com; [Allison Riggs](#)
Cc: [Hathcock, Kathryne](#); [McHenry, Neal](#); [Love, Katelyn](#)
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy
Date: Friday, September 25, 2020 5:19:00 PM

Thank you Alec. We can make 3 – 3:30pm work. Please see the below conference details.

Join Zoom Meeting

<https://zoom.us/j/96602468251?pwd=byttbFpndWdCa3lGcUZ1VHhIZzlvUT09>

Meeting ID: 966 0246 8251

Passcode: 866291

One tap mobile

+19292056099,,96602468251#,,,,,0#,,866291# US (New York)

+13017158592,,96602468251#,,,,,0#,,866291# US (Germantown)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 966 0246 8251

Passcode: 866291

Find your local number: <https://zoom.us/u/ads1o1O2Kd>

Hilary Harris Klein

919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Peters, Alec <apeters@ncdoj.gov>

Sent: Friday, September 25, 2020 5:11 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>; Narasimhan, Sripriya <SNarasimhan@ncdoj.gov>; jsherman@fairelectionscenter.org; george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com; Allison Riggs <AllisonRiggs@southerncoalition.org>

Cc: Hathcock, Kathryne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>

Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

I'm afraid we're not available at 10 Monday morning. It looks as though the possibilities on Monday for us are from 11–1, and from 3–on. If those times don't work, we can look at Tuesday.

BTW, I would not expect Beth and Neal to be part of this conversation. Their role in this case has been in their capacities as counsel to the Department of Transportation, Division of Motor Vehicles,

and to the Department of Health and Human Services, neither of which are involved in cure procedures.

— Alec



Alexander McC. Peters
Chief Deputy Attorney General
919.716.6400
apeters@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
ncdoj.gov

Please note messages to or from this address may be public records.

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, September 25, 2020 4:52 PM
To: Peters, Alec <apeters@ncdoj.gov>; Narasimhan, Sripriya <SNarasimhan@ncdoj.gov>; jsherman@fairelectionscenter.org; george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com; Allison Riggs <AllisonRiggs@southerncoalition.org>
Cc: Hathcock, Kathrynne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Thank you Alec. How about 10am on Monday? I will send out a calendar invite with conference details if that works for everyone.

Kind regards,

Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Peters, Alec <apeters@ncdoj.gov>
Sent: Friday, September 25, 2020 4:32 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Narasimhan, Sripriya <SNarasimhan@ncdoj.gov>; jsherman@fairelectionscenter.org; george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com; Allison Riggs <AllisonRiggs@southerncoalition.org>
Cc: Hathcock, Kathrynne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Hilary, I apologize if there has been confusion. I had not been back in touch because I knew Priya was in conversation with you, which we intended as responsive to your emails. I'm sorry if that

wasn't clear. As Priya says below, we are happy to continue to confer cooperatively.

Best regards,
Alec



Alexander McC. Peters
Chief Deputy Attorney General
919.716.6400
apeters@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
ncdoj.gov

Please note messages to or from this address may be public records.

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, September 25, 2020 3:30 PM
To: Narasimhan, Sripriya <SNarasimhan@ncdoj.gov>; jsherman@fairelectionscenter.org;
george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com;
Allison Riggs <AllisonRiggs@southerncoalition.org>
Cc: Peters, Alec <apeters@ncdoj.gov>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Hi Priya,

My email was directed to those attorneys appearing in this matter, who have yet to respond to any of my below inquiries or to indicate that you would be acting in this litigation in their stead. And while I appreciate our calls have covered some of these issues, I also understood they were outside the litigation context per your representation to that effect.

In any event, I would look forward to conferring on these issues at your earliest convenience, and can be available 4:30 – 5pm today, at various times over the weekend, or Monday 10am-11am or 2pm–3pm.

Kind regards,
Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Narasimhan, Sripriya <SNarasimhan@ncdoj.gov>
Sent: Friday, September 25, 2020 2:52 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; jsherman@fairelectionscenter.org;
george.varghese@wilmerhale.com; joseph.yu@wilmerhale.com; rebecca.lee@wilmerhale.com;
Allison Riggs <AllisonRiggs@southerncoalition.org>
Cc: Peters, Alec <apeters@ncdoj.gov>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: FW: [External]RE: DemNC v. NCSBOE - cure remedy

Hilary,

Thank you for your email. I'm surprised at your assertion that there has been a lack of engagement on these issues as you and I have had several conversations in the past couple of weeks—all addressing issues you've raised here. In fact, we last spoke on Wednesday about these same topics. DOJ and the State Board are happy to continue to confer cooperatively, as we have been doing for the last several weeks.

Thanks,
Priya



Sripriya Narasimhan
Deputy General Counsel
North Carolina Department of Justice
114 W. Edenton St., Raleigh, NC 27603
Tel: (919) 716-6421 * Email: snarasimhan@ncdoj.gov

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, September 25, 2020 2:26 PM
To: Peters, Alec <apeters@ncdoj.gov>; Hathcock, Kathrynne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>
Cc: 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Dear Alec, Neal, and Kathrynne,

I am writing to express our concern with the SBE's lack of compliance with the PI Order. To date, we are not aware of any communication from defendants to the county boards of elections regarding the PI Order in place, including specifically that counties may not "disallow[] or reject[] . . . absentee ballots without due process as to those ballots with a material error that is subject to remediation." (PI Order, p. 187). If our understanding is not correct, we ask that you clarify where and how this communication has been made to the counties and how the SBE intends to monitor compliance with this direction. Without this direction, we perceive a substantial risk that county boards of elections will reject ballots in the meetings that are to start September 29, 2020 without having afforded due process to voters in violation of the PI Order.

Additionally, the revised memo issued September 22, 2020 (Numbered Memo 2020-19) now omits any mention of voters having any opportunity to be heard during canvass regarding material errors on their ballots as an option. This is further concerning, in addition to other issues we have raised to your attention in prior correspondence.

We remain confused at your lack of engagement with us on these issues, and believe that conferring in good faith would allow us to resolve these issues without the need for further court involvement. We can be available later today, over this weekend, or Monday 10am-11am or 2pm-3pm to discuss.

Kind regards,

Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Friday, September 18, 2020 4:45 PM
To: 'Peters, Alec' <apeters@ncdoj.gov>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>
Cc: 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Dear Alec, Kathryn, and Neal,

I'm following up on my correspondence below and to express our growing concerns about the status of the due process relief that has been ordered. We understand that, last Friday (September 11), counties were directed to halt sending voter notification of deficiencies pending further guidance but that no such further guidance has been issued, and thus it appears the county processing of absentee ballots may be currently stalled. We also recognize some urgency given that county boards of election are to start meeting on September 29 (one and a half weeks from now) to formally accept / reject absentee ballots. We would like to avoid any unnecessary motions practice and therefore seek again to meet and confer with you regarding the relief ordered by the Court on August 4. We can be available Monday 10am – 2pm or 2pm – 4pm.

Kind regards,

Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Wednesday, September 2, 2020 10:29 AM
To: 'Peters, Alec' <apeters@ncdoj.gov>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>
Cc: 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Love, Katelyn <Katelyn.Love@ncsbe.gov>

Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Dear Alec, Kathyne, and Neal,

I'm following up on my letter from a week ago to see if you are available to discuss. We would be available tomorrow 12 – 1:30pm.

Kind regards,

Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Wednesday, August 26, 2020 10:37 AM
To: 'Peters, Alec' <apeters@ncdoj.gov>; Hathcock, Kathyne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>
Cc: 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Dear Alec, Kathryn, and Neal,

Please see the attached follow-up letter regarding and the cure remedy ordered by the Court on August 4, 2020 and Numbered Memo 2020-19.

Kind regards,

Hilary

Hilary Harris Klein
919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Wednesday, August 12, 2020 12:51 PM
To: 'Peters, Alec' <apeters@ncdoj.gov>; Hathcock, Kathyne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>
Cc: 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Dear Alec, Kathyne, and Neal,

Please see the attached letter regarding the cure remedy ordered by the Court on August 4, 2020.

Kind regards,

Hilary

Hilary Harris Klein

919-323-3380 ext. 119 | hilaryhklein@scsj.org

From: Allison Riggs <AllisonRiggs@southerncoalition.org>

Sent: Friday, August 7, 2020 10:02 AM

To: 'Peters, Alec' <apeters@ncdoj.gov>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>

Cc: Hilary Harris Klein <hilaryhklein@scsj.org>; 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>

Subject: RE: [External]RE: DemNC v. NCSBOE - cure remedy

Thanks, Alec, we'll look forward to hearing from you. And of course, thanks for understanding that given the court's order on topic, the need to confer with prevailing parties on the sufficiency of the remedy before issuing any guidance.

Thanks,

Allison Riggs

Interim Executive Director

Chief Counsel for Voting Rights

Southern Coalition for Social Justice

1415 West Highway 54, Ste. 101

Durham, NC 27707

[919-323-3380 ext. 117](tel:919-323-3380)

[919-323-3942](tel:919-323-3942) (fax)

allison@southerncoalition.org

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From: Peters, Alec <apeters@ncdoj.gov>

Sent: Friday, August 7, 2020 9:13 AM

To: Allison Riggs <AllisonRiggs@southerncoalition.org>; Hathcock, Kathryn <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>

Cc: Hilary Harris Klein <hilaryhklein@scsj.org>; 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>
Subject: [External]RE: DemNC v. NCSBOE - cure remedy

Hey Allison, and thanks for your understandable interest in the guidance that the State Board will be preparing. We will be happy to reach out when we are ready to discuss this with the other parties.

Best regards,
Alec



Alexander McC. Peters
Chief Deputy Attorney General
919.716.6400
apeters@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
ncdoj.gov

Please note messages to or from this address may be public records.

From: Allison Riggs <AllisonRiggs@southerncoalition.org>
Sent: Thursday, August 06, 2020 3:22 PM
To: Peters, Alec <apeters@ncdoj.gov>; Hathcock, Kathryne <KHathcock@ncdoj.gov>; McHenry, Neal <NMcHenry@ncdoj.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>
Cc: Hilary Harris Klein <hilaryhklein@scsj.org>; 'Jon Sherman' <jsherman@fairelectionscenter.org>; 'Varghese, George' <George.Varghese@wilmerhale.com>; 'Yu, Joseph J.' <Joseph.Yu@wilmerhale.com>; Lee, Rebecca <Rebecca.Lee@wilmerhale.com>
Subject: DemNC v. NCSBOE - cure remedy
Importance: High

Alec et al.,

Hope you're doing well. We'd like to schedule a time to talk to you all about the steps your client will take to comply with Judge Osteen's injunction from Tuesday about notice and cure for absentee voters this year. We'd like to ensure that we're on the same page with respect to what full compliance looks like so that we don't have to engage in any motions practice on this front.

We're available tomorrow at 3:30 PM or Monday between noon and 3 PM. Please let me know if any of those times work and we'll circulate a dial-in.

Thanks,

Allison Riggs
Interim Executive Director

Chief Counsel for Voting Rights
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
[919-323-3380 ext. 117](tel:919-323-3380)
[919-323-3942](tel:919-323-3942) (fax)
allison@southerncoalition.org

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EXHIBIT 10

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED
2018 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.¹ 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.

¹ 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.”²

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[.]”³ 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-

² 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).

³ 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.”⁴

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.⁵

⁴ 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>.

⁵ 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.”⁶ 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

⁶ 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."⁷ Just weeks ago, USPS announced "major operational changes" "that could slow down mail delivery" *even further*.⁸ 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.⁹ Since the announcement, some Americans have gone "upwards of three weeks without packages and letters, leaving them without medication, paychecks, and bills."¹⁰

⁷ 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>.

⁸ 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*].

⁹ *Id.* Bogage, *Postal Service memos detail 'difficult' changes*.

¹⁰ 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

<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-19.¹¹

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

¹¹ 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.

forced to “invite another adult into [their] home to complete the voting process,” which “increases the risk of transmission or exposure to disease.”¹²

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.¹³

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

¹² 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.

¹³ 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).¹⁴

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

¹⁴ See U.S. Postal Serv., *Election Mail*, 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)).¹⁵

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,

¹⁵ 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.¹⁶

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

¹⁶ *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.

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

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This the 18th day of August, 2020.



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EXHIBIT 11

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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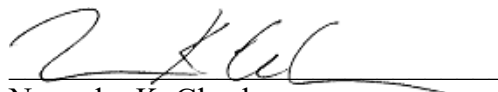
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This the 22nd day of September, 2020.


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
FOWLER; BECKY JOHNSON; JADE
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official capacity as Speaker of the North
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”¹;

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;²

¹ *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.³ 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;

² 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.

³ *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 Elections⁴;

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,

⁴ *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 officials⁵;

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.”⁶ 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;⁷

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

⁶ 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).

⁷ *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.

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
Burton Craige, NC Bar No. 9180
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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

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.¹

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.

¹ 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.¹

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.

¹ 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 name²
- Witness or assistant did not print address³
- Witness or assistant did not sign
- Witness or assistant signed on the wrong line

² 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.

³ 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 bipartisan 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)

Voter's Printed Name (Required)

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

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.¹ 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

¹ 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.² **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.³ A county board shall not disapprove an absentee ballot solely because it was delivered by someone who was not authorized

² 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.

³ *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.⁴

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.

⁴ *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 12

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 20 CVS 8881

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

PLAINTIFFS,)

v.)

THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS; AND)
DAMON CIRCOSTA, *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, *and*)

REPUBLICAN NATIONAL)
COMMITTEE; NATIONAL)
REPUBLICAN SENATORIAL)
COMMITTEE; NATIONAL)
REPUBLICAN CONGRESSIONAL)
COMMITTEE; DONALD J. TRUMP)
FOR PRESIDENT, INC; AND NORTH)
CAROLINA REPUBLICAN PARTY,)

REPUBLICAN)
COMMITTEE)
INTERVENOR-)
DEFENDANTS.)

LEGISLATIVE DEFENDANTS'
NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Intervenor-Defendants Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives (“Legislative Defendants”), by and through counsel, pursuant to North Carolina Rule of Appellate Procedure 3(a), do hereby notice their appeal to the Court of Appeals of North Carolina from the final consent judgment entered by the Superior Court, Wake County in this matter on 2 October 2020 and from the order of the Superior Court, Wake County issued on 5 October 2020, *nunc pro tunc* 2 October 2020 granting Plaintiffs’ and the State Defendants’ Joint Motion for Entry of a Consent Judgment.

This the 6th day of October, 2020.

Respectfully Submitted,



Nathan Huff

PHELPS DUNBAR LLP

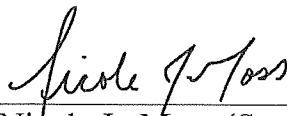
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CERTIFICATE OF SERVICE

I do hereby certify that I have on this 6th day of October, 2020, served a copy of the foregoing Notice of Appeal by electronic mail and by first class mail, on the following parties at the following addresses:

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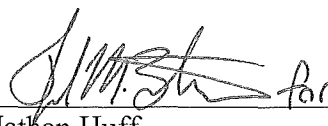
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EXHIBIT 13



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 2020-27

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Court Order Regarding Witness Signature Deficiency
DATE: October 1, 2020

On September 30, 2020, the U.S. District Court for the Middle District of North Carolina issued an order requiring the parties to attend a status conference to discuss Numbered Memo 2020-19. *Democracy NC v. State Board*, 1:20CV457, Order on Status Conference (M.D.N.C. Sept. 30, 2020). In the [order](#), the court states it does not find Numbered Memo 2020-19 “consistent with the Order entered by this Court on August 4, 2020,” and indicates that its preliminary injunction order should “not be construed as finding that the failure of a witness to sign the application and certificate as a witness is a deficiency which may be cured with a certification after the ballot has been returned.” *Id.* at 3-4. In order to avoid confusion while related matters are pending in a number of courts, this memo is issued effective immediately and is in place until further numbered memo from the State Board.

County boards that receive an executed absentee container-return envelope with a missing witness signature shall take no action as to that envelope. This includes any container-return envelopes that contain multiple deficiencies that include a missing witness signature. County boards shall not send a cure certification or reissue the ballot if they receive an executed container-return envelope without a witness signature. Absentee envelopes with a missing witness signature shall be kept in a secure location and shall not be considered by the county board until further notice. Once the State Board receives further direction from a court, we will issue guidance to county boards on what actions they should take regarding container-return envelopes with a missing witness signature. Guidance will also address how to handle ballots with a missing witness signature that were previously acted upon by the county board if a cure certification has been returned.

In all other respects, [Numbered Memo 2020-19](#), as revised on September 22, 2020, remains in effect. This means that county boards shall continue to issue cure certifications for all other deficiencies identified in Section 2.1 of Numbered Memo 2020-19 and shall follow the processes outlined in the memo for all deficiencies except a missing witness signature.

EXHIBIT 14



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 2020-28

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Court Orders Regarding Numbered Memos
DATE: October 4, 2020

To avoid confusion while related matters are pending in a number of courts, this memo is issued effective immediately and is in place until further numbered memo(s) is issued by the State Board.

For the reasons set forth in this memo, Numbered Memos 2020-19 (both versions), 2020-22, 2020-23 and 2020-27 are on hold until further notice from the State Board. On October 2, 2020, the Wake County Superior Court in *NC Alliance v. State Board* entered a consent judgment ordering that, to settle all of plaintiffs' claims, Numbered Memo 2020-19 (Absentee Container-Return Envelope Deficiencies), Numbered Memo 2020-22 (Return Deadline for Mailed Civilian Absentee Ballots in 2020), and Numbered Memo 2020-23 (In-Person Return of Absentee Ballots) shall be issued.

However, on October 3, 2020, the U.S. District Court for the Eastern District of North Carolina temporarily blocked the State Board from enforcing the same numbered memos. The court also transferred the cases to the U.S. District Court for the Middle District of North Carolina that has jurisdiction over the *Democracy NC* case. *Moore v. Circosta*, 5:20-CV-507-D, (E.D.N.C. Oct. 3, 2020); *Wise v. State Board*, 5:20-CV-507-D, (E.D.N.C. Oct. 3, 2020). The State Board's attorneys are reviewing these competing orders and will provide guidance as soon as possible on how to move forward.

At this time, because of these conflicting orders, Numbered Memos 2020-19, 2020-22, 2020-23 and 2020-27 are on hold.

County boards that receive an executed absentee container-return envelope with a deficiency shall take no action as to that envelope. County boards shall not send a cure certification or reissue the ballot if they receive an executed container-return envelope with any deficiency. County boards also may not accept or reject any ballots if the container-return envelope has any

deficiencies. Envelopes with deficiencies shall be kept in a secure location and shall not be considered by the county board until further notice. Once the State Board receives further direction from a court, we will issue guidance to county boards on what actions they should take regarding container-return envelopes with deficiencies. If a county board has previously reissued a ballot, and the second envelope is returned without any deficiencies, the county board may approve the second ballot.

County boards that receive deficient envelopes shall not check them into SEIMS. We recommend that, if a voter calls your office and wants to know about the status of their deficient ballot, your staff state: “We have received your ballot and there is an issue. *Currently the cure process is being considered by the courts.* We will contact you soon with more information.” If the ballot has a deficiency, do not issue a cure certification or spoil the ballot even upon a voter’s request.

EXHIBIT 15

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

20 CVS 8881

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

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,)

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,)

Proposed Intervenor-)
Defendants.)

**EXECUTIVE DEFENDANTS’
BRIEF IN SUPPORT OF THE
JOINT MOTION FOR ENTRY
OF A CONSENT JUDGMENT**

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INTRODUCTION

In the midst of this year's extraordinary increase in absentee mail-in voting, the proposed consent judgment before this Court is the only practical way to accomplish the following for this year's general election:

- To ensure that all eligible North Carolina voters who choose to vote – hundreds of thousands of whom will be voting, or voting absentee, for the first time in their lives – will have their vote counted;
- To ensure that the requirements of North Carolina's elections laws – including the one-witness requirement for absentee ballots, the confirmation of absentee ballot drop-off authorization, and the requirement that all absentee ballots be postmarked by Election Day – will continue to be preserved and applied;
- To ensure that the far more expansive changes that plaintiffs have sought – including further extending early voting, mailing unsolicited ballots to all voters, providing postage on ballot return envelopes, and not requiring ballots to be postmarked by Election Day – are *not* put in place, since they would severely complicate administration of this year's elections; and

To ensure that “protracted litigation”¹ throughout this election season does not jeopardize the safe, efficient, and constitutional administration of these elections.

This year's elections are taking place in the face of unprecedented challenges. Since March, the COVID-19 global pandemic has caused untold disruption to the American way of

¹ See N.C. Gen. Stat. § 163-22.2 (“The State Board of Elections shall also be authorized, upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes.”)

life. The virus is highly contagious and spreads through close contact with others. There is no cure. There is no vaccine.

This virus is unique. It affects certain communities and activities more acutely, and it particularly affects North Carolinians because of the way we vote. North Carolinians have three ways to vote: on Election Day, early and in-person, and by absentee ballot (but with a witness). All of these mechanisms require close contact with others and may increase the risk of contraction of the COVID-19 virus.

The confluence of events has resulted in a slew of lawsuits being filed across the country on behalf of voters and voter advocacy groups, bringing to light grave constitutional concerns attendant with voting in the pandemic under statutes currently in place. Many have succeeded—particularly by requiring an extension of the deadline for receipt of absentee ballots by at least a week and by enjoining any witness requirement.

In North Carolina, on August 4, 2020, a group of voters and voter advocacy groups secured a federal court injunction that prohibits the rejection of absentee ballots without a cure procedure to correct deficiencies like witness or signature information. To comply with the State Defendants' understanding with this injunction, on September 22, the State Board issued the cure procedures (Numbered Memo 2020-19) instructing county boards on the cure process in place. Absent this cure procedure, absentee ballots cannot be rejected—and must be counted—even if the witness or signature information is deficient under the state statutes.

Facing the prospect of protracted litigation on multiple fronts, the State Board has become increasingly concerned about the lack of certainty about the elections rules in place for the November 2020 general election. More than eight lawsuits have been filed, challenging various aspects of elections law as applied during the COVID-19 pandemic, including numerous

claims under the North Carolina Constitution. With voting underway and in light of the increasing evidence of discriminatory impact that the absentee ballot procedure has on communities of color, the State Board took measures to reach an agreement with Plaintiffs that would resolve all of their outstanding claims for the November 2020 general election and give the voters and local and state elections officials finality and direction.

The proposed consent judgment would result in dismissal and rejection of many of Plaintiffs' requests, but would implement three limited changes: (1) the deadline for absentee ballots to be accepted by county boards of elections, so long as they bear indicia of being marked and mailed on or before Election Day, would be extended by six days, from 5 p.m. on November 6 until 5 p.m. on November 12, to match the deadline that already exists for military and overseas voters, (2) the logging process that occurs when absentee ballots are returned in person to voting sites would occur at designated stations supervised by elections staff, with the information relating to the person returning the ballot taken verbally by the elections official and logged by that official, rather than by the person returning the ballot; and (3) the cure procedure issued as a result of the injunction entered in federal court will allow voters to attest to the validity of their own ballots after being contacted by board officials due to a deficiency in meeting the witness requirement.

The proposed consent judgment honors the purposes behind North Carolina's election procedures. It helps ensure that all legal ballots are counted. It ensures that there is a log of the person who returns absentee ballots so that, in the event of concerns about fraud or ballot "harvesting," these concerns can be investigated. It ensures that the voter to whom the absentee ballot is issued is the person who actually voted the ballot that the county board of elections receives.

The proposed consent judgment is fair, reasonable, and adequate. And, most importantly, it is in the best interest of voters. Voters are already submitting ballots, county boards are already approving and rejecting ballots, and early voting begins in approximately two weeks. Voters need to know the rules of the road, and those rules need to ensure that all voters who are eligible may vote safely and securely.

Despite the unanimous, bipartisan vote of the State Board to approve the principles contained in the consent judgment, the Legislative Defendants object. It appears they wish to continue protracted litigation in both state and federal court well into the voting period, increasing confusion and uncertainty. But the Legislative Defendants' arguments should not distract this Court from the central question before it, which is the fairness, reasonableness, and all issues necessary to confirm the validity of the proposed consent judgment.

As of today, September 30, the absentee voting period has been open for 26 days. More than 1,116,696 absentee ballots have been requested, 285,187 have been submitted, and 280,353 have been accepted. Early voting starts on October 15. Certainty and finality are essential.

The State Defendants urge this Court to approve the consent judgment, as it is a fair, adequate, and reasonable resolution of the claims advanced by Plaintiffs.

STATEMENT OF FACTS

A. COVID-19 and the State's Response to the Global Pandemic

The effects of the novel coronavirus strain known as COVID-19, both on public health and on a wide variety of activities are, by now, well-known. The COVID-19 pandemic has been widely recognized as the greatest global health crisis in at least a century. In our State alone, at least 207,380 people have had laboratory-confirmed cases of COVID-19 and at least 3,441 have died from the virus. *See* <https://covid19.ncdhhs.gov/>, accessed Sept. 27, 2020. The COVID-19

pandemic is the greatest threat to global health in the last century. *See* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7175860/>, accessed Sept. 27, 2020. It has affected the way we work, the way we interact with each other, and it has affected the way we vote.

Recognizing this, on March 15, 2020, State Board Executive Director Bell issued Numbered Memo 2020-11 to North Carolina's 100 county boards of elections to update them on the State Board's responses to the COVID-19 outbreak, provide recommendations that the county boards conduct meetings electronically, and adjust certain deadlines following the March 3 primary. *See*

https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-11_Coronavirus%20Response.pdf, accessed Sept. 27, 2020.

On March 26, 2020, the Executive Director issued a letter of recommendation to the North Carolina General Assembly and the Governor to address the issues raised by COVID-19. *See* https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf, accessed Sept. 27, 2020. The recommendations included allowing absentee requests to be submitted by fax or email, establishment of an online portal for absentee requests, permitting postage to be pre-paid for absentee ballots, and reducing or eliminating the witness requirement for elections conducted in 2020. *Id.* The Executive Director also recommended temporarily modifying the prohibition on employees of hospitals, nursing homes, and other congregate living facilities to allow these individuals to assist voters and serve as witnesses in light of current visitor restrictions. *Id.* Additionally, the Executive Director recommended that county boards of elections be allowed flexibility to determine their sites and hours for early voting to allow a tailored response to COVID-19 pandemic in each county. *Id.*

On March 20, 2020, pursuant to her statutory emergency authority, the Executive Director issued an order rescheduling the Republican second primary in Congressional District 11 from May 12 to June 23. *See* https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/-Executive%20Director%20Orders/Order_2020-03-20%20.pdf, accessed Sept. 27, 2020. This order also modified some reporting deadlines and suspended certain logging requirements to allow county board offices to work while being physically closed. *Id.* Finally, the order allowed transfer of certain voters to non-adjacent precincts if the transfer was related to the COVID-19 pandemic. *Id.*

On June 1, 2020, the Executive Director issued Numbered Memo 2020-12, in which she provided guidance for counties administering the June 23 primary. *See* https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-12_In-Person%20COVID%20Response%20June%2023%20Election.pdf, accessed Sept. 27, 2020. In particular, the Executive Director established policies to provide a safe experience for voters and elections officials during the COVID-19 pandemic, including requiring poll workers and other staff to wear personal protective equipment, including masks, face protection, and gloves and, when appropriate, to self-screen for symptoms before reporting to work. *Id.* Voters were provided with masks if they needed one, hand sanitizer, and single-use ballot-marking devices. *Id.* The Executive Director also ordered routine cleanings and social-distancing measures, consistent with CDC guidelines. *Id.*

On June 10, the North Carolina General Assembly enacted House Bill 1169, which the Governor signed into law as North Carolina Session Law 2020-17 the following day. This law made a number of changes in response to the COVID-19 pandemic. For example, it reduced the

requirement of having two witnesses for absentee ballots to one witness. 2020 N.C. Sess. Laws 17, § 1.(a). In addition, it gave county boards of elections greater flexibility to allow non-resident precinct officials to serve, which will help ensure that each polling places remains open even if some current precinct officials are unable or decline to serve. 2020 N.C. Sess. Laws 17, § 1.(b). Session Law 2020-17 also made provisions for bipartisan assistance teams to assist any voter in the state, including those in nursing homes, to fill out their ballots and requests. 2020 N.C. Sess. Laws 17, §§ 1.(c), 2.(b). Additionally, Session Law 2020-17 also provided for absentee ballot request forms to be made online through an electronic portal that will be made available on September 1. 2020 N.C. Sess. Laws 17, § 7.(a). Finally, Session Law 2020-17 provided matching funds for the federal CARES Act (P.L. 116-136), allowing county boards to take advantage of federal funding to assist them in preparing for the elections in light of the COVID-19 pandemic.

Simultaneously, on June 19, 2020, the State Board announced that it was engaging in an aggressive campaign to recruit people to serve as election officials at early voting sites and on Election Day. *See* <https://www.ncsbe.gov/news/press-releases/2020/06/19/election-officials-searching-democracy-heroes-launch-new-portal>, accessed Sept. 27, 2020. This effort is part of a broader plan to recruit additional poll workers to serve in 2020.

And finally, on July 17, 2020, the Executive Director issued an emergency order, requiring county boards of elections to have a minimum of 10 hours of voting each of the first two weekends of early voting, to have at least one polling site open during the early-voting period for every 20,000 registered voters, and to require frequent sanitization and use of PPE in accordance with CDC guidelines. *See* <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%-%>

20Memo%202020-14_Emergency%20Order%20of%20July%2017%2C%202020.pdf, accessed Sept, 27, 2020. This order was intended to ensure that there were sufficient sites and sufficient quality hours for voters to be able to exercise their right to vote safely in response to the pandemic and disaster declaration issued by the President of the United States.

B. United States Postal Service Delays

On July 30, 2020, Thomas J. Marshall, General Counsel and Executive Vice President of the United States Postal Service sent a letter to North Carolina’s Secretary of State, warning her that North Carolina elections law relating to absentee ballot deadlines was “incongruous with the Postal Service’s delivery standards.” *Pennsylvania v. DeJoy*, No. 2:20-cv-04096 (E.D.P.A.), Dkt. 1-1 at 53-55. USPS also stated 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 on time or be counted.” *Id.* In particular, USPS recommended that elections 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.* Accordingly, in North Carolina, voters can postmark their ballot by Election Day, but because of USPS delays and through no fault of their own, not have their ballots counted because the ballots arrived at the county board of elections office after the statutory deadline.

C. The M.D.N.C. Action: *Democracy NC v. North Carolina State Board of Elections*

On May 22, 2020, the groups Democracy North Carolina and the League of Women Voters of North Carolina, together with a number of individual voters, filed an action in the United States District Court for the Middle District of North Carolina. *See Democracy North Carolina v. NC State Board of Elections*, 2020 U.S. Dist. LEXIS 138492 (Aug. 4, 2020). In that action, the plaintiffs challenged various provisions of North Carolina election law, alleging that in the context of the COVID-19 pandemic, those election law provisions infringe on their rights under the United States Constitution and federal statutes. Among the provisions of North Carolina law challenged in *Democracy NC* are the witness requirement for mail-in absentee ballots and the restrictions on how absentee ballots can be returned to county boards of elections. The *Democracy NC* plaintiffs also sought imposition of procedures for curing deficiencies in returned absentee ballots. The plaintiffs filed their First Amended Complaint and their Motion for Preliminary Injunction on June 5, 2020. On June 18, they filed their Second Amended Complaint to reflect the changes in election law for the 2020 general election enacted by 2020 N.C. Sess. Laws 17. On June 15, 2020, the federal court granted permissive intervention to Moore and Berger, the Legislative Defendants in this action. The State Board Defendants vigorously defended against these claims.

On August 4, 2020, following a two-day evidentiary hearing and a third day of oral argument, the court entered its ruling on the plaintiffs' preliminary injunction motion. *Democracy NC*, 2020 U.S. Dist. LEXIS 138492 (Aug. 4, 2020). In its 188–page opinion and order, the court denied the request for preliminary injunction except as to two matters. First, the court enjoined the defendants from enforcing those provisions of law that prohibit employees of nursing care facilities from assisting voters with their absentee ballot as to one of the individual

plaintiffs who is blind and who is in a nursing facility where no one but residents and employees are allowed. *Id.* at *182–83.

Second, the court enjoined defendants “from the disallowance or rejection, or permitting the disallowance or rejection, of absentee ballots without due process as to those ballots with a material error that is subject to remediation,” and directed the adoption of procedures “which provide[] 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.* at *182. These changes were necessary, the court rules, because North Carolina’s witness requirement as statutorily authorized was likely unconstitutional. Thus, the federal court enjoined the State Defendants 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 (M.D.N.C. Aug. 4, 2020) (Osteen, J.), DE 124 at 187. Further, the court concluded that “when the ballot is rejected for a reason that is curable, such as incomplete witness information, or a signature mismatch, and the voter is not given notice or an opportunity to be heard on this deficiency, the court finds this ‘facially effect[s] a deprivation of the right to vote.’” *Id.* at 156 (quoting *Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-cv-71, 2020 WL 2951012, at *9 (D.N.D. June 3, 2020)). This “compelled” the court to find that the absentee-ballot statutes were “constitutionally inadequate” absent a statewide curing procedure. *Id.* at 157.

Though the court denied much of the injunctive relief sought by the plaintiffs, it noted that “Plaintiffs have raised genuine issues of concern with respect to the November General Election. Should Legislative and Executive Defendants believe these issues may now be discounted or disregarded for purposes of the impending election, they would be sorely

mistaken.” *Id.* at *4. This opinion and order was not appealed by any party, including the Legislative Defendants.

To attempt to comply with this injunction and pursuant to its statutory authority under section 163-22.2, the State Board released guidance that allowed voters to cure voter signature defects but required a voter to re-vote her ballot for witness signature defects. Soon thereafter, the State Board became concerned that the cure mechanism did not provide sufficient notice or opportunity to be heard on witness signature defects and that it disparately affected the rights of certain groups of voters.

As a result, and to ensure full compliance with the injunction entered by Judge Osteen, the State Board directed county boards of elections not to disapprove any ballots until a new cure procedure that would comply with the State Defendants’ understanding the injunction could be implemented. On September 22, 2020, the State Board instituted the cure procedure attached to the proposed consent judgment. The State Board subsequently notified the federal court of its cure mechanism process.

D. The State Court Action: *North Carolina Alliance for Retired Americans v. The North Carolina State Board of Elections*

On August 10, 2020, the North Carolina Alliance for Retired Americans, together with a number of individual voters, filed this action in Wake County Superior Court. On August 18, 2020, the plaintiffs filed their Amended Complaint. Plaintiffs challenge: (1) limitations on the number or hours and days that counties can offer one-stop in-person absentee voting; (2) the witness requirement for mail-in absentee ballots; (3) the lack of pre-paid postage for mail-in absentee ballot return envelopes; (4) rejection of mail-in absentee ballots that are postmarked by Election Day but delivered to county boards more than three days after the election, given concerns over delivery delays and operational difficulties with the United States Postal Service;

(5) rejection of absentee mail-in ballots due when the voters signature does not match the signature on file with a board of elections; and (6) restrictions on assistance with requesting a returning mail-in absentee ballots. Also on August 18, 2020, the plaintiffs filed their Motion for Preliminary Injunction.

On August 12, 2020, the Legislative Defendants filed a notice of intervention as of right in the *NC Alliance* action; that intervention as of right was effected by the filing of the notice, and they are now parties to that action as intervenor-defendants on behalf of the General Assembly. See N.C. Gen. Stat. §§ 1-72.2 and 1A-1, Rule 24(c).

During the ensuing five weeks and in light of the number of unresolved issues pending as voting began, the State Defendants engaged in arms-length negotiations with Plaintiffs to resolve some or all of these claims.

On September 22, 2020, the *NC Alliance* plaintiffs and the Executive (State Board) defendants filed a Joint Motion for Entry of a Consent Judgment with the superior court. By that joint motion, the *NC Alliance* plaintiffs and the State Defendants consent to entry of an order by the Superior Court of Wake County. Under the proposed consent order, plaintiffs agreed to drop many of their demands, including expanded early voting, elimination of the witness requirement for mail-in absentee ballots, and pre-paid postage for mail-in absentee ballot return envelopes. The State Defendants agreed: (1) to extend the deadline for receipt of mail-in absentee ballots mailed on or before Election Day to nine (9) days after Election Day to match the UOCAVA deadline, in keeping with the guidance received on July 30, 2020 from the Postal Service; (2) implement the cure process set forth in Numbered Memo 2020-19, as revised; and (3) establish separate mail-in absentee ballot “drop off stations” staffed by county board officials at each early voting site and at each county board of elections to reduce the congestion and crowding at early

voting sites and county board offices. Plaintiffs agreed to accept these measures, which fell far short of their demands, “as a full and final resolution of Plaintiffs’ claims against Executive Defendants related to the conduct of the 2020 elections.” This Court set a hearing on the joint motion for Friday, October 2, 2020.

E. Collateral Federal Court Challenges: *Moore v. Circosta* and *Wise v. North Carolina State Board of Elections*

On the evening of September 26, 2020, the Legislative Defendants filed a collateral challenge to this action in the United States District Court for the Eastern District of North Carolina. *Moore v. Circosta*, No. 5:20-cv-507 (E.D.N.C.) (Dever, J.). In it, they challenge the three underlying memoranda that form the basis of the consent judgment at issue in this case. Rather than litigate the fairness, reasonableness, and adequacy of the proposed consent judgment in this Court this week, the Legislative Defendants instead rushed to federal court on the theory that the issuance of the memoranda violates the Elections Clause and Equal Protection Clause of the United States Constitution. The State Defendants filed a motion to transfer the case to the Middle District of North Carolina to Judge Osteen, as one of the memoranda issued was in compliance of the injunction entered in *Democracy NC*. On September 30, the district court denied the State Defendants’ motion to transfer and set a briefing schedule for the Legislative Defendants’ motion for a temporary restraining order. The State Defendants’ opposition is due tomorrow, October 1, at 9:00 a.m. The Legislative Defendants’ response is due on October 2, at 9:00 a.m. Dkt. 26.

At approximately the same time that the Legislative Defendants filed their action in federal court, the Political Committee Intervenors, for whom this Court allowed permissive intervention just a day earlier, also filed an action in the Eastern District of North Carolina. *Wise v. North Carolina State Board of Elections*, No. 5:20-cv-505-D (E.D.N.C.). In this action, they

raise the same Elections Clause and Equal Protection claims raised by the Legislative Defendants in *Moore*.

ARGUMENT

I. Legal Standard

North Carolina courts have a “strong preference for settlement over litigation.” *Ehrenhaus v. Baker*, 216 N.C. App. 59, 72, 717 S.E.2d 9, 19 (2011). “Courts are generally indifferent to the nature of the parties’ agreement; *why or how* the case is settled is of little concern.” *Id.*

Although North Carolina courts have not articulated a standard for approval of a consent judgment, courts in this State have looked to the federal standard to provide guidance in similar contexts. *See, e.g., Ehrenhaus*, 216 N.C. App. at 71-72, 717 S.E.2d at 18-19 (adopting federal standard for approval of class-action settlements). Before approving entry of a consent judgment, a federal court has the duty to “satisfy itself that the agreement is ‘fair, adequate and reasonable,’ and is ‘not illegal, a product of collusion, or against the public interest.’” *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999) (quoting *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991)).

II. The Proposed Consent Judgment Is in the Public Interest.

Entry of the proposed consent judgment serves the public interest. Litigation over the nature and extent of a voter’s right to access the ballot raises grave constitutional concerns in the normal instance. But, as the nation is in the midst of a once-in-a-lifetime pandemic resulting from a disease that is highly transmissible and that, in many instances, carries severe and even deadly consequences, the constitutional issues raised in this case are even more serious. The public needs assurances that every eligible voter has the opportunity to vote safely, while also

being ensured of the integrity of elections administration—fear and confusion are best avoided. *See League of Women Voters of Va. v. Va. State Bd. of Elections*, 2020 WL 2158249, at *5 (W.D. Va. May 5, 2020) (“[W]hen a settlement has been negotiated by a specially equipped agency, the presumption in favor of settlement is particularly strong.”).

The proposed consent judgment meets this test. It provides clarity about the rules of the road going forward for elections that are already underway. *See United States v. Armour & Co.*, 402 U.S. 673, 681 (1971) (observing that by entering into consent judgments, “parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation.”). In addition, resolving this matter without protracted litigation and by definitively interpreting election laws as they apply in this pandemic avoids the continued and unnecessary use of public resources to litigate this case. *See Bragg*, 83 F. Supp. 2d at 717 (“Both the parties and the general public benefit from the saving of time and money that results from the voluntary settlement of litigation.”). And where the government is the party proposing a settlement, “the policy of encouraging settlements is particularly strong where the settlement is proposed by a government agency acting in the public interest.” *Acosta v. Agave Elmwood Inc.*, No. 1:17-cv-605, 2018 WL 5519540, at *2 (W.D.N.Y. Oct. 29, 2018)

The proposed consent judgment also acknowledges the unusual and serious health circumstances of administering a presidential election during a global pandemic. It does so by interpreting North Carolina law to ensure that voters continue to have viable options for voting that do not require repeated and unnecessary exposure to COVID-19. *See Stipulation and Consent Judgment* at 14-16 (bringing North Carolina’s absentee ballot receipt-deadline into congruity with USPS time tables and existing deadlines for military and overseas voters, reducing the congestion at in-person voting locations by requiring oral logging of absentee

ballots returned in person, and formalizing a process that continues to require witness signature but allows for voters to cure missing witness information themselves, without having to withstand repeated exposure to the virus). *See also League of Women Voters of Virginia*, 2020 WL 2158249, at *10 (concluding, over objection, that consent judgment involving waiver of witness requirement for Virginia’s June primary election was in the public interest in light of the risks posed by COVID-19).

Finally, the consent judgment serves the public’s interest through its narrow resolution of this case, without leading to the invalidation of the challenged provisions of state law. *See League of Women Voters of Virginia*, 2020 WL 2158249, at *5 (concluding that the public interest is “better served when parties come to a settlement agreement over an electoral process that is likely being applied unconstitutionally.”). “This is particularly true in the context of this agreement, which takes place during the worst pandemic this state, country, and planet has seen in over a century. The public health implications have been vast and unprecedented in the modern era, with no one left untouched by the risk of transmission.” *Id.*

The consent judgment resolves *all* of Plaintiffs claims through narrow relief, and without requiring a conclusion that *any* provision of North Carolina election law is unconstitutional. It also protects public health during an unprecedented national emergency, and avoids protracted election litigation that threatens to interfere with the orderly administration of the election.

III. The Proposed Consent Judgment Is Fair, Adequate, and Reasonable.

A. Plaintiffs Raise Strong and Grave Constitutional Concerns.

To assess the consent judgment’s fairness, adequacy, and reasonableness, federal courts consider “the strength of the plaintiff’s case.” *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999). To do so, however, courts need not conduct “a trial or a rehearsal of the

trial.” *Id.* Instead, the critical inquiry is to “judge the fairness of a proposed compromise by weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Flinn v. FMC Corp.*, 529 F.2d 1169, 1172-73 (4th Cir. 1975) (holding that a court must merely “reach an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated,” and determine if those probabilities justify the compromise the parties have reached).

Plaintiffs have raised constitutional claims challenging, and have sought to enjoin the enforcement of, several provisions of North Carolina’s election law, including limitations on the time period for early voting, absentee ballot receipt deadlines, witness requirements for absentee ballots, the lack of prepaid postage for absentee ballots, the prohibition on assisting voters with requesting or submitting an application for an absentee ballot, and the prohibition on assisting voters with the delivery of their completed absentee ballots. Plaintiffs alleged that these provisions, in light of the ongoing COVID-19 pandemic, violate the Equal Protection, Freedom of Speech, Freedom of Assembly, and Free Elections Clauses of the North Carolina Constitution.

Because the consent judgment only contemplates an agreement as to three of the claims, this Court need only assess the strength of those claims.

1. Challenge to the Absentee Ballot Receipt Deadline

Plaintiffs challenge the constitutionality of the absentee receipt deadline, which requires that ballots postmarked on or before Election Day be received within three days of Election Day to be counted. N.C. Gen. Stat. § 163-221(b)(2).

The application of the absentee ballot receipt deadline presents unique challenges during the COVID-19 pandemic because of the social-distancing guidelines that are required to safely and securely vote. As a result of the risks attendant with person-to-person contact in the

midst of this global pandemic, State Defendants expect that approximately 40% of voters will opt to vote absentee by mail—and a substantial proportion of those voters will choose to mail in their ballots. Emily Featherston, *Elections officials work to prepare for voting during a pandemic, in the shadow of an election fraud scandal*, WECT News (Apr. 23, 2020), <https://www.wect.com/2020/04/23/elections-officials-work-prepare-voting-during-pandemic-shadow-an-election-fraud-scandal/>. For those mailed-in absentee votes to be counted, they need to arrive to county boards of election by the statutory deadline. N.C. Gen. Stat. § 163-221(b)(2)..

The United States Postal Service, however, has embarked on substantial operational changes that are impacting its delivery capabilities. This will affect a substantial number of voters in North Carolina who are dependent on USPS to request, receive, and submit their absentee ballots. The agency itself sent a letter to the State at the end of July, warning the State that its “deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standards,” that the State should plan on requiring at least one week between the deadline to mark and postmark ballots and the deadline by which ballots must be received by counties. Letter to North Carolina Secretary of State from USPS General Counsel, July 30, 2020. Without this accommodation, USPS warned that there was “a significant risk that . . . ballots may be requested in a manner that is consistent with [North Carolina’s] election rules and returned promptly, and yet not be returned in time to be counted.” *Id.*

These delays, which were already well documented during the primaries in other states over the late spring and early summer,² have only *worsened* since those primaries.

² See Tom Scheck, Geoff Hing & Dee J. Hall, *Postal Delays, Errors In Swing States Loom Over Election*, NPR (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902604303/postal-delays-errors-in-swing-states-loom-over-election> (noting that 700 voters in Milwaukee and Wauwatosa, WI never received requested ballots, and that 81,000 ballots were delivered to the state after the primary, of which 79,054 were accepted only because of a court ruling).

USPS's operational changes have recently resulted in federal court intervention in the form of an injunction entered by the Eastern District of Pennsylvania in *Pennsylvania v. DeJoy*, No. 2:20-cv-4096, DE 62 (opinion) and 63 (order) (E.D. Pa. Sept. 28, 2020). The Court concluded that the USPS's operational changes have harmed its users, including the state of North Carolina, in "various and meaningful ways," and that "irreparable harm will result unless [the USPS's] ability to operate is assured." *Id.*, DE 62, at 2; *see also Jones v. United States Postal Service*, No. 1:20-cv-6516, DE 49 (S.D.N.Y. Sept. 21, 2020) (enjoining USPS from making certain operational changes and instituting strict reporting requirements to the Court).

As part of its order, the Eastern District of Pennsylvania made several findings of fact detailing "the agency's sudden and rigid pivot" that have resulted in "declines in service that . . . have not been fully remedied and pose a threat to the operation of the November 2020 elections." *Pennsylvania*, No. 2:20-cv-4096, DE 62, at 7. For instance, carriers "are prohibited from making late trips and extra trips even if waiting just a few minutes would ensure timely delivery to entire communities," and are "instructed to leave behind mail that is ready for delivery." *Id.* at 14. "The Postal Service has also set new work hour reduction targets and sought to aggressively reduce the use of overtime on a nationwide basis." *Id.* The Court concluded: "What is not reasonably in dispute is that the delays that have occurred as a result of the initiatives described above clearly pose a threat to the delivery of Election Mail to and from the voters." *Id.* at 20.

In light of the confluence of COVID-19 and USPS operational problems, the three-day receipt deadline places North Carolina's voters in an untenable position. Voters who could have abided by the deadline to postmark their marked ballots and have them counted but for these mail delays will be forced to: (1) vote in person, and risk the possibility of serious illness or death from COVID-19, or of transmitting the disease to others; (2) vote by mail more than a

week before Election Day, and lose the benefit of late-breaking information about candidates for public office; or (3) vote by mail on or shortly before election day and risk being disenfranchised by mail delivery times over which the voter has no control. These burdens are not distributed equally—for example, older, poorer, and minority voters face a higher risk of serious illness or death from COVID-19, and thus bear a heavier burden if forced by postal delays and the receipt deadline to vote in-person during the pandemic. *See* CDC, *Older Adults* (Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (“As you get older, your risk for severe illness from COVID-19 increases.”); CDC, *Health Equity Considerations and Racial and Ethnic Minority Groups* (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (“There is increasing evidence that some racial and ethnic minority groups are being disproportionately affected by COVID-19.”).

At the same time that the State enforces a three-day receipt deadline for ordinary absentee ballots, it counts military and overseas ballots so long as they are received no later than *nine* days of Election Day. G.S. § 163-258.12(b). This deadline is closely tailored to the needs of county election officials, who conduct their county canvasses on the tenth day after the election. *See* N.C. Gen. Stat. § 163-182.5.

The combination of delays that are outside the voter’s control, even if the voter abides by all of the State’s election laws, with the disparate treatment between military and overseas ballots and civilian ballots creates a serious concern that may result in unconstitutionally burdening the right to vote. *See, e.g., Fla. Democratic Party v. Detzner*, No. 4:16-cv-607, 2016 WL 6090943, at *6 (N.D. Fla. Oct. 16, 2016) (“If disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does.”).

2. Challenge to the Early Voting Time Period

Plaintiffs challenge the constitutionality of the limitations on the number of days and hours during which counties are permitted to conduct early voting. N.C. Gen. Stat. § 163-227.2(b) permits one-stop early voting “[n]ot earlier than the third Thursday before an election . . . and not later than 3:00 PM on the last Saturday before that election.” The State Defendants have additionally issued a Numbered Memo directing, *inter alia*, that: (1) all county boards shall open one early voting site for a minimum of ten hours total for each of the first and second weekends of the 17-day early voting period; (2) each county board shall open at least one early voting site per 20,000 registered voters in the county, although counties may apply for waivers; (3) county boards with only one early voting site must arrange for a back-up site and back-up staff; and (4) boards may open early voting sites earlier than 8:00 AM or stay open later than 7:30 PM, so long as all sites are open at the same time. Numbered Memo 2020-14. Plaintiffs allege that these changes are inadequate and, in some instances, have led to a *reduction* in the availability of early voting.

In-person early voting is a crucial component of conducting a safe and orderly election during a pandemic. While State Defendants expect a massive surge in voting-by-mail, many voters remain committed to in-person voting. However, in-person voting still necessarily involves risks in the midst of a pandemic: it involves lines and crowds, many indoors.

This concern is exacerbated by the fact that voters may return absentee ballots in-person at early voting sites. Voters who return these ballots will be in the same lines as early voters and will increase the crowds and delay—particularly as the State expects to see a ten-fold increase in the number of absentee votes this year. Adding to the issue is the concern that, with USPS experiencing delays, voters who otherwise would have returned their ballots by mail will instead choose to return their ballots in person.

When returning an absentee ballot in person, the person returning the ballot is required by administrative rule to log their name and other identifying information, including their relation to the voter, in writing. This process requires the exchange of the log and writing utensils between an elections official and the person returning their ballot. To simplify the process, and to minimize the chance of spreading the virus, the consent judgment allows for oral confirmation at a designated station at each early voting site and county board office. The person returning the ballot will still have to confirm her identity to an elections official, but instead of logging this information herself, the elections official will log this information. In addition, the logging will be completed at a designated station, in a line separate from the line for early voters. No ballots will be permitted to be dropped off without an elections official logging it.

This change to an administrative rule—not a statutory requirement—will decrease the congestion at early voting sites and ensure that materials are not passed back and forth between the elections official and the voter unnecessarily.

3. Challenge to the Witness Requirement

Finally, Plaintiffs claim that the witness requirement imposes a burden on the right to vote by requiring voters to risk exposure to COVID-19 in order to secure a witness to vote via absentee ballot. *See* Complaint ¶¶ 58-70. This burden falls unequally on voters who live in single-member or single-adult households and older voters. *Id.*, ¶¶ 64, 65. And, like the receipt deadline, the witness requirement is not applied to military and overseas voters. *Id.*, ¶ 69.

Witness requirements for absentee ballots have been shown to be, broadly speaking, disfavored by the courts—particularly during the COVID-19 pandemic. In light of the COVID-19 pandemic, an increasing number of courts have enjoined witness requirements in primary and general elections in 2020. *See, e.g., Common Cause R.I. v. Gorbea*, No. 20-1753, 2020 WL 4579367, at *2 (1st Cir. Aug. 7, 2020) (concluding that “[t]aking an unusual and in fact

unnecessary chance with your life is a heavy burden to bear simply to vote” and thus denying motion to stay consent judgment suspending “notary or two-witness requirement” for mail ballots), *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, 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 Virginia*, 2020 WL 2158249, at *8 (“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).

Even in North Carolina, a federal court held that the witness requirement could not be implemented as statutorily authorized without a mechanism for voters to have adequate notice of and cure materials defects that might keep their votes from being counted. On August 4, 2020, a federal court in the Middle District of North Carolina enjoined the State Defendants 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 (M.D.N.C. Aug. 4, 2020) (Osteen, J.), DE 124 at 187. The injunction reflected the federal court’s conclusion that “when the ballot is rejected for a reason that is curable, such as incomplete witness information, or a signature mismatch, and the voter is not given notice or an opportunity to be heard on this deficiency, the court finds this ‘facially effect[s] a deprivation of the right to vote.’” *Id.* at 156 (quoting *Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-cv-71, 2020 WL 2951012, at *9 (D.N.D. June 3, 2020)). This “compelled” the court to find that the absentee-ballot statutes were “constitutionally inadequate” absent a statewide curing procedure. *Id.* at 157.

To attempt to comply with this injunction and pursuant to its statutory authority under section 163-22.2, the State Board released guidance that allowed voters to cure voter signature defects but required a voter to re-vote her ballot for witness signature defects. Soon thereafter, the State Board became concerned that the cure mechanism did not provide sufficient notice or opportunity to be heard on witness signature defects and that it disparately affected the rights of certain groups of voters.

For example the State Board’s own statistics and reporting mechanisms in addition to publicly available evidence indicated that the process of rejecting ballots for absentee ballot envelope defects, including witness signature defects, has a disparate impact on minority voters, in North Carolina and elsewhere. In North Carolina, for example, “[a]s of September 17, Black voters’ ballots are being rejected at more than four times the rate of white voters.” Kaleigh Rogers, *North Carolina Is Already Rejecting Black Voters’ Mail-In Ballots More Often Than White Voters*, FiveThirtyEight (Sept. 17, 2020), <https://fivethirtyeight.com/features/north-carolina-is-already-rejecting-black-voters-mail-in-ballots-more-often-than-white-voters/>. *See also* North Carolina Early Voting Statistics, <https://electproject.github.io/Early-Vote->

2020G/NC.html (detailing that, as of September 28, 2020, Black voters had a rejection rate of 4.3% while white voters had a rejection rate of 1.1%). Hispanic and Native American voters' ballots are being rejected at nearly three times the rate of white voters' ballots, and Asian voters' ballots are being rejected at more than twice the rate of white voters. *Id.* To put it another way: as of September 28, in North Carolina alone, white voters had submitted 182,312 ballots, and 2,005 of those ballots had been rejected, while Black, Hispanic, Asian, and Native American voters combined had submitted 83,102 ballots, and 2,075 had been rejected. *Id.*

The same pattern has been recognized throughout the country. *See* Jane C. Timm, *A white person and a Black person vote by mail in the same state. Whose ballot is more likely to be rejected?*, NBC News (Aug. 9, 2020), <https://www.nbcnews.com/politics/2020-election/white-person-black-person-vote-mail-same-state-whose-ballot-n1234126> (citing studies demonstrating that Hispanic and Black voters were more than twice as likely to have their ballot rejected as white voters in elections held in Florida and Georgia in 2018). As a result, the procedures used for rejecting absentee ballots and the cure processes in place, or lack thereof, have come under increasing judicial scrutiny. *See, e.g., Richardson v. Tex. Sec. of State*, 2020 WL 5367216, at *46 (W.D. Tex. Sept. 8, 2020) (ordering Texas Secretary of State to notify local election officials that “the rejection of a voters’ ballot on the basis of a perceived signature mismatch is unconstitutional” in the absence of notice and an opportunity to cure), *appeal filed* No. 20-50774 (5th Cir. 2020); *Frederick v. Lawson*, 2020 WL 4882696, at *12-15 (S.D. Ind. Aug. 20, 2020) (concluding that Indiana’s signature verification requirement violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment and enjoining the state “from rejecting any mail-in absentee ballot on the basis of a signature mismatch absent adequate notice and cure procedures to the affected voter”); *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d

1017, 1030 (N.D. Fla. 2018) (referring to signature matching as a “questionable practice”), *stay denied sub nom. Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312 (11th Cir. 2019) (concluding that Florida’s signature-match and cure scheme imposed a “serious burden on voters”); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1341 (N.D. Ga. 2018) (enjoining rejection of ballots for perceived signature mismatch).

As a result, and to comply with the State Defendants’ understanding of the injunction entered by Judge Osteen, the State Board directed county boards of elections not to disapprove any ballots until a new cure procedure that would comply with the injunction could be implemented. On September 22, 2020, the State Board instituted the cure procedure attached to the proposed consent judgment. At the same time, the State Board notified the federal court of its cure mechanism process.

* * *

As demonstrated above, Plaintiffs’ claims raise serious constitutional concerns that are mitigated by the terms of the proposed consent judgment. In exchange, the State Defendants were able to secure dismissal of several claims that would have, at the very least, required protracted litigation, even if unsuccessful. And the relatively modest relief reflected in the consent judgment reflects the fact that identical claims have been successful in other forums. Under the circumstances, and given where North Carolina is in the election, the consent judgment is fair, reasonable, and adequate.

B. The Proposed Consent Judgment Makes Modest Adjustments That Are Narrowly Tailored to Address the Ongoing Global Pandemic.

Both Plaintiffs and State Defendants agree that Plaintiffs’ claims raise serious constitutional concerns over the guarantees against unduly burdening the right to vote. The proposed consent judgment would remedy these concerns in a narrow way: by implementing

limited additional remedies for any constitutional violations that may result from the enforcement of existing state law in the midst of an ongoing global pandemic, and without striking down any North Carolina statutes. In light of the strength of Plaintiffs' claims, these terms are fair, adequate, and reasonable.

Plaintiffs' lawsuit asks this Court to:

- enjoin the enforcement of the absentee ballot receipt deadline by waiving the postmark requirement as it applies to any ballot that is not affirmatively postmarked after November 3, so long as they are received by county boards of elections up to nine days after Election Day;
- enjoin the enforcement of the witness requirement for absentee ballots entirely, as applied to voters residing in single-person or single-adult households;
- enjoin the enforcement of all laws that prohibit assistance with the request and submission of absentee ballots;
- enjoin any signature-verification procedures unless the State Board provides standards for signature-matching verification procedures;
- require that the State Defendants pay for postage for absentee voters; and
- require that the State Defendants extend early voting by requiring 21 additional days for the November general elections. Complaint, Prayer for Relief.

The proposed consent judgment would not provide this full complement of relief. Instead of enjoining these statutes, the proposed consent judgment would leave them in place and give them effect, while resolving many of Plaintiffs' constitutional concerns. This narrow method of resolving these claims weighs in favor of entering the consent judgment.

The proposed consent judgment does not provide any remedy for Plaintiffs' claims challenging the prohibition on assistance with absentee ballot requests and submissions, the institution of signature-verification procedures, or the provision of prepaid postage for ballot mail. And even with respect to those claims for which the proposed consent judgment provides a limited remedy, the remedy does not encompass the full scope of Plaintiffs' request.

Plaintiffs' challenge to the absentee ballot receipt procedures seeks to require any ballot that is received by mail to county boards of elections that does not bear a postmark to be counted unless a preponderance of the evidence demonstrates that it was mailed after Election Day. Complaint, Prayer for Relief at h. In addition, Plaintiffs request an extension of the receipt deadline for ballots mailed in by nine days—to mirror the deadline afforded to uniformed-service and overseas absentee voters. *Id.* The proposed consent judgment leaves in place the requirement that all ballots must be marked and postmarked (or bear official indicia that the ballot was in the hands of a postal service) by Election Day. Decree at 14. The proposed decree only modifies the receipt deadline to mirror the deadline afforded to other voters in North Carolina, as a response to delays caused by the USPS—delays which are out of the control of state officials or voters. *Id.*; *see also supra* at pp. 18-20. Plaintiffs appear to continue to believe that requiring a postmark or indicia of postmarking on or before November 3 presents an unconstitutional barrier to vote. But the provision in the consent judgment ensuring that all votes carry affirmative evidence of having been marked on or before Election Day preserves the purpose of the statutory prescriptions on the manner in which North Carolinians must vote, while providing Plaintiffs a remedy, albeit one that is more narrow than their desired outcome.

Plaintiffs' challenge to the period of early voting seeks to require the State Board to extend the early voting period from 17 days by adding an additional 21 days. Complaint, Prayer

for Relief at c. The proposed consent judgment leaves in place the early voting period provided by the General Statutes. Decree at 15-16. The proposed decree only modifies the procedure by which absentee ballots are logged when they are returned in person to county board offices and early voting sites. *Id.* Instead of requiring the person returning the ballot to log the ballot herself, minimizing exposure to the COVID-19 virus by eliminating the need to pass the log and pen back and forth between the person and the elections official, the proposed consent judgment allows the person returning the ballot to verbally confirm that she is legally permitted to do so. *Id.* This verbal confirmation procedure will speed up the return process, allowing for lines at early voting sites to move more quickly. *See supra* pp. 21-22. Plaintiffs appear to continue to believe that requiring 21 more days of early voting is necessary to eliminate barriers to vote in the middle of the COVID pandemic. But the provision in the consent judgment ensuring that the absentee ballot return procedure is more streamlined and reduces the potential for the COVID-19 virus to spread at early-voting sites preserves the purpose of the statutory prescriptions on the manner in which ballots are returned, while providing Plaintiffs a remedy, though narrower than their desired outcome.

Finally, Plaintiffs' challenge to the witness-signature requirement seeks to enjoin the requirement entirely for voters living in single-person or single-adult households. Complaint, Prayer for Relief at d. The proposed consent judgment leaves the witness requirement in place in its entirety. Stipulation and Proposed Consent Judgment at 15. The proposed decree only incorporates a cure process that the State Defendants had already instituted to comply with an injunction entered in *Democracy North Carolina v. North Carolina State Board of Elections*, No. 20-cv-457 (M.D.N.C.) (Osteen, J.). The injunction prohibits the State Board from permitting the "disallowance or rejection of absentee ballots without due process as to those ballots with a

material error that is subject to remediation.” Order on Inj. Relief (Dkt. 124) at 187. To comply, the State Board left in place the witness requirement. But, it instituted a cure procedure that limited repeated exposure to the COVID-19 virus where absentee ballots contained a material error of lacking a voter signature, witness or assistant signature, witness or assistant name, or witness or assistant address. Stipulation and Proposed Consent Judgment at 15. The cure process as to the witness requirement requires that, where a voter makes a mistake on the ballot container envelope, the voter is contacted by the county board of elections and is issued an affidavit by which the voter affirms that she is the one who voted her ballot. *Id.* In this way, the county board of elections serves as the witness, while providing security that the voter voted her ballot and reducing the risk of the spread of COVID-19. Plaintiffs appear to continue to believe that enjoining the use of the witness requirement entirely is required to protect the right to vote for those living in single-person or single-adult households. But the provision in the consent judgment ensuring that there is confirmation that the voter is the one who voted her ballot preserves the purpose behind the statutory requirement for a witness while providing Plaintiffs a remedy, even though the remedy is narrower than desired.

IV. The Proposed Consent Judgment Is the Product of Honest, Arms-Length Negotiation.

The proposed consent judgment is the subject of substantial negotiation and compromise between the State Defendants and Plaintiffs. The nature and extent of these negotiations provide the Court with assurance that the proposed consent judgment is fair, adequate, and reasonable.

As a general matter, courts will credit the parties’ representations as to their good faith in negotiations. *See Common Cause R.I. v. Gorbea*, No. 1:20-cv-00318-MSM, 2020 WL 4365608, at *4 (D.R.I. July 30, 2020) (“[N]o evidence of collusion among the parties has been presented to

this Court; in fact, the parties have represented that they engaged in good-faith negotiations in the crafting of the Consent judgment's terms.”).

In addition, courts generally find that consent judgments that represent an actual compromise between the parties' positions are products of good-faith negotiations. For example, in *Gorbea*, the District of Rhode Island recently rejected allegations of collusion in crafting an election-related consent judgment because “[i]t [wa]s clear that the Consent judgment was a compromise [T]he fact that plaintiffs did not get everything that they sought . . . suggest[s] that the proposed intervenors' argument that this agreement was . . . collusive is wholly without merit or evidence.” No. 1:20-cv-00318-MSM, 2020 WL 4365608, at *4 (D.R.I. July 30, 2020), *aff'd* 970 F.3d 11, 17 (1st Cir. 2020) (“All in all, we see no collusion”). This is particularly true where the substantive reasonableness of the compromise is evident. In *Carcaño v. Cooper*, for instance, the Middle District of North Carolina rejected arguments of collusion where the consent judgment “dismiss[e]d the Executive Branch Defendants from the case having ceded nothing more than an interpretation of HB142 § 2 faithful to its plain terms.” No. 1:16-cv-236, 2019 WL 3302208, at *6 (M.D.N.C. July 23, 2019). This is true even if “the Executive Branch Defendants . . . show[ed] little interest in litigating this case.” *Id.*

The consent judgment satisfies these standards. It is a compromise between the positions of Plaintiffs and State Defendants, neither of whom achieved complete victory. *See supra* pp. 26-30. Rather, the consent judgment realistically reflects the parties' perceived litigation risks. Plaintiffs “did not get everything they sought,” *Gorbea*, 2020 WL 4365608, at *4, and the State Defendants were able to secure the dismissal of all claims, with Plaintiffs bearing their own fees. *See Carcaño*, 2019 WL 3302208, at *6 (securing dismissal of all claims against Executive Defendants was proof consent judgment was not collusive); *League of Women Voters of*

Virginia, 2020 WL 2158249, at *6 (plaintiffs’ agreement not to seek attorneys’ fees was proof that consent judgment was not one-sided). Moreover, the consent judgment serves the State’s interest in avoiding protracted litigation that risks disrupting the administration of an orderly, secure election in which all eligible voters are able to participate. *See League of Women Voters of Virginia*, 2020 WL 2158249, at *13.

Procedurally, the consent judgment, like this litigation more broadly, contains the hallmarks of good-faith negotiation. Plaintiffs filed their amended complaint and motion for preliminary injunction on August 18, 2020. Plaintiffs and State Defendants moved for entry of the consent judgment approximately five weeks later, on September 22. The fact that the joint motion was filed many weeks after the complaint and motion for preliminary injunction were filed bears the indicia of good-faith negotiations—a time period that far exceeds that held to be non-collusive in *Gorbea*, in which the First Circuit found “no collusion” in a settlement agreed to “just days” after plaintiffs’ suit was filed, *see* 970 F.3d at 17, and in *League of Women Voters of Virginia*, in which the Western District of Virginia found no collusion in a consent judgment entered just six days after plaintiffs filed suit, *see* 2020 WL 2158249, at *3-4 (setting forth procedural history), *13 (concluding agreement was not collusive despite quick resolution).

Legislative Defendants still press an objection that the consent judgment is the product of collusion. But this objection is based on nothing more than rank speculation. Courts have generally rejected similar baseless accusations of collusion that only attempt to scuttle a fair and just resolution. “Absent evidence to the contrary, the court may presume that settlement negotiations were conducted in good faith and the resulting agreement was reached without collusion.” *League of Women Voters of Va. v. Va. St. Bd. of Elections*, 2020 WL 2158249 (W.D. Va. May 5, 2020) (quoting *McCurley v. Flowers Foods, Inc.*, No. 5:16-cv-00194, 2018 WL

6650138, at *2 (D.S.C. Sept. 10, 2018)). *See also Funkhouser v. City of Portsmouth*, No. 2:13-cv-520, 2015 WL 12765639, at *3 (E.D. Va. May 14, 2015) (“In the absence of any evidence to the contrary, it is presumed that no fraud or collusion occurred.”); *Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2005) (“As a general principle, the courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered.”) (internal quotation marks omitted).

Consequently, “the burden is on the challenging party to show that the settlement is infected with collusion.” *Gray v. Derderian*, No. CA 04-312L, 2009 WL 2997066, at *4 (D.R.I. Aug. 14, 2009), *adopted by* 2009 WL 10727589 (D.R.I. Sep. 15, 2009).³ It is no small task to meet this burden, and doing so requires “more than speculation” that collusion occurred. *League of Women Voters of Virginia*, 2020 WL 2158249, at *13.

But Legislative Defendants have provided nothing more than speculation to support their accusations of collusion. The only “evidence” they cite to support their baseless claims is that Plaintiffs and State Defendants announced a proposed consent judgment, that it had been reached “in secret without knowledge of or consultation with the Legislative Defendants.” LD Cross-Motion for Continuance at 3. But neither of these accusations is cause to conclude that the proposed consent judgment was a product of collusion.

The act of reaching a settlement itself cannot serve as proof of collusion. *See In re Warner Commc’ns Secs. Litig.*, 618 F. Supp. 735, 751 (S.D.N.Y. 1985) (“Settlement . . . is hardly *prima facie* evidence of collusion.”). Nor can the absence of vitriol between litigants or

³ This standard is recognized across federal and state jurisdictions. *E.g.*, *United States v. Dynamics Research Corp.*, 441 F. Supp. 2d 259, 268-69 (D. Mass. 2006); *Dacotah Mktg. & Research, LLC v. Versatility, Inc.*, 21 F. Supp. 2d 570, 578 (E.D. Va. 1998); *Copper Mtn., Inc. v. Poma of Am., Inc.*, 890 P.2d 100, 108 (Colo. 1995).

counsel. *Id.* Additionally, “given the obvious interest in obtaining a resolution . . . before” the rapidly approaching election, “the swift timing of an agreement . . . is not altogether remarkable.” *League of Women Voters of Virginia*, 2020 WL 2158249, at *13.

Moreover, Legislative Defendants’ protestations that they were not consulted before reaching a resolution ring hollow. The consent judgment is a resolution among two of the three parties—Plaintiffs and the only defendants that have a role in exercising executive authority in this case, the State Defendants. No part of the consent judgment affects a legislative right or imposes an obligation on Legislative Defendants. Accordingly, there was no reason to consult or inform them. They remain free to defend their positions on behalf of the General Assembly in this case.

V. The Proposed Consent Judgment Does Not Run Afoul of the United States Constitution

As discussed above, as of this past Saturday, the Legislative Defendants and Political Committee Intervenors are simultaneously pursuing collateral attacks against the proposed consent judgment in federal court. Their claims in that forum lack merit, and need not give this Court any pause about approving the parties’ agreement.

A. State Law Empowers the State Board To Agree to the Terms in the Proposed Consent Judgment.

The terms of the proposed consent judgment are entirely consistent with the authority that the State Board enjoys under state law. Indeed, the State Board’s actions are specifically authorized under two separate statutes: sections 163-22.2 and 163-27.1.

The State Board enjoys distinctive authority under state law—authority that has been recognized by our State’s Supreme Court: “[C]onsistent with much modern legislation, the General Assembly has delegated to the members of the [State Board] the authority to make

numerous discretionary decisions.” *Cooper v. Berger*, 370 N.C. 392, 415 n.11, 809 S.E.2d 98, 113 n.11 (2018).

One of these discretionary decisions that is accorded to the State Board is the authority to enter into consent judgments to avoid protracted litigation challenging the constitutionality of North Carolina election laws. North Carolina General Statutes § 163-22.2 explicitly provides: “In the event any portion of Chapter 163 of the General Statutes or any State election law . . . is held unconstitutional or invalid by a State or federal court . . . the State Board of Elections shall have the authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable The State Board of Elections *shall also be authorized*, upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes.” This statutory provision clearly establishes that the General Assembly has given the State Board authority to propose to the Court the consent judgment in the Joint Motion.

That authority applies here. Plaintiffs’ lawsuit challenges the constitutionality of a number of state elections laws and asks this Court to enjoin their enforcement for the November 2020 elections. To avoid protracted litigation and ensure certainty and fairness for voters, the State Board took reasonable action to enter into an agreement that makes modest adjustments to voting procedures in North Carolina for the 2020 general election. These modifications preserve the constitutionality of the statutes that Plaintiffs have challenged, while also protecting voters’ constitutional rights. Carefully calibrated modifications of that kind are precisely the sort of policy judgments that N.C. Gen. Stat. § 163-22.2 authorizes the Board to make in response to litigation.

To the extent that the Legislative Defendants object to the implementation of the cure mechanism, which is part of the proposed consent judgment, their complaints are meritless for at least two reasons. First, as just explained, the State Board is authorized to implement the cure mechanism as part of its authority to enter into consent judgments under N.C. Gen. Stat. § 163-22.2. Second, the State Board has separate authority under N.C. Gen. Stat. § 163-22.2 to implement the cure mechanism as an interim regulation necessitated by a court’s finding of a constitutional violation.

On August 4, 2020, a federal district court held that North Carolina’s election laws related to absentee ballots failed to afford procedural due process because they did “not afford mail-in absentee voters any notice of, or opportunities to cure, material defects in . . . th[eir] absentee ballots.” *Democracy North Carolina v. North Carolina State Bd. of Elections*, No. 20-cv-457 Dkt. 124 at 150 (M.D.N.C. Aug. 4, 2020). The court specified that “when the ballot is rejected for a reason that is curable, such as incomplete witness information, or a signature mismatch, and the voter is not given notice or an opportunity to be heard on this deficiency, the court finds this ‘facially effect[s] a deprivation of the right to vote.’” *Id.* at 156 (quoting *Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-cv-71, 2020 WL 2951012, at *9 (D.N.D. June 3, 2020)). This “compelled” the court to find that the absentee-ballot statutes were “constitutionally inadequate” absent a statewide curing procedure. *Id.* at 157. Accordingly, the court enjoined the State Board from allowing any absentee ballots to be rejected “without due process as to those ballots with a material error that is subject to remediation.” *Id.* at 187. The State Board was directed to implement a procedure which “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.* In compliance with this injunction and pursuant to its statutory authority under

section 163-22.2, on September 22, 2020, the State Board instituted the cure procedure attached to the proposed consent judgment. At the same time, the State Board notified the federal court of its cure mechanism process.

Finally, in addition to authority under N.C. Gen. Stat. § 163-22.2, the State Board, through its Executive Director, also has authority to institute emergency orders to conduct an election in the midst of a catastrophe resulting in a disaster declaration by the President of the United States or the Governor. N.C. Gen. Stat. § 163-27.1; 08 NCAC 01 .0106. These powers allow the Executive Director to make modifications to statutes governing the “conduct of an election in a district where the normal schedule for the election is disrupted.” *Id.* The Executive Director has exercised this authority in nearly every election cycle in recent memory, in response to hurricanes and other disasters. Most recently, the Executive Director exercised this authority in response to the ongoing COVID-19 pandemic when she issued an emergency order mandating minimum weekend hours for one-stop sites, minimum one-stop early voting sites, and the implementation of safety and sanitation requirements for the administration of in-person voting. *See* Emergency Order Administering the November 3, 2020 General Election During the Global COVID-19 Pandemic and Public Health Emergency (July 17, 2020), *available at* https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order_2020-07-17.pdf. Each of these mandates made modifications to the enforcement of existing state law to accommodate the ongoing crisis.

Similarly here, the Executive Director would have the statutory authority to make any of the modifications set forth in the Numbered Memos using her emergency powers if she found them necessary. After all, the State of North Carolina is still operating under the disaster declaration issued by the President of the United States and the Governor and the Executive

Director would have authority to issue these Numbered Memos after taking into account the enumerated factors in 08 NCAC 01 .0106.

The reason, therefore, for taking these actions as part of a consent judgment—and not as independent exercises of authority—is, of course because a consent order has attendant benefits: Were the State Board and Executive Director to take these actions independently, they would not have been able to negotiate the release of all of Plaintiffs’ other claims. By taking these actions as part of entry of a consent judgment, the State Defendants are able to ensure a greater public benefit: securing certainty for the voters of this State while also avoiding unnecessary expense.

Because the Executive Director and the State Board are authorized to make the modifications to the enforcement of North Carolina’s election laws under N.C. Gen. Stat. §§ 163-22.2 and 163-27.1, the proposed consent judgment is consistent with North Carolina law and is fair, adequate, and reasonable.

B. The Provisions in the Proposed Consent Judgment Are Consistent With the Elections Clause.

The Legislative Defendants and the Political Committee Intervenors’ collateral litigation also argues that the provisions of the proposed consent judgment are unlawful because they violate the Elections Clause of the United States Constitution. Their arguments are baseless.

The Elections Clause states, in relevant part, that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. In collateral litigation that the Legislative Defendants filed on Saturday night—just in advance of the hearing on this motion—the Legislative Defendants asserted that this Clause empowers “only two entities” to regulate elections in North Carolina: Congress and the North Carolina General Assembly. *Moore v. Circosta*, TRO Memorandum at 11; *see also id.* at 12 (contending that “[b]y choosing to use the

word ‘Legislature,’ the Elections Clause makes clear that the Constitution . . . grant[s] the power to regulate elections . . . to the state’s legislative branch” alone). Under clear Supreme Court precedent, the Legislative Defendants’ cramped interpretation of the Elections Clause is flatly wrong.

More than a century ago, the Supreme Court made clear that the word “Legislature” in the Elections Clause should not be read as a reference to “the representative body alone.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 805 (2015) (describing the Court’s holding in *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916)).

The Supreme Court has repeatedly affirmed this interpretation of the Elections Clause, including as recently as a few Terms ago. *See, e.g., Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787; *Smiley v. Holm*, 285 U.S. 355 (1932). In *Arizona Independent Redistricting Commission*, the Court assessed the constitutionality of an independent redistricting commission that had been created as part of an initiative ratified by Arizona voters. 285 U.S. at 792. After the commission adopted new redistricting maps, the Arizona Legislature sued, arguing that the commission had usurped its authority under the Elections Clause. In the Arizona Legislature’s view, the Clause’s use of the word “Legislature” “mean[t] specifically and only the representative body which makes the laws of the people.” *Id.* (citation omitted). The Arizona Legislature thus maintained that the Commission—and the maps that it had drawn—were unconstitutional.

Again, the Supreme Court rejected this narrow reading of the Elections Clause, holding that the word “Legislature” must be interpreted “in accordance with the [relevant] State’s prescriptions for lawmaking.” *Id.* at 813, 814-24. For example, if state law requires that elections laws be passed by a General Assembly subject to the Governor’s veto, “the Elections Clause . . . respect[s] the State’s choice to include the Governor” in the legislative process. *Id.* at

807; *see also Smiley*, 285 U.S. at 368, 372-73 (holding that “nothing in” the Elections Clause “precludes a state from providing that legislation action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power”).

Applying these precedents, this Court cannot simply assume—as the Legislative Defendants and the Political Committee Intervenors urge—that the North Carolina General Assembly is the “Legislature” that the Elections Clause references. *Ariz. Indep. Redistricting Comm’n*, 576 U.S. at 805, 808-09, 816. Instead, this Court must look to North Carolina law to determine who the State authorizes to regulate elections. *Smiley*, 285 U.S. at 368 (question of who has the “authority [to] mak[e] laws for the state” is a “matter of state polity”).

Here, it is clear that state law empowers both the General Assembly and the State Board to regulate the “Time[], Place[], and Manner” of elections. *See supra* pp. 35-39. As discussed above, state law specifically authorizes the State Defendants to take the actions it has in the proposed consent judgment. *See id.* Because the Board’s actions are entirely consistent with “the method which the State has prescribed” for enacting elections regulations, the proposed consent judgment poses no problem under the Elections Clause. *See Ariz. Indep. Redistricting Comm’n*, 567 U.S. at 807 (quoting *Smiley*, 285 U.S. at 367).

In addition, however, state law also authorizes this State’s own courts to enforce the constitutional boundaries of the North Carolina Constitution. *See, e.g., Cooper*, 370 N.C. at 410, 809 S.E.2d at 109 (reinforcing the authority of state courts to “necessarily constrain[]” the General Assembly’s authority by the “limits placed upon that authority by other constitutional provisions”). Accordingly, this Court’s entry of a consent judgment would be entirely within the bounds and consistent with the Elections Clause.

C. The Provisions in the Proposed Consent Judgment Are Consistent With the Equal Protection Clause.

The Legislative Defendants and the Political Committee Intervenors also claim that the provisions of the proposed consent judgment are unlawful because they violate the Equal Protection Clause of the United States Constitution. Their arguments are baseless.

In the same collateral litigations that the Legislative Defendants and the Political Committee Intervenors filed on Saturday night, they asserted that the provisions of the consent judgment institute rules that are arbitrary and nonuniform. *Moore*, No. 5:20-cv-507, DE 1 (Complaint), 8 (Emergency Motion for Temporary Restraining Order); *Wise v. North Carolina State Bd. of Elections*, 5:20-cv-505 (E.D.N.C. Sept. 26, 2020), DE 1 (Complaint), 3 (Emergency Motion for Temporary Restraining Order). Again, however, their arguments are entirely unsupported.

First, the Legislative Defendants do not have standing to challenge the provisions in the consent judgment as arbitrary and nonuniform or that the consent judgment dilutes their votes. The Legislative Defendants have appeared in this case in their official capacities, to press their positions on behalf of the General Assembly. But vote-dilution and nonuniformity claims under the Equal Protection Clause can only be brought by individual voters. The right to participate in elections on an equal basis is a right that belongs to the voter, not to legislators who bring their claims in their official capacity or candidates for election. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Therefore, the Legislative Defendants are not entitled to object to the consent judgment on this basis.

Nor do the Political Committee Intervenors have standing to challenge the consent judgment on this basis. They, too, are not individual voters who can bring this claim.

Second, even if they were entitled to object on the basis of the Equal Protection Clause, their objection is meritless. The provisions of the consent judgment do not enforce different requirements on different voters. They actually do the exact opposite. *See* Numbered Memo 2020-19 (Ex. B to Joint Motion for Entry of Stipulation and Consent Judgment) (“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.”). Neither the Legislative Defendants nor the Political Committee Intervenors show that the provisions are being enforced differently on different voters—much less that *they* are experiencing differential treatment. Any objection on the basis of the Equal Protection Clause fails.

CONCLUSION

For the foregoing reasons, the State Defendants respectfully request that the Court enter final judgment in the form of the stipulation and proposed consent order.

Dated: September 30, 2020

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This the 30th day of September, 2020.



Alexander McC. Peters
Chief Deputy Attorney General

EXHIBIT 16



Supreme Court of North Carolina

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From N.C. Court of Appeals
(P20-513)
From Wake
(20CVS8881)

23 October 2020

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RE: NC Alliance For Retired Americans, et al. v NC State Board of Elections, et al. - 440P20-1

Dear Ms. Moss:

The following order has been entered on the motion filed on the 21st of October 2020 by Intervenor-Defendants (Philip E. Berger and Timothy K. Moore, in their official capacities) for Temporary Stay:

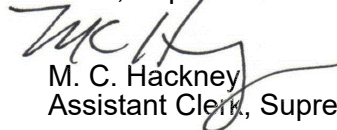
"Motion Denied by order of the Court in conference, this the 23rd of October 2020."

Beasley, C.J., Recused
Newby, J., Recused
Davis, J., Recused

**s/ Earls, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of October 2020.

Amy L. Funderburk
Clerk, Supreme Court of North Carolina



M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Nathan A. Huff, Attorney at Law, For Berger, Philip E et al - (By Email)

Ms. Nicole J. Moss, Attorney at Law, For Berger, Philip E et al - (By Email)

Mr. Burton Craige, Attorney at Law, For Barker, Fowler et al - (By Email)

Mr. Alexander McC. Peters, Special Deputy Attorney General, For The North Carolina State Board of Elections, et al. - (By Email)

Mr. R. Scott Tobin, Attorney at Law, For Republican National Committee, et al. - (By Email)

Mr. Narendra K. Ghosh, Attorney at Law, For Barker, Fowler et al - (By Email)

Mr. Terence Steed, Assistant Attorney General, For The North Carolina State Board of Elections, et al. - (By Email)

Mr. Ryan Y. Park, Solicitor General, For The North Carolina State Board of Elections, et al. - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)

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