No. 21-248

In the
Supreme Court of the United States

PHILIP E. BERGER, ET AL.,
Petitioners,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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JANUARY 10, 2022

PETITION FOR WRIT OF CERTIORARI FILED AUGUST 19, 2021
PETITION FOR WRIT OF CERTIORARI GRANTED NOVEMBER 24, 2021

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JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

U.S. District Court
North Carolina Middle District (NCMD)
CIVIL DOCKET FOR CASE #:
1:18-cv-01034-LCB-LPA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP et al v. COOPER et al

Date Filed	**#**	**Docket Text**
12/20/2018	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0418-2481011.), filed by Winston Salem - Forsyth County NAACP, Chapel Hill - Carrboro NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP.(JOYNER, IRVING) (Entered: 12/20/2018)
* * *		

01/14/2019	7	MOTION to Intervene by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker
		of the North Carolina House of Representatives. Response to Motion due by 2/4/2019 (Attachments: # 1 Supplement Proposed Answer, # 2 Text of Proposed Order Proposed Order)(MOSS, NICOLE) (Entered: 01/14/2019)

01/14/2019	8	MEMORANDUM filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives re 7 MOTION to Intervene *Memorandum in Support* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (Attachments: # 1 Exhibit A - Veto Statement, # 2 Exhibit B - S.B. 824, # 3 Exhibit C - 5/9/14 Motion, # 4 Exhibit D - 5/12/14 Order, # 5 Exhibit E - 2/21/17 Press Release, # 6 Exhibit F - 3/9/17

		Reply Brief, # 7 Exhibit G - 8/8/13 Article, # 8 Exhibit H - 7/26/13 Article, # 9 Exhibit I - 8/2/16 Article, # 10 Exhibit J - 1/30/16 Article, # 11 Exhibit K - 1/19/16 Article, # 12 Exhibit L - 2/21/17 Press Release, # 13 Exhibit M - 5/15/17 Press Release, # 14 Exhibit N - 12/27/18 Order, # 15 Exhibit O - 1/2/19 Article, # 16 Exhibit P - H.B. 1029, # 17 Supplement Declaration)(MOSS, NICOLE) (Entered: 01/14/2019)
* * *		
02/12/2019	34	RESPONSE filed by Defendant ROY A. COOPER, III re 7 MOTION to Intervene filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by ROY A. COOPER, III. Replies due by 2/26/2019 (BRENNAN, STEPHANIE) (Entered: 02/12/2019)
* * *		

02/14/2019	36	RESPONSE filed by Defendants STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND re 7 MOTION to Intervene filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. Replies due by 2/28/2019 (VYSOTSKAYA DE BRITO, OLGA) (Entered: 02/14/2019)
* * *		
02/19/2019	38	RESPONSE *in Opposition* filed by Plaintiff NORTH CAROLINA STATE CONFERENCE OF THE NAACP re 7 MOTION to Intervene filed by Timothy K. Moore, in his official capacity as Speaker of the North

		Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Replies due by 3/5/2019 (COOPER, JAMES) (Entered: 02/19/2019)
* * *		
02/28/2019	42	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *On Abstention Grounds and for Lack of Jurisdiction* by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. Response to Motion due by 3/21/2019 (VYSOTSKAYA DE BRITO, OLGA) (Entered: 02/28/2019)
02/28/2019	43	MEMORANDUM filed by Defendants STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND re 42 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *On Abstention Grounds*

		and for Lack of Jurisdiction filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. (Attachments: # 1 Exhibit State Ds' Ex A - Holmes Complaint, # 2 Exhibit State Ds' Ex B - State Ds' Answer and MTD, # 3 Exhibit State Ds' Ex C - Cert of Const. Amend 2018-128, # 4 Exhibit State Ds' Ex D - NAACP Second Amended Complaint, # 5 Exhibit State Ds' Ex E - NAACP Judge Collins Order, # 6 Exhibit State Ds' Ex F - NAACP Notice of Appeal, # 7 Exhibit State Ds' Ex G- Holmes - Ps' Brief re Facial Challenge) (VYSOTSKAYA DE BRITO, OLGA) (Entered: 02/28/2019)
02/28/2019	44	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by ROY A. COOPER, III. Response to Motion due by 3/21/2019 (BRENNAN, STEPHANIE) (Entered: 02/28/2019)
02/28/2019	45	MEMORANDUM filed by Defendant ROY A. COOPER, III re 44 MOTION

		TO DISMISS FOR FAILURE TO STATE A CLAIM filed by ROY A. COOPER, III. (Attachments: # 1 Exhibit1 Holmes Complaint, # 2 Exhibit 2 Holmes Answer and Motion to Dismiss, # 3 Exhibit 3 Holmes Notice of Depo of Strach, # 4 Exhibit 4 NAACP v. Moore Order, # 5 Exhibit 5 NAACP v. Moore Notice of Appeal) (BRENNAN, STEPHANIE) (Entered: 02/28/2019)
* * *		
03/05/2019	48	REPLY, filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, to Response to 7 MOTION to Intervene filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North

		Carolina House of Representatives. (Attachments: # 1 Exhibit A - Proposed Temporary Rule)(MOSS, NICOLE) (Entered: 03/05/2019)
* * *		
03/21/2019	50	RESPONSE in Opposition re 43 Memorandum,,, filed by KEN RAYMOND, ROBERT CORDLE, DAVID C BLACK, JEFFERSON CARMON, STELLA ANDERSON, 44 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by ROY A. COOPER, III, 42 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *On Abstention Grounds and for Lack of Jurisdiction* filed by KEN RAYMOND, ROBERT CORDLE, DAVID C BLACK, JEFFERSON CARMON, STELLA ANDERSON, 45 Memorandum, filed by ROY A. COOPER, III filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Replies due by 4/4/2019 (Attachments: # 1 Exhibit Ex. A)(COOPER, JAMES) (Entered: 03/21/2019)

* * *		
04/11/2019	52	REPLY, filed by Defendants STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND, to Response to 42 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *On Abstention Grounds and for Lack of Jurisdiction* filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. (Attachments: # 1 Exhibit H- Rozier Order to 3 Judge Panel, # 2 Exhibit I - 18 CVS 15292 Order of CJ Appointing Panel, # 3 Exhibit J - Notice of Depo. of Strach, # 4 Exhibit K - Consent Protective Order 3.28.19, # 5 Exhibit L- P19-149 COA Order on Stay, # 6 Exhibit M - SL2019-4, # 7 Exhibit N - H646v0, # 8 Exhibit O - Holmes Case Management email)(COX, PAUL) (Entered: 04/11/2019)
04/11/2019	53	REPLY, filed by Defendant ROY A. COOPER, III, to Response to 44 MOTION TO DISMISS FOR FAILURE TO

		STATE A CLAIM filed by ROY A. COOPER, III. (BRENNAN, STEPHANIE) (Entered: 04/11/2019)
		* * *
06/03/2019	56	**MEMORANDUM OPINION AND ORDER** signed by JUDGE LORETTA C. BIGGS on 6/3/2019. The Motion to Intervene by Hon. Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Hon. Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (ECF No. 7) is DENIED without prejudice to the motion being renewed if it can be demonstrated that State Defendants have in fact declined to defend the instant lawsuit, and that all requirements for intervention have been satisfied pursuant to Rule 24 of the Federal Rules of Civil Procedure. FURTHER that Proposed Intervenors are permitted to participate in this action by filing *amicus curiae* briefs. (Daniel, J) (Entered: 06/03/2019)

07/02/2019	57	**MEMORANDUM OPINION AND ORDER** signed by JUDGE LORETTA C. BIGGS on 7/2/2019. State Board Defendants' Motion to Dismiss, or, in the Alternative, Motion to Stay (ECF No. 42) is DENIED. FURTHER that Governor Cooper's Motion to Dismiss or, in the Alternative, for a Stay (ECF No. 44) is GRANTED and the Governor is DIMISSED as a party to this action. FURTHER that Plaintiffs' Motion for Scheduling Conference and Order (ECF No. 54) is DENIED as moot. (Daniel, J) (Entered: 07/02/2019)
* * *		
07/16/2019	59	ANSWER to 1 Complaint, by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. (VYSOTSKAYA DE BRITO, OLGA) (Entered: 07/16/2019)
07/19/2019	60	Renewed MOTION to Intervene by Philip E. Berger, in his official capacity as President Pro Tempore of the

		North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Response to Motion due by 8/9/2019 (Attachments: # 1 Supplement Proposed Answer, # 2 Text of Proposed Order Proposed Order)(MOSS, NICOLE) (Entered: 07/19/2019)
07/19/2019	61	MEMORANDUM filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives re 60 Second MOTION to Intervene *Memorandum in Support of* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (Attachments: # 1 Exhibit A- 2019 NC Sess Law 4, # 2 Exhibit B-2019

		NC Sess Law 22, # 3 Exhibit C- State Defs.' Br. in Supp. of MTD, # 4 Exhibit D- State Defs.' Reply in Supp. of MTD, # 5 Exhibit E- Leg. Defs.' Br. in Supp. of MTD, # 6 Exhibit F- Leg. Defs.' Reply in Supp. of MTD, # 7 Exhibit G- Pls.' Br. in Opp. to MTD, # 8 Exhibit H- Reaves Declaration, # 9 Exhibit I- Vysotskaya Email, # 10 Exhibit J- 2019-5-24 Holmes Order, # 11 Exhibit K- Callanan Deposition Transcript, # 12 Exhibit L- Devore Deposition Transcript, # 13 Exhibit M- Gutierrez Deposition Transcript Vol. II, # 14 Exhibit N- State Defs.' Resp. to PI Motion, # 15 Exhibit O- State Defs.' Supp. Brief, # 16 Exhibit P- Bell Affidavit, # 17 Exhibit Q- Pls.' Reply in Supp. of Mot. for a PI, # 18 Exhibit R- Gov. Cooper Amicus in Moore, # 19 Exhibit S- PETA v. Stein)(MOSS, NICOLE) (Entered: 07/19/2019)
* * *		
08/09/2019	65	RESPONSE filed by Defendants STELLA ANDERSON, DAVID C

		BLACK, JEFFERSON CARMON, KEN RAYMOND re 60 Second MOTION to Intervene filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, KEN RAYMOND. Replies due by 8/23/2019 (Attachments: # 1 Exhibit A - Holmes State Def Brief, # 2 Exhibit B - Holmes Joint Status Report, # 3 Exhibit C - Holmes 3 Judge Panel Order)(VYSOTSKAYA DE BRITO, OLGA) (Entered: 08/09/2019)
08/09/2019	66	RESPONSE in Opposition re 60 Second MOTION to Intervene filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore

		of the North Carolina Senate filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Replies due by 8/23/2019 (COOPER, JAMES) (Entered: 08/09/2019)
08/12/2019	67	Corrected document re 65 Response to Motion,,. (Attachments: # 1 Exhibit A - Holmes State Def Brief, # 2 Exhibit B - Holmes Joint Status Report, # 3 Exhibit C - Holmes 3 Judge Panel Order)(VYSOTSKAYA DE BRITO, OLGA) (Entered: 08/12/2019)
* * *		
08/19/2019	69	REPLY, filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, to Response to 60 Second MOTION to Intervene filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate,

		Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (Attachments: # 1 Exhibit Exhibit A: Transcript of Hearing in Holmes v. Moore, # 2 Exhibit Exhibit B: Haley Proctor Affidavit)(MOSS, NICOLE) (Entered: 08/19/2019)
* * *		
09/17/2019	71	MOTION for Ruling *on Renewed Motion to Intervene* by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Response to Motion due by 10/8/2019 (Attachments: # 1 Exhibit Supreme Court of North Carolina Docket Sheet Holmes, et al. v. Moore et al.)(MOSS, NICOLE) (Entered: 09/17/2019)
09/17/2019	72	MOTION for Preliminary Injunction by CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE

		COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP. Response to Motion due by 10/8/2019 (ULIN, JOHN) (Entered: 09/17/2019)
09/17/2019	73	MEMORANDUM re 72 MOTION for Preliminary Injunction by Plaintiffs CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13)(ULIN, JOHN) (Entered: 09/17/2019)

* * *		
09/23/2019	74	NOTICE OF APPEAL by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Filing fee $ 505, receipt number 0418-2660029. (MOSS, NICOLE) (Entered: 09/23/2019)
09/23/2019	75	MOTION to Stay *Pending Appeal, or, in the Alternative, to Participate as Defendants Pending Appeal* by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Response to Motion due by 10/15/2019 (MOSS, NICOLE) (Entered: 09/23/2019)
09/23/2019	76	MEMORANDUM filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of

		Representatives re 75 MOTION to Stay *Pending Appeal, or, in the Alternative, to Participate as Defendants Pending Appeal Memorandum in Support of* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (Attachments: # 1 Exhibit Exhibit A: Moss Decl., # 2 Exhibit Exhibit B: Thornton Report in Holmes v. Moore, # 3 Exhibit Exhibit C: Hood Report in Holmes v. Moore, # 4 Exhibit Exhibit D: Callanan Report in Holmes v. Moore)(MOSS, NICOLE) (Entered: 09/23/2019)
* * *		
09/26/2019	81	NOTICE by PHILIP E. BERGER, TIMOTHY K. MOORE *in their official capacity as President Pro Tempore of the North Carolina Senate and Speaker of the North Carolina House of Representatives*

		(Attachments: # 1 Petition for Writ of Mandamus in the Fourth Circuit, # 2 Addendum to Petition for Writ of Mandamus Petition in the Fourth Circuit) (MOSS, NICOLE) (Entered: 09/26/2019)
09/26/2019	82	RESPONSE in Opposition re 75 MOTION to Stay *Pending Appeal, or, in the Alternative, to Participate as Defendants Pending Appeal* filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Replies due by 10/10/2019 (ULIN, JOHN) (Entered: 09/26/2019)
* * *		
09/27/2019	84	REPLY, filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, to Response to

		75 MOTION to Stay *Pending Appeal, or, in the Alternative, to Participate as Defendants Pending Appeal* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (MOSS, NICOLE) (Entered: 09/27/2019)
* * *		
10/08/2019	88	**USCA ORDER** granting the Motion to dismiss interlocutory appeal re: 74 Notice of Appeal. USCA Case #19-2048. (Daniel, J) (Entered: 10/09/2019)
10/08/2019	89	USCA JUDGMENT. In accordance with the decision of this court, this appeal is dismissed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41 re: 74 Notice of Appeal. USCA Case #19-2048. (Daniel, J) (Entered: 10/09/2019)
10/08/2019	90	**USCA ORDER** denying the petition for writ of mandamus

		re: 81 Notice - Petition for Writ of Mandamus in the Fourth Circuit. USCA Case #19-2056. (Daniel, J) (Entered: 10/09/2019)
* * *		
10/09/2019	91	*AMENDED* MEMORANDUM re 72 MOTION for Preliminary Injunction by Plaintiffs CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13)(ULIN, JOHN) Modified docket text on 10/10/2019 to reflect "Amended". (Entered: 10/09/2019)
10/09/2019	92	USCA JUDGMENT.

		In accordance with the decision of this court, the petition for writ of mandamus and motion for stay of district court proceedings pending mandamus, are denied re: 81 Notice - Petition for Writ of Mandamus in the Fourth Circuit. USCA Case #19-2056. (Daniel, J) (Entered: 10/09/2019)
10/11/2019	93	MANDATE of USCA. The judgment of this court, entered 10/08/2019, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure re: 74 Notice of Appeal. USCA Case #19-2048. (Daniel, J) (Entered: 10/11/2019)
* * *		
10/30/2019	96	**Stricken** RESPONSE in Opposition re 72 MOTION for Preliminary Injunction filed by HIGH POINT NAACP, CHAPEL HILL - CARRBORO NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP, NORTH CAROLINA STATE

		CONFERENCE OF THE NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, GREENSBORO NAACP *Amicus Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Replies due by 11/13/2019. (Attachments: # 1 Exhibit Ex. A Reaves Declaration, # 2 Exhibit Ex. B Ex. 7 to Burden Deposition, # 3 Exhibit Ex. C dSouza Affidavit, # 4 Exhibit Ex. D Lichtman Deposition Excerpt, # 5 Exhibit Ex. E Ex. 6 to Lichtman Deposition, # 6 Exhibit Ex. F Ex. 7 to Lichtman Deposition, # 7 Exhibit Ex. G Block Report, # 8 Exhibit Ex. H Callanan Report, # 9 Exhibit Ex. I Hood Report, # 10 Exhibit Ex. J Thornton Report, # 11 Exhibit Ex. K Gimpel Report, # 12 Exhibit Ex. L Ford Declaration)(MOSS, NICOLE)

		Modified on 11/27/2019 to reflect stricken per 116 Order. (Daniel, J). (Entered: 10/30/2019)
10/30/2019	97	RESPONSE in Opposition re 72 MOTION for Preliminary Injunction filed by HIGH POINT NAACP, CHAPEL HILL - CARRBORO NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, GREENSBORO NAACP filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, ROBERT CORDLE, KEN RAYMOND. Replies due by 11/13/2019 (Attachments: # 1 Exhibit Index, # 2 Exhibit 1 - Senate Bill 824 (SB824), # 3 Exhibit 2 - 2014 N.C. Sess. Law 4, # 4 Exhibit 3 - 2019 N.C. Sess. Law 22, # 5 Exhibit 4 - 2018 N.C. Sess. Law 128 (HB1092), # 6 Exhibit 5 - Joel Ford Complete Deposition Transcript in the matter

		# 8 Exhibit 7 - SBOE webpage showing photo ID constitutional amendment pass, # 9 Exhibit 8 - Karen Brinson Bell Affidavit and supporting affidavit, # 10 Exhibit 9 - 2013 N.C. Sess. Law 381 & 2015 N.C. Sess. Law 103, # 11 Exhibit 10 - Kimberly Strach Deposition Transcript Excerpts in the matter Holmes v. Moore, et al., 18 CVS 15292, # 12 Exhibit 11 - SB824 Intro Bill, # 13 Exhibit 12 - Alan Lichtman Deposition Transcript Excerpts, # 14 Exhibit 13 - Carter-Baker Report, # 15 Exhibit 14 - Barry Burden Ph.D. Deposition Exhibit 3 Underhill, # 16 Exhibit 15 - NC General Assembly Consolidated Hearing Transcripts, # 17 Exhibit 16 - Congressional District 9 Order 3/13/2019, # 18 Exhibit 17 - Kory Goldsmith Affidavit and supporting exhibits, # 19 Exhibit 18 - Joel Ford Affidavit in the matter Holmes v. Moore, et al., 18 CVS 15292, # 20 Exhibit 19 - NC Senate Roll Call Vote Transcript #811, # 21 Exhibit

		20 - NC House Roll Call Vote Transcript #1324, # 22 Exhibit 21 - NC Senate Roll Call Motion to Concur Vote Transcript for Roll Call #819, # 23 Exhibit 22 - NC House Roll Call Veto Override Vote Transcript for Roll Call #1354, # 24 Exhibit 23 - NC Senate Roll Call Veto Override Vote Transcript for Roll Call #824, # 25 Exhibit 24 - Legislative Reporting Service SB824 History, # 26 Exhibit 25 - NC DHHS Letter and Supporting Data, # 27 Exhibit 26 - Allan Lichtman Deposition Exhibits, # 28 Exhibit 27 - Courtney Patterson Deposition Transcript Excerpts in the matter in the matter Holmes v. Moore, et al., 18 CVS 15292, # 29 Exhibit 28 - Brian Neesby Affidavit and Supporting Exhibits, # 30 Exhibit 29 - Barry Burden Ph.D. Depo Transcript Excerpts and exhibits, # 31 Exhibit 30 - NC OSHR Letter and Supporting Data, # 32 Exhibit 31 - Kathryn Ann Fellman Deposition Transcript Excerpts in the matter Holmes v. Moore, et al.,

		18 CVS 15292, # 33 Exhibit 32 - Kevin Quinn Ph.D. Deposition Transcript Excerpts in the matter Holmes v. Moore, et al., 18 CVS 15292, # 34 Exhibit 33 - Olga E. Vysotskaya de Brito Declaration)(VYSOTSKAYA DE BRITO, OLGA) (Entered: 10/30/2019)
* * *		
11/04/2019	99	MOTION to Strike 96 Response in Opposition to Motion,,,, by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Response to Motion due by 11/25/2019 (COOPER, JAMES) (Entered: 11/04/2019)
11/07/2019	100	**MEMORANDUM OPINION AND ORDER** signed by JUDGE LORETTA C. BIGGS on 11/7/2019. For the reasons outlined herein, the motion captioned "Renewed Motion to Intervene" by 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 (ECF No. 60)

		is DENIED WITH PREJUDICE. FURTHER that as outlined in its June 3rd order, Proposed Intervenors are permitted to participate in this action by filing *amicus curiae* briefs. (Daniel, J) (Entered: 11/07/2019)
* * *		
11/11/2019	103	NOTICE OF APPEAL as to 100 Memorandum Opinion and Order,, by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Filing fee $ 505, receipt number 0418-2693418. (MOSS, NICOLE) (Entered: 11/11/2019)
* * *		
11/14/2019	106	NOTICE of Docketing Appeal from USCA re: 103 Notice of Appeal. USCA Case Mgr: Michael Radday; USCA Case Number 19-2273. (Daniel, J) (Entered: 11/14/2019)
* * *		

11/15/2019	108	REPLY, filed by Plaintiffs CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP, to Response to 72 MOTION for Preliminary Injunction filed by CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, NORTH CAROLINA STATE CONFERENCE OF THE NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M)(ULIN, JOHN) (Entered: 11/15/2019)

* * *		
11/25/2019	115	REPLY, filed by Plaintiff NORTH CAROLINA STATE CONFERENCE OF THE NAACP, to Response to 99 MOTION to Strike 96 Response in Opposition to Motion, filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. (COOPER, JAMES) (Entered: 11/25/2019)
* * *		
11/27/2019	116	**ORDER** signed by JUDGE LORETTA C. BIGGS on 11/27/2019. Plaintiffs' motion to strike Amici's brief in opposition to a preliminary injunction (ECF No. 99) is GRANTED. Amici's brief and all accompanying exhibits (ECF No. 96) are STRICKEN. FURTHER that Amici are permitted to submit a new amicus curiae brief within 10 days of the entry of this order which does not introduce or rely upon evidence not already introduced into the record by the named parties. (Daniel, J) (Entered: 11/27/2019)
* * *		

12/31/2019	120	**MEMORANDUM OPINION, ORDER AND PRELIMINARY INJUNCTION** signed by JUDGE LORETTA C. BIGGS on 12/31/2019. Plaintiffs' Motion for Preliminary Injunction (ECF No. 72) is GRANTED IN PART AND DENIED IN PART to the extent set forth herein. (Daniel, J) (Entered: 12/31/2019)
01/10/2020	121	MOTION to Stay *Pending Appeal* by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. Response to Motion due by 1/31/2020 (MOSS, NICOLE) (Entered: 01/10/2020)
01/10/2020	122	MEMORANDUM filed by Intervenor Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker

		of the North Carolina House of Representatives re 121 MOTION to Stay *Pending Appeal* filed by Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives. (MOSS, NICOLE) (Entered: 01/10/2020)
01/24/2020	123	NOTICE OF APPEAL Without Fee Payment as to 120 Memorandum Opinion and Order,, Preliminary Injunction, by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, DAMON CIRCOSTA, KEN RAYMOND. (VYSOTSKAYA DE BRITO, OLGA) (Entered: 01/24/2020)
* * *		
01/31/2020	127	RESPONSE in Opposition re 121 MOTION to Stay *Pending Appeal* filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives,

		Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by STELLA ANDERSON, DAVID C BLACK, JEFFERSON CARMON, DAMON CIRCOSTA, KEN RAYMOND. Replies due by 2/14/2020 (VYSOTSKAYA DE BRITO, OLGA) (Entered: 01/31/2020)
01/31/2020	128	RESPONSE in Opposition re 121 MOTION to Stay *Pending Appeal* filed by Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate filed by NORTH CAROLINA STATE CONFERENCE OF THE NAACP. Replies due by 2/14/2020 (COOPER, JAMES) (Entered: 01/31/2020)
* * *		
02/20/2020	130	NOTICE of Hearing: Master Trial Calendar: JANUARY Bench Trial set for 1/4/2021 at 09:30 AM in Unassigned

		Courtroom. Trial briefs, etc. deadline set for 12/14/2020.(Blay, Debbie). (Entered: 02/20/2020)
* * *		
08/14/2020	149	USCA OPINION Vacated and Remanded. USCA Case #19-2273. (Daniel, J) (Entered: 08/14/2020)
08/14/2020	150	USCA JUDGMENT. In accordance with the decision of this court, the district court order entered November 7, 2019, is vacated. This case is remanded to the district court for further proceedings consistent with the court's decision. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41 re: 123 Notice of Appeal Without Fee Payment. USCA Case #19-2273. (Daniel, J) (Entered: 08/14/2020)
09/11/2020	151	USCA STAY OF MANDATE Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a

		motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court re: 123 Notice of Appeal Without Fee Payment. USCA Case #19-2273. (Daniel, J) (Entered: 09/11/2020)
10/05/2020	152	USCA Order granting petition for rehearing en banc. USCA Case #19-2273. (Daniel, J) (Entered: 10/05/2020)
11/03/2020		**TEXT ORDER** issued by JUDGE LORETTA C. BIGGS on 11/3/2020. It appearing that the mandate has not been issued in this case, the jury trial scheduled for January 6, 2021 will therefore be continued to a date to be determined.(Blay, Debbie) (Entered: 11/03/2020)
* * *		
03/23/2021	158	NOTICE of Hearing: Master Trial Calendar: JANUARY Bench Trial set for 1/3/2022

		09:30 AM in Unassigned Courtroom. Trial briefs, etc. deadline set for 12/13/2021.(Blay, Debbie) (Entered: 03/23/2021)
* * *		
06/07/2021	160	USCA OPINION affirming the District Court re: 103 Notice of Appeal. USCA Case #19-2273. (Daniel, J) (Entered: 06/07/2021)
06/07/2021	161	USCA JUDGMENT. In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41 re: 103 Notice of Appeal. USCA Case #19-2273. (Daniel, J) (Entered: 06/07/2021)
* * *		
08/23/2021	168	SUPREME COURT NOTICE of petition for a writ of certiorari filed on August 19, 2021 and placed on the docket August 23, 2021 as No. 21-248. USCA Case #19-2273. (Daniel, J) (Entered: 09/01/2021)

* * *		
09/17/2021	173	NOTICE of Hearing: Bench Trial set for 1/24/2022 at 09:30 AM in Winston-Salem Courtroom #4 before JUDGE LORETTA C. BIGGS. (Blay, Debbie) (Entered: 09/17/2021)
* * *		
10/02/2021	177	MOTION for Summary Judgment by STELLA ANDERSON, JEFFERSON CARMON, DAMON CIRCOSTA, STACY "FOUR" EGGERS, IV, WYATT T TUCKER, SR. Response to Motion due by 11/1/2021 (STEED, TERENCE) (Entered: 10/02/2021)
* * *		
10/08/2021	182	MEMORANDUM filed by Defendants STELLA ANDERSON, JEFFERSON CARMON, DAMON CIRCOSTA, STACY "FOUR" EGGERS, IV, WYATT T TUCKER, SR re 177 MOTION for Summary Judgment filed by STELLA ANDERSON, JEFFERSON CARMON,

		DAMON CIRCOSTA, STACY "FOUR" EGGERS, IV, WYATT T TUCKER, SR. (STEED, TERENCE) (Entered: 10/08/2021)
* * *		
11/22/2021	189	REPLY, filed by Defendants STELLA ANDERSON, JEFFERSON CARMON, DAMON CIRCOSTA, STACY "FOUR" EGGERS, IV, WYATT T TUCKER, SR, to Response to 177 MOTION for Summary Judgment filed by STELLA ANDERSON, JEFFERSON CARMON, DAMON CIRCOSTA, STACY "FOUR" EGGERS, IV, WYATT T TUCKER, SR. (STEED, TERENCE) (Entered: 11/22/2021)

RELEVANT DOCKET ENTRIES

General Docket

United States Court of Appeals
for the Fourth Circuit

#: 19-2273

NC NAACP State Conference v. Philip Berger

11/14/2019	1	Case docketed. Originating case number: 1:18-cv-01034-LCB-LPA. Case manager: MRadday. [19-2273] MR [Entered: 11/14/2019 09:45 AM]
* * *		
01/13/2020	31	BRIEF by Philip E. Berger and Timothy K. Moore in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 01/14/2020. [1000661494] [19-2273] David Thompson [Entered: 01/13/2020 07:17 PM]

01/13/2020	32	JOINT APPENDIX (electronic and paper form) by Philip E. Berger and Timothy K. Moore. Method of Filing Paper Copies: mail. Date paper copies mailed
		dispatched or delivered to court: 01/14/2020. [1000661496] [19-2273] David Thompson [Entered: 01/13/2020 07:50 PM]
01/17/2020	33	MOTION by Philip E. Berger and Timothy K. Moore to expedite decision. Date and method of service: 01/17/2020 ecf. [1000665132] [19-2273] David Thompson [Entered: 01/17/2020 03:33 PM]
* * *		
01/22/2020	35	Response in opposition to Motion to expedite decision [33] with combined motion to extend filing time for response brief until March 12, 2020. by Chapel Hill-Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, North Carolina State Conference of the NAACP,

		Stokes County Branch of the NAACP and Winston Salem-Forsyth County NAACP. Was opposing counsel informed of motion pursuant to Loc. R. 27(a)?: Y. Did opposing counsel consent to granting of motion?: N. [19-2273] Stephen Wirth [Entered: 01/22/2020 06:09 PM]
01/22/2020	36	RESPONSE/ANSWER by Stella Anderson, David C. Black, Jefferson Carmon, Damon Circosta and
		Ken Raymond to notice requesting response [34], Motion to expedite decision [33]. [19-2273] Olga Vysotskaya de Brito [Entered: 01/22/2020 08:17 PM]
01/24/2020	39	COURT ORDER filed denying motion to extend filing time [35]; denying motion to expedite decision [33]. Copies to all parties. [1000669682] [19-2273] TW [Entered: 01/24/2020 04:16 PM]
* * *		

02/11/2020	41	BRIEF by Stella Anderson, David C. Black, Jefferson Carmon, Ken Raymond and Damon Circosta in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 02/11/2020. [1000681194] [19-2273] Olga Vysotskaya de Brito [Entered: 02/11/2020 03:35 PM]
* * *		
02/11/2020	43	BRIEF by Chapel Hill-Carrboro NAACP,

		Greensboro NAACP, High Point NAACP, Moore County NAACP, North Carolina State Conference of the NAACP, Stokes County Branch of the NAACP and Winston Salem-Forsyth County NAACP in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 02/12/2020. [1000681391] [19-2273] Stephen Wirth [Entered: 02/11/2020 08:44 PM]
* * *		
02/18/2020	50	BRIEF by Philip E. Berger and Timothy K. Moore in electronic and paper format. Type of Brief: REPLY. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 02/18/2020. [1000685204] [19-2273] David Thompson [Entered: 02/18/2020 05:10 PM]
* * *		
05/27/2020	70	ORAL ARGUMENT

		(Video Conference) heard before the Honorable Pamela A. Harris, Julius N. Richardson and A. Marvin Quattlebaum, Jr.. Attorneys arguing case: Mr. David Henry Thompson for Appellants Philip E. Berger and Timothy K. Moore, Paul Mason Cox for Appellees Ken Raymond, Stella Anderson, Damon Circosta, Jefferson Carmon and David C. Black and Mr. Stephen K. Wirth for Appellees North Carolina State Conference of the NAACP, Chapel Hill-Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, Stokes County Branch of the NAACP and Winston Salem-Forsyth County NAACP. Courtroom Deputy: Joseph Coleman. [1000746302] [19-2273] JLC [Entered: 05/27/2020 12:01 PM]
* * *		
08/14/2020	76	PUBLISHED AUTHORED OPINION filed. Originating case number: 1:18-cv-01034-LCB-LPA.

		[1000793241]. [19-2273] MR [Entered: 08/14/2020 03:52 PM]
08/14/2020	77	JUDGMENT ORDER filed. Decision: Vacated and remanded. Originating case number: 1:18-cv-01034-LCB-LPA. Entered on Docket Date: 08/14/2020. [1000793243] Copies to all parties and the district court/agency.. [19-2273] MR [Entered: 08/14/2020 03:56 PM]
* * *		
09/11/2020	82	PETITION for rehearing en banc by North Carolina State Conference of the NAACP, Chapel Hill-Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, Stokes County Branch of the NAACP and Winston Salem-Forsyth County NAACP. [19-2273] Stephen Wirth [Entered: 09/11/2020 12:23 PM]
09/11/2020	83	Mandate stayed pending ruling on petition for rehearing or rehearing en banc.. [19-2273] MR

		[Entered: 09/11/2020 12:27 PM]
* * *		
09/11/2020	86	PETITION for rehearing en banc by Stella Anderson, David C. Black, Jefferson Carmon, Damon Circosta and Ken Raymond. [19-2273] Ryan Park [Entered: 09/11/2020 07:17 PM]
* * *		
09/25/2020	88	RESPONSE/ANSWER to rehearing en banc by Timothy K. Moore and Philip E. Berger. [19-2273] David Thompson [Entered: 09/25/2020 05:45 PM]
10/05/2020	89	COURT ORDER filed granting petition for rehearing en banc [86], granting petition for rehearing en banc [82]. Copies to all parties.. [1000823597] [19-2273] MR [Entered: 10/05/2020 02:05 PM]
10/05/2020	90	Case reopened upon grant of rehearing/rehearing en banc. Originating case number: 1:18-cv-01034-LCB-LPA. [19-2273] MR

		[Entered: 10/05/2020 02:10 PM]
* * *		
12/02/2020	114	BRIEF by Philip E. Berger and Timothy K. Moore in electronic and paper format. Type of Brief: SUPPLEMENTAL. Method of Filing Paper Copies: N/A. (filed per order at ecf #113) [1000859057] [19-2273] MR [Entered: 12/03/2020 12:03 PM]
12/07/2020	115	EN BANC ORAL ARGUMENT (Video Conference) heard before the Honorable Roger L. Gregory, J. Harvie Wilkinson, III, Paul V. Niemeyer, Diana Gribbon Motz, Robert B. King, G. Steven Agee, Barbara Milano Keenan, James A. Wynn, Jr., Albert Diaz, Henry F. Floyd, Stephanie D. Thacker, Pamela A. Harris, Julius N. Richardson, A. Marvin Quattlebaum, Jr. and Allison J. Rushing. Attorneys arguing case: Peter A. Patterson for Appellants Philip E. Berger and Timothy K. Moore,

		James Wellner Doggett for Appellees Ken Raymond, Stella Anderson, Damon Circosta, Jefferson Carmon and David C. Black and Mr. Stephen K. Wirth for Appellees North Carolina State Conference of the NAACP, Chapel Hill-Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, Stokes County Branch of the NAACP and Winston Salem-Forsyth County NAACP. Courtroom Deputy: Emily Borneisen. [1000860491] [19-2273] EB [Entered: 12/07/2020 10:31 AM]
06/07/2021	116	PUBLISHED AUTHORED OPINION filed. Originating case number: 1:18-cv-01034-LCB-LPA. [1000964733]. [19-2273] Annotation added to reflect Supreme Court status.--[Edited 11/24/2021 by EB] TW [Entered: 06/07/2021 12:49 PM]
06/07/2021	117	JUDGMENT ORDER filed. Decision: Affirmed.

		Originating case number: 1:18-cv-01034-LCB-LPA. Entered on Docket Date: 06/07/2021. [1000964747] Copies to all parties and the district court. [19-2273] TW [Entered: 06/07/2021 12:56 PM]
06/29/2021	118	Mandate issued. Referencing: [117] Judgment Order , [116] published authored Opinion. Originating case number: 1:18-cv-01034-LCB-LPA.. [19-2273] MR [Entered: 06/29/2021 09:19 AM]
08/23/2021	119	SUPREME COURT REMARK--petition for writ of certiorari filed. 08/19/2021. 21-248. [19-2273] EB [Entered: 08/24/2021 03:35 PM]
11/24/2021	120	SUPREME COURT REMARK--petition for writ of certiorari granted. 11/24/2021 [19-2273] EB [Entered: 11/24/2021 04:34 PM]

Dkt. 8

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

[Filed: January 14, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL – CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM – FORSYTH COUNTY NAACP, *Plaintiffs,* v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; JOSHUA MALCOM, in his official capacity as Chair of the North Carolina State Board of Elections; KEN RAYMOND, in his official capacity as Secretary of the	CASE NO. 1:18-cv-01034-LCB-LPA **PROPOSED INTERVENORS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO INTERVENE**

North Carolina State Board of Elections; STELLA ANDERSON, DAMON CIRCOSTA, ROBERT CORDLE, STACY EGGERS IV, JAY HEMPHILL, VALERIE JOHNSON, and JOHN LEWIS, in their official capacities as members 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,

Proposed Intervenors.

*[*** Tables omitted for printing purposes ***]*

STATEMENT OF THE MATTER BEFORE THE COURT

At stake in this lawsuit is the validity of North Carolina Senate Bill ("S.B.") 824, a recent enactment

implementing the constitutional directive of the people of North Carolina that citizens be required to present photo identification when voting. As matters currently stand, however, there is no party before the Court that can be counted on to adequately defend S.B. 824. Governor Roy Cooper is an implacable opponent of the law. It was enacted over his veto, which was accompanied by a statement describing the law as having "sinister and cynical origins" in a purported "design[] to suppress the rights of minority, poor and elderly voters." Governor Roy Cooper Objections and Veto Message (Dec. 14, 2018), Ex. A. While the remaining defendants are sued in their capacity as members of the North Carolina State Board of Elections, that Board no longer exists—it was dissolved following a decision of the North Carolina Supreme Court finding that its structure violated the State Constitution because it was too insulated from the Governor's control. A law creating a new Board will go into effect January 31, but its members will be appointed by Governor Cooper and he may select a majority from his own political party. And all of the named defendants presumably will be represented by North Carolina Attorney General Josh Stein, who began his tenure as Attorney General by successfully seeking to have the Supreme Court *decline* to review the Fourth Circuit's decision striking down North Carolina's prior voter ID law. With defendants like these, this case hardly needs plaintiffs.

Fortunately, North Carolina has not left the defense of its statutes to potentially hostile executive branch officials. In accordance with United States Supreme Court precedent, state law expressly establishes that

the President Pro Tempore of the Senate and the Speaker of the House of Representatives have standing, as agents of the State, to intervene in litigation on behalf of the General Assembly in defense of North Carolina statutes. President Pro Tempore Berger and Speaker Moore accordingly move to intervene to defend S.B. 824, and this Court should grant the motion to ensure that the law—and the people of North Carolina on whose behalf it was enacted—gets the defense it deserves.

QUESTION PRESENTED BY THIS MOTION

Whether Proposed Intervenors should be granted leave to intervene in this case either as of right under Federal Rule of Civil Procedure 24(a) or permissively under Rule 24(b).

STATEMENT OF FACTS

A majority of states have voter ID laws. *See* Wendy Underhill, *Voter Identification Requirements*, NAT'L CONFERENCE OF STATE LEGISLATURES (Oct. 31, 2018), https://bit.ly/18Szn2n. These laws serve states' legitimate interests in preventing voter fraud and in ensuring "public confidence in the integrity of the electoral process." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196–97 (2008) (plurality); *see also id.* at 209 (Scalia, Thomas, and Alito, JJ., concurring in the judgment).

In 2013, the North Carolina General Assembly (the state's legislature) passed a law that required voters to present an approved form of photo ID and that made several other changes to the state's voting system (e.g., reducing the early voting period and eliminating

out-of-precinct voting, same-day registration and voting, and pre-registration by 16-year-olds). *See* 2013 N.C. Sess. Laws 381. In 2015, the legislature amended the law to permit voters to vote without an ID if they could show a reasonable impediment to obtaining one. *See* 2015 N.C. Sess. Laws 103 § 8. But a divided panel of the Fourth Circuit struck the law down, *see North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), and North Carolina's current Governor and Attorney General abandoned the State's appeal of that decision, *see North Carolina v. NAACP*, 137 S. Ct. 1399, 1399 (2017) (Roberts, C.J., statement respecting the denial of certiorari).

In November 2018, the people of North Carolina amended the State's constitution to require photo ID to vote. As amended, the constitution provides that "[v]oters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." N.C. CONST. art. VI, § 2(4); *see also* N.C. CONST. art. VI, § 3(2).

Pursuant to that mandate, the General Assembly passed S.B. 824. *See* 2018 N.C. Sess. Laws 144, Ex. B. Unlike North Carolina's 2013 voting law, S.B. 824 concerns only voter ID. And it permits voters to use a wide range of IDs, including a North Carolina driver's license, a driver's license from any state or U.S. territory in certain circumstances, a passport, a tribal enrollment card, a qualifying student ID, a qualifying state or local government employee ID, a military ID, or a veteran ID. *See* Ex. B at 2. Voters may present any

approved ID even if it has expired within the past year, military and veteran IDs may be used regardless of expiration, and seniors may use IDs that expired after their 65th birthdays. *See id*. S.B. 824 also gives voters a right to obtain a voter ID card, which remains valid for 10 years, free of charge. *See id*. at 1.

Voters who arrive to the polls without IDs can vote as well. If a voter has simply forgotten ID or is unaware of the requirement, the voter can cast a provisional ballot and then return with an ID anytime within nine days (i.e., until the end of the day before the Board canvasses the votes pursuant to N.C. Gen. Stat. § 163A-1172(b)). The law requires the Board to give the voter an information sheet with this deadline and the types of acceptable IDs. *See* Ex. B at 3. And if a voter does not have an ID at all, the voter can fill out an affidavit at the voting place indicating the "reasonable impediment" that prevented the voter from obtaining one—including a lack of transportation, illness, work schedule, lack of necessary documents, family responsibilities, loss of ID, or any other unique reasonable impediment. *See id*. at 3–4. The voter is entitled to complete a provisional ballot upon the completion of the reasonable impediment affidavit, and the ballot will be treated as valid unless "the county board [of elections] has grounds to believe the affidavit is false." *Id*. at 4.

The legislature also addressed the problem of absentee voter fraud by requiring that requests for absentee ballots be accompanied by forms of ID similar to those required for in-person voting. *See id*. at 7. But voters who lack a method to attach an electronic or

physical copy of their ID with their request—or who face any other reasonable impediment as defined above—may say so and still obtain an absentee ballot. *See id.* at 7–8.

The North Carolina legislature has gone to great lengths to ensure that the people's constitutional directive to require voter ID is implemented in a manner that does not unduly burden the right of any person to vote. Indeed, North Carolina's law compares favorably with Virginia's voter ID law, which was upheld by the Fourth Circuit and which is similar to North Carolina's law in many respects but does not contain a reasonable impediment exception. *See Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 594–95 (4th Cir. 2016). In North Carolina, as in Virginia, "every registered voter who shows up to his or her local polling place on the day of the election has the ability to cast a ballot and to have the vote counted, even if the voter has no identification." *Id.* at 600.

The General Assembly presented S.B. 824 to Governor Roy Cooper on December 6, 2018. *See* Senate Bill 824 / SL 2018-144, N.C. Gen. Assembly (2017–2018 Sess.), https://bit.ly/2FmisPP. Governor Cooper, a longtime opponent of voter ID rules, vetoed the bill on December 14. *See id.* The North Carolina Senate thereafter overrode the veto by a vote of 33-12, and the North Carolina House of Representatives did so by a vote of 72-40. *See id.* Soon after, Plaintiffs filed this suit against the Governor and members of the North Carolina State Board of Elections ("Defendants"), alleging that S.B. 824 will disproportionately impact African-American and Latino voters in violation of

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; intentionally discriminates against African-American and Latino voters, in violation of the Fourteenth and Fifteenth Amendments of the United States Constitution; and will unduly burden the right to vote, in violation of the Fourteenth Amendment. *See* Compl. ¶¶ 105–46, Doc. 1.

Proposed Intervenors have a well-founded belief that Defendants will not adequately represent the State's and the General Assembly's interests in defending S.B. 824, which Proposed Intervenors and their fellow legislators passed at the mandate of the people of North Carolina, from these baseless challenges.

ARGUMENT

I. Proposed Intervenors Are Entitled To Intervene as of Right.

Under Federal Rule of Civil Procedure 24(a), a court "must permit anyone to intervene who" (1) makes a timely motion to intervene, (2) has "an interest in the subject of the action," (3) is "so situated that the disposition of the action may impair or impede [his] ability to protect that interest," and (4) shows "that he is not adequately represented by existing parties." FED. R. CIV. P. 24(a); *Fisher-Borne v. Smith*, 14 F. Supp. 3d 699, 702 (M.D.N.C. 2014).

As the Fourth Circuit has noted regarding intervention as of right, "liberal intervention is desirable to dispose of as much of a controversy 'involving as many apparently concerned persons as is compatible with efficiency and due process.' " *Feller v.*

Brock, 802 F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Proposed Intervenors are deeply concerned with defending on behalf of the State and the General Assembly a law that the General Assembly passed pursuant to constitutional command and that serves the State's vital interest in protecting the integrity of its electoral process. They satisfy all four requirements for intervention as of right.

a. Proposed Intervenors' Motion is Timely.

Three criteria determine whether a motion to intervene is timely: (1) "how far the underlying suit has progressed," (2) the "prejudice" that granting the motion would cause to the other parties; and (3) the reason for the delay—if any—in filing the motion. *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014). This suit did not progress at all before Proposed Intervenors filed their motion: they filed the motion just weeks after the suit commenced, before any existing party had filed anything other than the complaint. Proposed Intervenors did not delay in filing this motion. And granting the motion would not delay the proceedings or prejudice the other parties in any way. *Cf. id.* (affirming denial of a motion to intervene where "the proceedings below had already reached a relatively advanced stage"). Thus, the motion is timely.

b. Proposed Intervenors Have a Significantly Protectable Interest in the Subject of this Suit.

To satisfy Rule 24(a), Proposed Intervenors' interest in the subject of this suit must be "significantly

protectable." *Donaldson v. United States*, 400 U.S. 517, 531 (1971). In other words, Proposed Intervenors must have a stake in the suit, rather than a "general concern with the subject matter." *Fisher-Borne*, 14 F. Supp. 3d at 703.

Proposed Intervenors have a significantly protectable interest in the validity of S.B. 824, which the North Carolina General Assembly enacted over the Governor's veto. Because state legislatures have an institutional interest in seeing that their enactments are not "nullified," *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2665 (2015), long-standing Supreme Court authority establishes that state legislative officials have the authority to defend state enactments in federal court when State law "authorize[s]" them "to represent the [State] Legislature in litigation." *Karcher v. May*, 484 U.S. 72, 81 (1987); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997) ("[S]tate legislators have standing to contest a decision holding a state statute unconstitutional if state law authorizes legislators to represent the State's interests."). Here, State law does that expressly. Section 1-72.2 of the North Carolina General Statutes provides that "[i]t is the public policy of the State of North Carolina that in any action in any federal court in which the validity or constitutionality of an act of the General Assembly . . . is challenged, the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch." N.C. Gen. Stat. § 1-72.2(a). That section establishes a similar policy for actions in State court, *id.*, and it additionally provides that, "[t]he

Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, by and through counsel of their choice, including private counsel, shall jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute." *Id.* § 1-72.2(b). And it implores federal courts to allow the legislature to intervene in cases in which the State is a party and a State law is attacked. *Id.* § 1-72.2(a).

The North Carolina law establishing Proposed Intervenors' interest easily qualifies them to defend S.B. 824 under *Karcher*. There, the Supreme Court, citing a single case, reasoned that New Jersey legislative officials had standing to defend New Jersey law because "[t]he New Jersey Supreme Court has granted applications of the Speaker of the General Assembly and the President of the Senate to intervene as parties-respondent on behalf of the legislature in defense of a legislative enactment." 484 U.S. at 82. Here, unlike in *Karcher*, the Court is not required to infer an interest from a thinly-reasoned state court decision but rather can rely upon the express provisions of State statutory law. Indeed, the authority of the President Pro Tempore and Speaker to represent the interests of the General Assembly in defense of state law is so ingrained in North Carolina law that they are often *named defendants* in state court litigation challenging state laws, including litigation challenging S.B. 824. *See Holmes v. Moore*, No. 18-cv-15292 (N.C. Super. Ct.); *see also, e.g., Cooper v. Berger*, No. 409PA17, 2018 WL 6721278 (N.C. Dec. 21, 2018); *Cooper v. Berger*, 809 S.E.2d 98 (N.C. 2018);

State v. Berger, 781 S.E.2d 248 (N.C. 2016). And in other cases they have intervened when not named as defendants. *See, e.g., Edwards v. Bipartisan State Bd. of Elections & Ethics Enf't*, 818 S.E.2d 279 (N.C. 2018); *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); *Richardson v. State*, 774 S.E.2d 304 (N.C. 2015).

In accordance with the North Carolina authorities discussed above, the President Pro Tempore and Speaker's interest in defending state legislation has been recognized by the Fourth Circuit and this Court. *See, e.g., Am. Civil Liberties Union v. Tennyson*, No. 13-1030, 815 F.3d 183 (4th Cir. 2016), Doc. 40 (motion to intervene by Speaker and President Pro Tempore pursuant to Section 1-72.2), Ex. C; *id.*, Doc. 43 (granting motion), Ex. D; *Fisher-Borne*, 14 F. Supp. 3d at 703–04 ("[A]s authorized representatives of the legislature, [the Speaker and President Pro Tempore]'s desire to defend the constitutionality of legislation passed by the legislature is a protectable interest in the subject matter of this litigation."). This Court should do the same with respect to S.B. 824.

c. The Court's Disposition of this Case Might Impair Proposed Intervenors' Significantly Protectable Interest.

Intervention is required under Rule 24(a) where "the disposition of a case would, as a practical matter, impair the applicant's ability to protect his interest." *Spring Const. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). The disposition of the present case could, as an absolute matter, impair Proposed Intervenors' interest in ensuring that the law they passed at the command of the people of North Carolina—in order to protect the

integrity of and public confidence in elections—actually takes effect. Plaintiffs ask this Court to declare several provisions of S.B. 824 unconstitutional under the Fourteenth and Fifteenth Amendments and invalid under Section 2 of the Voting Rights Act; to enjoin North Carolina officials from implementing those provisions; and to retain jurisdiction over North Carolina for an indefinite time, pursuant to Section 3(c) of the Voting Rights Act, to scrutinize every change that the State might make to its voting procedures. *See* Compl. ¶ 147, Doc. 1. If the Court grants this relief, the General Assembly's efforts to pass S.B. 824 will have been "completely nullified." *Ariz. State Legislature*, 135 S. Ct. at 2665. Furthermore, its continuing authority to enact voting laws will be burdened. The Court's disposition of this case could thus impair Proposed Intervenors' significantly protectable interest. *See, e.g., Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 573 (7th Cir. 2009) (finding an "inconvenience" sufficient to constitute an impediment for purposes of Rule 24(a)); *Francis v. Chamber of Commerce of U.S.*, 481 F.2d 192, 195 n.8 (4th Cir. 1973) (noting that stare decisis, which would attach to an adverse appellate ruling in the case, "by itself may furnish the practical disadvantage required under [Rule] 24(a)").

d. The Existing Defendants Will Not Adequately Protect Proposed Intervenors' Significantly Protectable Interest.

"The requirement of [inadequate representation] is satisfied if the applicant shows that representation of his interest *may be* inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)

(emphasis added); *accord United Guar. Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc'y*, 819 F.2d 473, 476 (4th Cir. 1987). "[A]nd the burden of making that showing should be treated as minimal." *Trbovich*, 404 U.S. at 538 n.10; see also 7C WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1909 (3d ed. Sept. 2018) (hereinafter "WRIGHT & MILLER") ("[T]here is good reason in most cases to suppose that the applicant is the best judge of the representation of the applicant's own interests and to be liberal in finding that one who is willing to bear the cost of separate representation may not be adequately represented by the existing parties.").

Here, Defendants have made quite clear that they cannot be trusted to defend S.B. 824 in the same, rigorous manner as Proposed Intervenors—and very well might not defend the law at all. Presumably, North Carolina Attorney General Josh Stein will represent the state officials sued here. Soon after taking office, Attorney General Stein moved to dismiss North Carolina's petition for certiorari from the Fourth Circuit's ruling striking down the State's previous voter ID law, and Chief Justice Roberts cited that motion in a statement respecting the denial of certiorari. *See NAACP*, 137 S. Ct. at 1399 (statement of Roberts, C.J.). The same day he filed the motion, Attorney General Stein issued a press release suggesting that the law unduly burdened the right to vote: "I support efforts to guarantee fair and honest elections, but those efforts should not be used as an excuse to make it harder for people to vote." *See* Press Release, N.C. Att'y Gen., AG Stein Moves To Dismiss Case on Voting Law (Feb 21, 2017), Ex. E. His representations to the Supreme Court

were similarly derogatory toward his own State's laws. *See* Reply of Petitioners to Objection to the Motion to Dismiss at 2, *North Carolina v. NAACP*, 137 S. Ct. 1399 (Mar. 9, 2017), Ex. F (characterizing the State's prior voter ID requirement as "curtail[ing] North Carolinians' ability to exercise their right to vote"). Having prejudiced the State's defense of its prior voter ID requirement, Attorney General Stein should not be entrusted with defense of the new law.

Governor Cooper himself is just as opposed to voter ID rules, if not more. The most obvious proof is, of course, his veto of S.B. 824. In his veto message, he made known his thoughts on the law at the heart of this suit. He called the law "sinister," "cynical," and "designed to suppress the rights of minority, poor and elderly voters"; said that "[r]equiring photo IDs for in-person voting is a solution in search of a problem"; and blamed that requirement with "put[ting] up barriers to voting that will trap honest voters in confusion." Veto Message, Ex. A. Even before that, as Attorney General, Cooper actively undermined the State's efforts to enact its previous voter ID law, posting a petition online for those opposed to the bill to lobby then-Governor Pat McCrory to veto it. *See* Matthew Burns, *Cooper rallies opposition to NC elections bill*, WRAL.COM (Aug. 8, 2013), Ex. G. Cooper himself sent a letter to Governor McCrory urging him to veto the bill. *See* Rachel Lewis Hilburn, *Attorney General fires off letter to McCrory urging veto on voter ID bill*, WHQR (July 26, 2013), Ex. H. In that letter, he called the law "regressive," "unnecessary, expensive and burdensome." *Id.*

The State was later forced to defend its previous voter ID law without the help of then-Attorney General Cooper, who declined to participate in the petition for certiorari seeking review of the Fourth Circuit's ruling striking down that law. *See* Petition for a Writ of Certiorari, *North Carolina v. NAACP*, No. 16-833, 2016 WL 7634839 (U.S. Dec. 27, 2016); *N.C Attorney General Roy Cooper won't defend voter ID suit further; Gov. Pat McCrory criticizes him*, THE NEWS & OBSERVER (Aug. 2, 2016), Ex. I. Governor McCrory lamented that "again [General Cooper] is not willing to do his job." *Id*. In response, Cooper made clear his view on voter ID laws: "When are they [i.e., the Governor and General Assembly] going to learn that you just can't run roughshod over the Constitution?" *Id*.

Indeed, when campaigning for Governor, Cooper's antipathy to the previous voter ID law was central to his platform. *See Roy Cooper on attack in new web ad*, WRAL.COM (Jan. 30, 2014), Ex. J (quoting campaign ad in which Cooper charged "Gov. McCrory and the tea party Republicans" with, among other things, "ma[king] it harder to register and vote"). This tactical choice was apparently a response to criticism from Democratic opponents over his initial defense of the law. *See* John Hinton, *Democrat Ken Spaulding criticizes Roy Cooper for King Day email about voting rights*, WINSTON-SALEM JOURNAL (Jan. 19, 2016), Ex. K. And as described above, shortly after Governor Cooper took office Attorney General Stein moved to dismiss the petition for certiorari seeking review of the Fourth Circuit's ruling striking down the prior law, presumably at Governor Cooper's instruction. *See NAACP*, 137 S. Ct. at 1399 (statement of Roberts, C.J.);

see also Press Release, N.C. Governor, Governor Cooper, AG Stein Take Steps to Withdraw from Voting Restrictions Case (Feb. 21, 2017), Ex. L. And he celebrated when the Supreme Court ultimately denied the State's petition for certiorari, calling the decision "good news for North Carolina voters." *See* Press Release, N.C. Governor, Gov. Cooper Issues Statement on SCOTUS Voter Access Decision (May 15, 2017), Ex. M.

An "absentee cannot be required to look for adequate representation to an opponent." WRIGHT & MILLER § 1909. Governor Cooper and Attorney General Stein have openly opposed voter ID rules in the past, actively undermining the legislature in the process. From their public statements, it is no stretch to say that they would prefer to see this case resolved the same way the Plaintiffs would. Thus, if they defend S.B. 824—and it is by no means clear that they will—they will certainly not take "the same approach to the conduct of the litigation" as the General Assembly that enacted the law over the Governor's veto and that will defend it vigorously. *United Guar.*, 819 F.2d at 476. Proposed Intervenors must therefore be permitted to intervene to protect the State's and General Assembly's interest in the law and to give this Court the benefit of a fully adversarial process.

The remaining Defendants, members of the North Carolina State Board of Elections, cannot be counted upon to defend S.B. 824 either. For one thing, there currently is no State Board of Elections. The North Carolina Supreme Court deemed the Board as previously structured to be unconstitutional because it

was insufficiently controlled by the Governor, *see Cooper*, 809 S.E.2d 98, and a three-judge panel later entered an order requiring the Board to dissolve, *see* Order, *Cooper v. Berger*, No. 18-cv-3348 (N.C. Super. Ct. Dec. 27, 2018), Ex. N (detailing recent procedural history). The panel stayed that order four times to allow the Board to certify the November 2018 election results. *See id.* at 1-2. When the Board failed to hold a meeting about those results on the day on which its Chairman had represented to the panel that it would do so, the panel declined to stay the order any longer. *See id.* at 2-3. The order went into effect, and the Board was thereby dissolved, on December 28. No interim Board has since been created, and the law creating a new five-member Board will not go into effect until January 31. *See* Max Greenwood, *NC Governor Says He Won't Appoint Interim Elections Board*, THE HILL (Jan. 2, 2019), Ex. O.

When it does, Governor Cooper will appoint all members of the new Board—and will be allowed to appoint a majority of its members from his own party. *See* 2017 N.C. House Bill No. 1029 at 1–2 (to be codified at N.C. Gen. Stat. § 163-19(b)), Ex. P. And he will apparently have unfettered authority to remove those members. *See id.* at 3 (striking the language from N.C. Gen. Stat. § 163-28 to the effect that the Board "shall be and remain an independent regulatory and quasi-judicial agency"); *see also Cooper*, 809 S.E.2d at 113 (finding the previous Board unconstitutional in part because the Governor's removal authority over its members was too constrained). There is little reason to believe, therefore, that the Board will take a position in this case different from the Governor's—let alone a

position that comes close to aligning with Proposed Intervenors' interests.

In sum, the named Defendants have neither the same level of interest in this case nor the same ability and incentive to litigate it that Proposed Intervenors do. The Governor opposed and vetoed S.B. 824; the Elections Board is in flux, and ultimately will likely take the Governor's side. The General Assembly, through Proposed Intervenors, is thus the only part of the government that can be counted upon to defend the law implementing the will of the people as expressed in the North Carolina Constitution. That makes it "the most natural party to shoulder the responsibility of defending the fruits of the democratic process." *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013). And that gives Proposed Intervenors a right to intervene under Rule 24(a).

II. Alternatively, Proposed Intervenors Satisfy the Minimal Requirements for Permissive Intervention.

This Court has previously permitted Proposed Intervenors to intervene under Rule 24(b) to defend North Carolina law. *See, e.g., Carcaño v. McCrory*, 315 F.R.D. 176, 177 (M.D.N.C. 2016). Under Rule 24(b), the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(2)(B). Intervention must also not deprive the Court of subject-matter jurisdiction. *See Carcaño*, 315 F.R.D. at 178 n.2.

Timeliness is measured by the same three criteria used for intervention as of right: "how far the suit has progressed," "the prejudice that delay might cause other parties," and the reason for the delay (if any) in the motion. *Students for Fair Admissions Inc. v. Univ. of North Carolina*, 319 F.R.D. 490, 494 (M.D.N.C. 2017). The purpose of this requirement is merely "to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *Id*. (quoting *Scardelleti v. Debarr*, 265 F.3d 195, 202 (4th Cir. 2001)). As explained above, Proposed Intervenors filed their intervention motion before anything else of substance had happened in this case. Thus, intervention will cause no undue delay or prejudice to any existing parties.

Moreover, as shown in the Proposed Answer, Proposed Intervenors' defenses share with the "main action" questions of both law and fact. FED. R. CIV. P. 24(b)(2)(B). Plaintiffs claim that S.B. 824 displays a discriminatory intent, will unduly burden the right to vote, will have a disparate impact on minority voters, and thus violates the Fourteenth and Fifteenth Amendments and the Voting Rights Act. *See* Compl. ¶¶ 105–46, Doc. 1. Proposed Intervenors contend that S.B. 824 displays no such intent and will have no such effect, and thus fully complies with the Constitution and the Act. These arguments present completely overlapping questions of fact and law. And since the legal questions are of federal law, permitting intervention will not deprive the Court of subject-matter jurisdiction over this case.

Proposed Intervenors therefore satisfy all requirements for permissive intervention, and the Court should grant their request to intervene. *See Feller*, 802 F.2d at 729 ("[L]iberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." (internal quotation marks omitted)).

CONCLUSION

Proposed Intervenors have a significantly protectable interest in S.B. 824. Defendants will not adequately represent that interest because they oppose the policies embodied in S.B. 824 and cannot be counted on to vigorously or adequately defend them. This Court should allow Proposed Intervenors to intervene under either Rule 24(a) or 24(b).

Dated: January 14, 2019 Respectfully submitted,

/s/ Nicole J. Moss
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*[***Certificates omitted for printing purposes***]*

Dkt. 8-1

EXHIBIT A

[Filed: January 14, 2019]

[SEAL]
Roy Cooper, Governor
State of North Carolina

GOVERNOR ROY COOPER OBJECTIONS AND VETO MESSAGE:

Senate Bill 824, AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE.

Requiring photo IDs for in-person voting is a solution in search of a problem. Instead, the real election problem is votes harvested illegally through absentee ballots, which this proposal fails to fix.

In addition, the proposed law puts up barriers to voting that will trap honest voters in confusion and discourage them with new rules, some of which haven't even been written yet.

Finally, the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect.

Therefore, I veto the bill.

/s/ Roy Cooper
Roy Cooper
Governor

RECEIVED FROM GOVERNOR
Date Dec. 14, 2018
Time 3:46 p.m.
Signed Sarah Holland

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this the 14th day of December 2018, at 3:46 pm for reconsideration by that body.

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of December, 2018.

/s/ Philip E. Berger
Philip E. Berger
President Pro Termpore of the Senate

/s/ Tim Moore
Tim Moore
Speaker of the House of Representatives

VETO
Roy Cooper

_____
Roy Cooper
Governor

Approved ____.m. this _____ day of _____, 2018

RECEIVED FROM GOVERNOR
Date Dec. 14, 2018
Time 3:46 p.m.
Signed Sarah Holland

Dkt. 8-5

EXHIBIT E

[Filed: January 14, 2019]

[SEAL]
Attorney General
Josh Stein

AG STEIN MOVES TO DISMISS CASE ON VOTING LAW

Release date: 2/21/2017

For Immediate Release:
Tuesday, Feb. 21, 2017

Contact:
Laura Brewer
(919) 716-6484

AG Stein Moves to Dismiss Case on Voting Law

(RALEIGH, NC) Attorney General Josh Stein today moved to dismiss the pending petition to the U.S. Supreme Court on the voting law passed in 2013.

"The right to vote is our most fundamental right," said AG Stein. "Voting is how people hold their government accountable. I support efforts to guarantee fair and honest elections, but those efforts should not be used as an excuse to make it harder for people to vote."

In addition to protecting voting rights for North Carolinians, AG Stein's action seeks to save the state up to $12 million in potential liability. Attorneys representing the plaintiffs have agreed to waive up to

$12 million of legal fees from the more than three-year litigation if the petition is dismissed and the litigation ends.

Background on this case:

· After the 2013 law was enacted, a unanimous panel of judges of the U.S. Fourth Circuit Court of Appeals struck it down, writing that "the new provisions target African Americans with almost surgical precision."
· Shortly before he left office, Gov. Pat McCrory filed a petition with the U.S. Supreme Court to overturn the Fourth Circuit Court's ruling.
· AG Stein's action today moved to dismiss that petition, which if granted would mean that the Fourth Circuit Court's ruling against the legislation would be final.
· For more information on this case please view the attached fact sheet.

###

North Carolina Department of Justice / Josh Stein, Attorney General (919) 716-6400

Dkt. 8-13

EXHIBIT M

[Filed: January 14, 2019]

Gov. Cooper Issues Statement on SCOTUS Voter Access Decision

RALEIGH

May 15, 2017

Today, Governor Cooper responded to the Supreme Court' decision not to reinstate the voting restrictions law overturned in federal court last year:

"Today's announcement is good news for North Carolina voters. We need to be making it easier to vote, not harder – and the Court found this law sought to discriminate against African-American voters with "surgical precision." I will continue to work to protect the right of every legal, registered North Carolinian to participate in our democratic process. "

In February, Governor Cooper and Attorney General Stein moved to end the case (http://www.wral.com/cooper-stein-move-to-end-voting-rights-case/16542573/) by withdrawing the state's petition for appeal to the Supreme Court.

Contact Information

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919-814-2100

JA 80

Donate to Hurricane Recovery
(donate-florence-recovery)

Dkt. 34

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: February 12, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina et al., Defendants.	**GOVERNOR COOPER'S REPSONSE TO MOTION TO INTERVENE**

The Governor does not take a position on the motion to intervene. However, the Governor responds to the motion to intervene to address statements made and issues raised by the motion.

This case was filed on December 20, 2018. It challenges the validity of N.C. Sess. Law 2018-144, "AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE." The complaint names as defendants Governor Cooper and nine members of

the State Board of Elections who were members at the time the complaint was filed. All defendants were sued in their official capacities.[1] The Governor's response to the Complaint is due February 28, 2019.

On January 14, 2019, President Pro Tempore of the North Carolina Senate Phillip Berger and Speaker of the North Carolina House of Representatives Timothy Moore moved to intervene in this case. The proposed intervenors' motion challenges the ability of the current defendants to defend the case, as well as the ability of the Attorney General's office to serve as counsel in the defense of the case.

Governor Cooper disagrees with the legislative defendants' contention that intervention is required based on N.C. Gen. Stat. § 1-72.2.[2] Governor Cooper further disputes the contention raised by the proposed intervenors that the Governor and/or the State Board members[3] represented by the Attorney General's Office are not capable of defending this lawsuit. (*See* Mem. in

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[1] The prior State Board of Elections and Ethics Enforcement dissolved on December 28, 2019, and five new members were named to the newly-constituted State Board of Elections effective January 31, 2019.

[2] Because the Governor takes no position on this motion other than to note his disagreement with proposed intervenors' representations, the Governor saves for another day the question of the constitutionality of N.C. Gen. Stat. § 1-72.2.

[3] The Governor anticipates moving for dismissal on the grounds that he has not waived immunity and is not a proper party. However, if the Governor is dismissed from the case, the State Board members would be capable of defending the case.

Supp. of Mot. to Intevene at 11-16) The Governor and the proposed intervenors' alleged policy differences are not material to the question of whether the Governor or other defendants would be able to adequately protect the proposed intervenors' interests. Governor Cooper, the State Board, and the Attorney General's Office are fully capable of performing their duties on behalf of the people of North Carolina. Governor Cooper's veto power and his position on prior legislation that was ultimately declared unconstitutional do not change that fact. Furthermore, cooperation between the parties on procedural matters such as extensions is encouraged by the courts and does not suggest substantive coordination as the proposed intervenors suggest. *See, e.g.*, Fed. R. Civ. P. 1, advisory committee's note to 2015 amendment.

Nonetheless, the Governor takes no position on the motion to intervene and defers to the Court concerning the role of the proposed intervenors in this case.

Respectfully submitted, this 12th day of February, 2019.

JOSHUA H. STEIN
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*[***Certificate omitted for printing purposes***]*

Dkt. 36

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: February 14, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al. Defendants.	**STATE BOARD DEFENDANTS' RESPONSE TO MOTION TO INTERVENE**

Defendants State Board of Elections Chair Robert B. Cordle, *in his official capacity*; State Board of Elections Secretary Stella E. Anderson, *in her official capacity*; State Board of Elections member David C. Black, *in his official capacity*; State Board of Elections member Ken Raymond, *in his official capacity*; and State Board of Elections member Jefferson Carmon III, *in his official capacity*, ("State Board Defendants"), neither consent nor object to the pending motion to intervene filed by President Pro Tempore of the North

Carolina Senate Phillip Berger, and Speaker of the North Carolina House of Representatives Timothy Moore ("Proposed Intervenors").

On January 14, 2019, the Proposed Intervenors moved to intervene in this case [DE 7]. The State Board Defendants accepted service of Summons and Plaintiffs' Complaint on February 4, 2019. Defendant Cooper filed his Response to the Motion to Intervene on February 12, 2019 [DE 34]. On February 13, 2019, this Court issued a text Order setting the State Board Defendants' deadline for filing any response to Motion to Intervene to February 19, 2019. The State Board Defendants incorporate and rely upon Defendant Cooper's arguments in his response to said motion to intervene, and further state the following:

The Proposed Intervenors' motion challenges the ability of the current defendants to defend the case, as well as the ability of the Attorney General's office to serve as counsel in the defense of the case.

For the reasons discussed by Governor Cooper in his response, [DE 34 at 1-2], the State Board Defendants disagree with the Proposed Intervenors' contention that intervention is necessary, or required based on N.C. Gen. Stat. § 1-72.2, or that the State Board Defendants represented by the undersigned counsel are not capable of defending this lawsuit. (DE 8 at 11-16) State Board Defendants note that a federal court in North Carolina has previously rejected a nearly identical contention by the Legislative Intervenors that a mandatory intervention is appropriate under similar circumstances. *Ansley v. Warren*, 2016 U.S. Dist. LEXIS 88010 (W.D.N.C. July 7, 2016) (noting "that

Movants may renew their motions at a later date if it becomes apparent at some point in the future that the State no longer intends to defend the constitutionality of [challenged legislation.]")

Nevertheless, State Board Defendants do not oppose Legislative Intervenors' being permitted to intervene, and defer to the Court's determinations regarding whether and in what capacity the Proposed Intervenors will be permitted to proceed as part of this action.

Respectfully submitted, this 14th day of February, 2019.

JOSHUA H. STEIN
Attorney Genera

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*[***Certificate omitted for printing purposes***]*

Dkt. 38

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: February 19, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP, Plaintiffs, v. **ROY ASBERRY COOPER III**, in his official capacity as the Governor of North Carolina; **ROBERT B. CORDLE**, in his official capacity as Chair of the North Carolina State Board of Elections; **STELLA E. ANDERSON**, in her official	**PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE**

capacity as Secretary of the North Carolina State Board of Elections; **DAVID C. BLACK**, **KEN RAYMOND**, and **JEFFERSON CARMON III**, in their official capacities as members 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,

Proposed Intervenors.

*[***Tables omitted for printing purposes***]*

INTRODUCTION AND STATEMENT OF FACTS

This lawsuit seeks to enjoin North Carolina's Governor and its State Board of Elections (together "the Executive Branch Defendants") from enforcing S.B. 824, a new unconstitutional North Carolina Voter ID law. Compl. 36, ECF No. 1. Philip E. Berger, the

President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, the Speaker of the North Carolina House of Representatives, purportedly acting on behalf of the General Assembly, now seek to intervene as defendants in this lawsuit under Federal Rule of Civil Procedure 24. To justify their intervention, they speculate that the Executive Branch Defendants will decline to defend S.B. 824. In support of that speculation, they recite the Governor and Attorney General's prior political opposition to S.B. 824, and the political affiliations of the reconstituted State Board of Elections.

But the Executive Branch Defendants have now represented that they intend to defend the law. Gov. Cooper's Resp. Mot. Intervene (Cooper's Resp.) 2, ECF No. 34; State Bd. Resp. Mot. Intervene (Bd. Resp.) 2, ECF No. 36. Indeed, the career attorneys at North Carolina Department of Justice, regardless of any political statements made by Governor Cooper, have an ethical and professional obligation to defend the laws of North Carolina. Moreover, as this Court has noted before, purported political opposition to a law, without more, does not provide proposed intervenors with a cognizable interest. *United States v. North Carolina*, No. 13-861, 2014 WL 494911, at *3 n.1 (M.D.N.C. Feb. 6, 2014). For this reason alone, even if the President and the Speaker are authorized to intervene on behalf of the General Assembly, their intervention motion must be denied. Indeed, intervenors do not cite a single case in which a court has permitted a legislative body to intervene to defend issues that the Executive Branch is already defending in the same lawsuit.

The plain language of Rule 24 confirms that conclusion. The General Assembly does not qualify for "Intervention of Right" pursuant to Rule 24(a)(2) because its asserted interests are being adequately represented by the Executive Branch Defendants and because it has no "interest" in the subject matter of this action that justifies intervention. Its interests are no different than any other citizen of North Carolina in assuring that state law is enforced within constitutional constraints. The General Assembly also does not qualify for "Permissive Intervention" pursuant to Rule 24(b)(1)(B) both because the General Assembly has no unique claims or defenses to assert and because its participation in this lawsuit would unduly delay and prejudice the adjudication of the original parties' rights. This result does not mean that the General Assembly's views cannot be heard: Failure to satisfy Rule 24's intervention standard does not preclude the General Assembly from seeking to be heard as *amicus*.

More fundamentally, the General Assembly also may not intervene because it lacks Article III standing, which is a requirement for intervention as a defendant in a federal court. *See Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003). Unlike the Executive Branch, which always has Article III standing to defend statutes because of its "take care" duties, the General Assembly only has Article III standing when its unique legislative interests are at stake or, possibly (though the Supreme Court has never so held), when the Executive Branch declines to defend a statute. Neither situation arises here. The General Assembly's two stated injuries from this lawsuit—(1) a possible injunction against the

enforcement of a North Carolina law; and (2) a burden on the General Assembly's "continuing authority to enact voting laws"—do not satisfy Article III. As to the first purported injury, an injunction against enforcement of S.B. 824 would not give rise to cognizable Article III injury *to the General Assembly*, where, as here, North Carolina's Governor and State Board of Elections are defending the State's law. As to the second, nothing about this lawsuit would affect the General Assembly's ongoing power to enact voting laws: this lawsuit seeks to enjoin enforcement of an unconstitutional law that also violates the federal Voting Rights Act. The General Assembly's power to enact constitutional legislation will be unaffected by this lawsuit.

Regardless, the Speaker and the President Pro Tempore are not authorized to speak for the General Assembly in this lawsuit. The Speaker and President Pro Tempore argue they are authorized under state law to intervene in this case based on a broad reading of a statute that was part of a partisan power grab passed over the Democratic Governor's veto by a supermajority Republican legislature, which this Court has held was an unconstitutional racial gerrymander. *See Covington v. North Carolina*, 316 F.R.D. 117, 176 (M.D.N.C. 2016). The first election with new maps in 2018 resulted in Republicans losing their supermajorities in both chambers. But before those maps went into effect, the legislature amended N.C. Gen. Stat. 1-72.2 to its current form. In its current form, according to the Speaker and President Pro Tempore, it allows them to intervene as they see fit in any case attacking the constitutionality of a North Carolina statute.

But this statute—N.C. Gen. Stat. 1-72.2—requires a legislatively-enacted resolution directing or authorizing the General Assembly's intervention in any particular lawsuit. Any other reading would grant the Speaker and the President Pro Tempore free rein to intervene on the General Assembly's behalf in any lawsuit they wished. Such a delegation of authority would violate the North Carolina Constitution's non-delegation doctrine. Because the General Assembly has not passed a resolution directing the Speaker and President Pro Tempore to act on its behalf, they have no authority to do so or to seek to intervene in this lawsuit.

Finally, the North Carolina Constitution bars the General Assembly from intervening in this lawsuit. The General Assembly's participation in this lawsuit would interfere with the Executive Branch Defendants' defense of the law, and thus the Executive Branch's core power to "take care" that the laws of North Carolina are faithfully executed. N.C. Const. art. III, § 5. There cannot be two States of North Carolina in this lawsuit. Only the Executive Branch speaks for North Carolina. This is because the General Assembly cannot represent North Carolina in federal court unless it is legally authorized to "speak for the State." *Hollingsworth v. Perry*, 570 U.S. 693, 704-10 (2013). Because the North Carolina constitution bars the General Assembly from speaking for North Carolina in this lawsuit, the General Assembly cannot lawfully intervene.

For these reasons, the motion to intervene should be denied.

ARGUMENT

I. The General Assembly's motion fails under Federal Rule of Civil Procedure 24.

A. The General Assembly is not entitled to intervene as of right.

"[N]ot all parties with strong feelings about or an interest in a case are entitled, as a matter of law, to intervene." *North Carolina*, 2014 WL 494911, at *4. The General Assembly's "strong feelings" about S.B. 824 do not entitle it to intervene here. Under Rule 24(a), intervention will be granted to those who submit a timely motion showing that (1) an existing party will inadequately protect an interest that (2) the intervenor has a cognizable interest in protecting. *See In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991). The General Assembly bears the burden of demonstrating all of Rule 24's requirements. *See Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991).

1. The Governor and the State Board of Elections are adequate representatives of the General Assembly's interests.

To the extent that the General Assembly has a protectable interest—which, as discussed in the next section, it does not—it has not shown that Executive Branch Defendants will inadequately protect its interests. The General Assembly claims that its interest is in protecting S.B. 824 from invalidation. The Executive Branch Defendants have the same interest. In fact, it is a constitutionally mandated duty that the Executive Branch Defendants protect a legally enacted

state statute from invalidation. "When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the [applicant] must demonstrate adversity of interest, collusion, or nonfeasance." *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (citations omitted). That presumption is strongest where the Executive Branch represents the interests of the putative intervenors. In that situation, an "exacting showing of inadequacy" is required. *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013); *see also North Carolina*, 2014 WL 494911, at *3 (same). In defining what constitutes a strong showing of inadequacy, this Court has emphasized that mere disagreement over litigation strategy—including the choice of legal arguments and how much "to emphasize certain legal arguments at the expense of others"—is not sufficient. *North Carolina*, 2014 WL 494911, at *3.

The Executive Branch Defendants adequately represent the interest of every North Carolinian—including the General Assembly—in the faithful execution of state law. The Executive Branch Defendants individually and collectively have a duty to defend S.B. 824 against constitutional attacks, *see Gen. Synod of the United Church of Christ v. Resinger*, 2014 WL 5094093, at *3 (W.D.N.C. Oct. 10, 2014) (noting that N.C. Supreme Court has held that the N.C. Attorney General has a duty "prescribed by statutory and common law" "to defend the State . . . in all actions in which the State may be a party), and have refuted the General Assembly's claims that they will not uphold those duties here, *see* Cooper's Resp. 2; Bd.

Resp. 2.[1] The General Assembly has therefore failed to make the "very strong showing of inadequacy" necessary to justify intervention. *Stuart*, 706 F.3d at 351-52.

The General Assembly's motion all but concedes that its only concern is over litigation strategy and thus provides no proof of inadequate representation. The General Assembly claims that the Executive Branch Defendants "cannot be trusted to defend S.B. 824 in the same, rigorous manner" as the General Assembly will, Proposed Intervenors' Mem. Supp. Mot. Intervene (Intervenors' Mem.) 11, ECF No. 8, complaining that Governor Cooper and the State Board of Elections "will certainly not take the same approach to the conduct of the litigation," *id*. 14 (internal quotations omitted). But as this Court and the Fourth Circuit have held, this argument is a non-starter. *See North Carolina*, 2014 WL 494911, at *3; *Stuart*, 706 F.3d at 353.

The General Assembly also fails to establish that the Executive Branch Defendants do not share their purpose. The General Assembly merely speculates that the State Board of Elections will fail to adequately defend the law and relies almost entirely on statements made previously by the Governor and Attorney General regarding the enactment of voter ID laws. But these statements do not demonstrate that the Governor and Attorney General will fail to *defend* this law in court.

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[1] Governor Cooper also states that he may ask to be dismissed on the basis that the State Board of Elections is the proper defendant. But the Governor maintains that regardless of whether he remains in the suit, the State Board is an adequate defendant. Cooper's Resp. 2 n.3.

See, e.g., Intervenors' Mem. 11, 12. This Court has recognized that statements about a bill are irrelevant as to whether a government agency will defend the bill after it becomes law. *See North Carolina*, 2014 WL 494911, at *3 n.1. Indeed, the Executive Branch Defendants are actively defending this case. *See* Cooper's Resp. 2; Bd. Resp. 2.

The General Assembly suggests a less stringent legal standard, one that the Fourth Circuit has addressed and rejected. In their view, an applicant must be permitted to intervene upon a showing that the named defendant will "not take 'the same approach to the conduct of the litigation'" as the applicant. *See* Intervenors' Mem. 11, 14 (citing *United Guar. Res. Ins. Co. v. Phil. Sav. Fund Soc.*, 819 F.2d 473, 476 (4th Cir. 1987) and *Trbovich v. United Mine Workers Am.*, 404 U.S. 528, 538 n.10 (1972)). But the Fourth Circuit has rejected this reading of *United Guaranty* and *Trbovich*, explaining that such a low standard would apply only when the proposed intervenor and named party have "divergent objectives." *Stuart*, 706 F.3d at 352. Here, there is no sign that the Executive Branch Defendants seek any objective other than that of the General Assembly: defending S.B. 824. Thus, *United Guaranty* and *Trbovich* are inapplicable. *Id.*

2. The General Assembly has not articulated a protectable interest.

The General Assembly's "interests" do not rise to the level of Article III injuries and therefore do not qualify as protectable interests under Rule 24, which requires "more than the minimum Article III interest." *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir.

2009); *see also City of Chicago v. FEMA*, 660 F.3d 980, 984 (7th Cir. 2011) ("Article III standing . . . does not suffice to establish the required Rule 24(a) 'interest.'"); *see infra*, Section II (standing). The General Assembly's interest in protecting S.B. 824 from invalidation amounts to nothing but a generalized interest, shared by all North Carolinians, in having laws enforced. It is a foundational principle that a mere interest in the "vindication of the rule of law" is not a legally cognizable interest. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998). And any interest claimed by the General Assembly in protecting its future ability to pass laws is illusory. Nothing about this case will affect the General Assembly's power to pass future laws. *See infra*, Section II.B.

Moreover, North Carolina law does not vest the General Assembly with a protectable interest. State law cannot confer an interest where none otherwise exists. *Cf. Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (holding that a statute cannot confer Article III standing simply by granting a party the right to sue). The General Assembly suggests that *Karcher v. May*, 484 U.S. 72 (1987) holds otherwise, arguing that *Karcher* "establishes that state legislative officials have the authority to defend state enactments in federal court when State law 'authorize[s]'" it. Intervenors' Mem. 7-8. But this is a misstatement of the holding in *Karcher*, which did not address the merits of the New Jersey legislature's standing or right to intervene. Rather, the *Karcher* court discussed only the question of whether state law authorized the Speaker of the General Assembly and President of the Senate to represent the legislature in litigation. *See Karcher*, 484

U.S. at 81-82. "When a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011). Further, parties can waive the right to object to intervention and often do so. *See In re Troutman Enterprises, Inc.*, 286 F.3d 359, 363 (6th Cir. 2002). Put simply, under *Karcher*, statutory authorization was necessary to pursue litigation, but it was not sufficient. *Karcher* thus does not alter Rule 24's requirements regarding the issues at hand.

The dictum the General Assembly relies on from *Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997), citing *Karcher*, is inapposite. In addition to being dictum, the Court in *Arizonans* was describing *ASARCO* standing, which dictates when a party has standing to appeal—a different inquiry than standing in a district court. *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 623-24 (1989). Further, Justice Ginsburg's statement about *Karcher* was simply the recognition that the Court has recognized legislatures sometimes have standing when authorized to represent the statute, but by no means stands for the proposition that legislatures always have standing when authorized under state law. *Cf. Spokeo*, 136 S. Ct. at 1549 (holding that a statute cannot confer Article III standing simply by granting a party the right to sue)

The cases the General Assembly relies on, *Karcher*, *Fisher-Borne v. Smith*, 14 F. Supp. 3d 699 (M.D.N.C. 2014), are also different from this case because in each the Executive Branch declined to defend or further

defend a law, *see Fisher-Borne*, 14 F. Supp. 3d at 703-04 (allowing intervenors into case "but only for the purposes of lodging an objection and preserving that objection," which the Executive Branch would not pursue on appeal)). And in *ACLU v. Tennyson*, the issue of Rule 24 was for all intents and purposes waived, except for timeliness. *See* Pls.' Opp'n Intervenors' Mot. Intervene, ECF. No. 42, *ACLU*, 815 F.3d 183 (4th Cir. 2016) (No. 13-1030) (objecting on timeliness grounds but not on any other Rule 24 requirement). Intervenors cite no decision in which a legislature has been permitted to intervene in the defense of an issue in district court litigation, when the Executive Branch was defending the same issue in the lawsuit.

B. Permissive intervention should be denied.

The General Assembly also cannot meet the standard for permissive intervention. Permissive intervention "is a device for achieving judicial economy by saving court time." 25 Fed. Proc. L. Ed. § 59:368. An applicant for permissive intervention must submit a timely motion showing that he meets one of the four eligibility criteria set forth in Rule 24(b). Rule 24(b)(1)(B), the only criterion that the General Assembly claims it satisfies, contemplates intervention by an applicant whose concrete legal interests are at stake—typically in a separate proceeding—but might be prejudiced by the result in the "main action." *See, e.g., Deus v. Allstate Ins. Co.*, 15 F.3d 506, 525 (5th Cir. 1994); *see also* Fed. R. Civ. P. 24(b). Even upon a showing of eligibility, however, a request for permissive

intervention shall be denied if the Court finds that "intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

1. The General Assembly is not eligible for permissive intervention.

The General Assembly argues that it is eligible for permissive intervention under both Rule 24 (b)(1)(B) and (b)(2)(B). The General Assembly cites Fed. R. Civ. P. 24(b)(2)(B). But the General Assembly fails to explain how that section of the Rule provides a basis for permissive intervention, nor does the General Assembly satisfy its requirements. *See United Church of Christ*, 2014 WL 5094093, at *3 (holding that "a legislative body promulgates, debates, and passes laws; however, it is not even arguable that the legislature administers or enforces those laws" under Rule 24(b)(2)).

The General Assembly also argues it satisfies 24(b)(1)(B) because it has at least one "claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). The General Assembly offers a factual defense, Intervenors' Mem. 17, as well as four affirmative defenses, Answer Proposed Intervenors 31-32, ECF No. 7-1. These proffered defenses are inadequate to support permissive intervention.

The General Assembly does not actually have a "claim or defense." Each of the General Assembly's purported claims is nothing more than a claim that the current law must continue to be enforced. But a

"general ideological interest in seeing that [a State] enforces [its laws]" is not a "claim or defense." *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007); *see also* 25 Fed. Proc. L. Ed. § 59:376; *see also Allen Calculators*, 322 U.S. at 141-42 (noting that permitting a "multitude" of interventions in a case "of large public interest" "may result in accumulating proofs and arguments without assisting the court").

Moreover, the General Assembly's proffered defenses are indistinguishable from those that the Executive Branch Defendants are capable of raising. Courts routinely recognize that "defenses [that] are not unique" to the proposed intervenor "can be adequately represented by defendants" and do not justify permissive intervention; otherwise, "numerous third-parties [could] seek intervention on the same bases." *Hodes & Nauser, MDs, P.A. v. Moser*, 2011 WL 4553061, at *4 (D. Kan. Sept. 29, 2011); *see also New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 472 (5th Cir. 1984) (en banc) (similar); *Menominee Tribe of Wis. v. Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996) (similar). The General Assembly has failed to rebut the presumption that the Executive Branch Defendants adequately represent the State's interests. *See supra* Section I.A.1. Thus, permissive intervention should be denied.

The General Assembly characterizes its interest as being "so ingrained in North Carolina law that" the General Assembly and its Speaker and President are "often named defendants in state court litigation challenging state laws[.]" Intervenors' Mem. 9

(emphasis omitted).[2] But in state court, the leaders of the state House and Senate "must be joined as defendants" in any suit "challenging the validity of a North Carolina statute . . . under State or federal law." N.C.R. Civ. P. 19(d). There is no equivalent rule in federal civil procedure. Thus, whether the General Assembly is a proper party under *state* civil procedure rules is irrelevant to whether the General Assembly has an interest that warrants intervention under *federal* civil procedure rules.

2. Allowing permissive intervention would unduly delay and prejudice the adjudication of Plaintiffs' rights.

Even if the Court finds that the General Assembly qualifies for permissive intervention, Plaintiffs respectfully request that the Court exercise its discretion to deny intervention. "In exercising its discretion," Rule 24 advises, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Barring an injunction from this Court, S.B. 824 will harm voters starting with this year's primary election season, beginning in August. Even a slight delay could prejudice Plaintiffs' rights. *See Athens Lumber Co. v. Fed. Election Comm'n*, 690 F.2d 1364, 1367 (11th Cir. 1982) (affirming denial of permissive intervention in light of the need for expeditious resolution of

[2] The General Assembly argues that the legislature as a litigating party is "ingrained in North Carolina law" and yet fails to cite a case prior to 2015. Intervenors' Mot. 9.

constitutional challenges to election laws and because "the introduction of additional parties inevitably delays proceedings").

There is reason to believe that the General Assembly's participation in this case will result in delay and prejudice. The General Assembly recently asked this court for an indefinite stay of all motions—even motions for emergency relief. Opp'n Mot. Ext'n Time Respond Mot. Intervene 3, ECF No. 25. That request shows that participation by the General Assembly will, at minimum, delay the resolution of this case, risking prejudice to the plaintiffs. *See Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 346 (6th Cir. 2007).

II. The General Assembly does not have Article III standing.

The General Assembly's request to intervene is also improper because it lacks Article III standing. Article III limits the exercise of the judicial power to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy." *Town of Chester v. Laroe Estates*, 137 S. Ct. 1645, 1650 (2017) (citation omitted). To intervene as a defendant-intervenor in a federal lawsuit, a party must have Article III standing. *See Fund For Animals, Inc.*, 322 F.3d at 731-32; *see also Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 912 (10th Cir. 2017); *Flying J, Inc.*, 578 F.3d at 571; *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1023 (8th Cir. 2003); *Solid Waste Agency v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 507 (7th Cir. 1996).

An essential requirement to establish Article III standing is "injury in fact." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). A litigant, including intervenor-defendants, must show that he has suffered or will suffer an injury that is "concrete and particularized," and "actual or imminent, not conjectural or hypothetical." *Id.* (internal quotations and citations omitted); *accord Fund For Animals, Inc.*, 322 F.3d at 733 (requiring intervenor-defendant to satisfy Article III standing). The General Assembly has no Article III injury. The General Assembly identifies two injuries that allegedly support their intervention: (1) the non-enforcement of a North Carolina law; and (2) a burden on the General Assembly's "continuing authority to enact voting laws." Intervenors' Mem. 10. The first of these alleged injuries is neither concrete nor particularized, but rather shared by every North Carolinian. The second injury simply will not result from this lawsuit. No relief arising from this lawsuit would pose additional limits on the General Assembly's legislative powers or functions that do not already exist under the state and federal constitutions. Finally, the General Assembly's suggestion that a North Carolina law can grant it Article III standing contravenes decades of Supreme Court precedent saying otherwise.

A. An interest in the enforcement of state law is not a concrete and particularized injury.

The General Assembly's generalized interest in having the laws enforced does not give rise to an Article III injury. For nearly a century, the Supreme Court has held that citizens who bring lawsuits

alleging that the government violated "a right to have the Government act in accordance with law" do not have Article III standing. *Lujan*, 504 U.S. at 575; *see Fairchild v. Hughes*, 258 U.S. 126, 129 (1922) (similar). This type of injury results in an "impact on [the party] . . . plainly undifferentiated and common to all members of the public." *United States v. Richardson*, 418 U.S. 166, 176-77 (1974) (internal quotations and citations omitted).

The General Assembly also suggests that this lawsuit injures its interest in "protect[ing] the integrity of and public confidence in elections." Intervenors' Mem. 10. But everyone in North Carolina has an interest in the integrity of North Carolina elections. Injuries that apply to everyone in a state are "necessarily abstract" in nature, not concrete and particularized as Article III requires. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220 (1974). When it comes to these types of abstract injuries, the Supreme Court has been clear: a mere interest in the "vindication of the rule of law" is not a legally cognizable interest that can support Article III standing. *Steel Co.*, 523 U.S. at 106. Here, North Carolinians' interests are represented by the Executive Branch Defendants. There cannot be two North Carolinas in one case. *Cf. Buckley v. Valeo*, 424 U.S. 1, 139-40 (1976) (holding that civil litigation involving public rights must be carried out by the Executive Branch).

B. Any burden on legislative authority is not an Article III injury.

The General Assembly claims that its legislative powers will be "burdened" by S.B. 824's invalidation. Even if that were so, such a "burden" would not be an Article III injury. *See Raines v. Byrd*, 521 U.S. 811, 828-29 (1997). The Supreme Court has never held that legislatures have standing in a suit simply because a law is being attacked as unconstitutional. And the General Assembly cites no case that says otherwise.

Plaintiffs do not request any relief that could be construed as "burden[ing]" the General Assembly's "continuing authority to enact voting laws." Intervenors' Mem. 10. Plaintiffs ask this Court to enjoin the *Executive Branch* in its enforcement of S.B. 824 and to retain jurisdiction so as to enjoin the *Executive Branch* from enforcing other new voting laws that have not been cleared as constitutional by this Court.

Further, only lawsuits where legislators lose uniquely legislative powers give rise to Article III injuries. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015) (recognizing state legislature's standing for losing power to enact redistricting maps); *Coleman v. Miller*, 307 U.S. 433, 436 (1939) (recognizing state senators' standing for losing ability to ratify or deny constitutional amendments). But this case does not affect the General Assembly's legislative powers at all. Even if Plaintiffs obtain all of their requested relief, the General Assembly will remain free to pass any laws it sees fit.

C. The General Assembly cannot create Article III standing by pointing to a North Carolina statute.

A state statute cannot confer Article III standing on a state legislature. A state legislature can represent a State's interests in federal court, but only where the legislature otherwise has an Article III injury. *See Hollingsworth*, 570 U.S. at 712 . It is firmly established that a statute cannot create standing by simply declaring that a party has standing. *See Spokeo*, 136 S. Ct. at, 1549 ("Article III standing requires a concrete injury even in the context of a statutory violation."); *see also, e.g., Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773 (2000).

III. The Speaker and the President lack the authority to intervene on behalf of the North Carolina General Assembly

One may "speak for the State" in federal court only if the State has authorized one to do so. *See Hollingsworth*, 570 U.S. at 710. But the statute that the Speaker and the President argue authorizes them to intervene on behalf of the General Assembly, NC Gen. Stat. 1-72.2, requires the General Assembly to authorize intervention in this suit, which it has not done. Any other reading of NC Gen. Stat. 1-72.2 violates North Carolina's non-delegation doctrine. Constitutional avoidance thus counsels interpreting NC Gen. Stat. 1-72.2 to require a vote of the legislature before intervention may be attempted. No such vote occurred in this case, and the Speaker and President are unauthorized to seek intervention in the present case.

A. The North Carolina General Assembly has not voted, as required under NC Gen. Stat. 1-72.2, to authorize the Legislators to intervene here.

Originally, NC Gen. Stat. 1-72.2 was a limited grant of authority to the General Assembly to intervene in lawsuits. *See* H.B. No. 1133, S.L. 2014-115, § 3 (2014) (enacted). Faced with a Democratic Governor and Attorney General, the Republican supermajority, which this Court had held was a racial gerrymander, *see Covington*, 316 F.R.D. at 176, enacted a significant expansion of NC Gen. Stat. 1-72.2 over the Governor's veto. *See* S.B. 257, S.L. 2017-57, §6.7.(i) (2017) (enacted). In its current form, NC Gen. Stat. 1-72.2 provides that the Speaker of the House of Representatives and the President Pro Tempore of the Senate may intervene in suits only when they show that they are "interven[ing] on behalf of the General Assembly" as "agents of the State." Those provisions mean that the General Assembly must first enact a resolution authorizing or directing the Speaker and the President to intervene in a lawsuit before they may do so. Basic principles of agency law require this reading.

Absent a resolution authorizing or directing their intervention in a lawsuit, the Speaker and the President do not satisfy the most basic features of an agency law. Agency requires more than mere authorization to assert a particular interest. "An essential element of agency is the principal's right to control the agent's actions." 1 Restatement (Third) of Agency § 1.01, Comment f (2006). And, for "the relationship between two persons [to be] one of agency"

an "agent" must "owe[] a fiduciary obligation to the principal." *Id.* § 1.01, Comment e.

NC Gen. Stat. 1-72.2 is thus best read to incorporate the traditional requirement that a legislative agent must be authorized or directed to enter a *particular* lawsuit by a resolution of the legislative body that the agent purports to represent. That is how the U.S. Congress has traditionally authorized federal court intervention. *See* H. Res. 5, 113th Cong. § 4(a)(1) (2013) (enacted) (authorizing Bipartisan Legal Advisory Group to represent the House in *United States v. Windsor*); *see* 159 Cong. Rec. 27 (Jan. 3, 2013); H. Res. 49, 97th Cong. (1981) (enacted) (authorizing Speaker of the House "to protect the interests of the House before the court in the case of *Chadha v. Immigration and Naturalization Service*"). That is also how State legislative intervenors have joined lawsuits. *See Karcher*, 484 U.S. at 75 (describing how "Speaker of the New Jersey General Assembly and President of the New Jersey Senate, respectively, sought and obtained permission to intervene as defendants on behalf of the legislature"); First Am. Compl. Ex. A 3, 11, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 997 F. Supp. 2d 1047 (D. Ariz. 2014) (No. 12-cv-01211) (noting legislature voted to authorize the lawsuit against redistricting commission).

Unlike North Carolina's executive officials, the Speaker and the President have no duty to take care that the laws of North Carolina are "faithfully executed." N.C. Const. art. III, §§ 1, 5(4). Yet, as the Speaker and the President interpret NC Gen. Stat.

1-72.2, they are free to pursue a purely ideological commitment to any law's constitutionality without the need to take cognizance of resource constraints, changes in public opinion, potential ramifications for other state priorities—or to seek the advice and consent of the legislative body at all. That could not possibly have been the intent of the General Assembly when it enacted NC Gen. Stat. 1-72.2. Because they have not obtained authorization to intervene on behalf of the General Assembly, the Speaker and the President may not intervene here.

B. If NC Gen. Stat. 1-72.2 allows the Legislators to intervene without a vote of the legislature, the statute violates the North Carolina non-delegation doctrine.

Under the North Carolina non-delegation doctrine, embodied in Article I, Section 6 and Article II, Section 1 of the North Carolina Constitution, the legislature can delegate only a "limited portion of its legislative powers," and it can do so only if the delegation is "accompanied by adequate guiding standards." *Adams v. N.C. Dep't of Nat. & Econ. Res.*, 249 S.E.2d 402, 410 (N.C. 1978); *see also Conner v. N.C. Council of State*, 716 S.E.2d 836, 842 (N.C. 2011). While the text of NC Gen. Stat. 1-72.2 itself provides *no* guiding standards that dictate when, how, or why the General Assembly will intervene in any particular lawsuit, the state constitutional principles that govern the legislature's authority make it clear that specific legislative authorization to intervene is required—any other

interpretation of N.C. Gen. Stat. 1-72.2 would violate North Carolina's non-delegation doctrine.

IV. Allowing the General Assembly to intervene here—where the Executive Branch Defendants are defending the law—would violate North Carolina's separation of powers.

North Carolina law bars the General Assembly from intervening in this suit. Under the North Carolina Constitution, defending the constitutionality of laws is a core Executive Branch function. N.C. Const. art. III, §§ 1, 5(4). Because this case involves an exercise of the Executive Branch's core "take care" responsibility, and because the General Assembly's intervention would, *at minimum*, interfere with the Executive Branch Defendants' exercise of that responsibility in this case, the North Carolina Constitution bars legislative intervention in this lawsuit.

The North Carolina Constitution's separation of powers is far stricter than the U.S. Constitution's separation of powers. Article I, section 6 of the North Carolina Constitution provides: "The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." Separation of powers is "[a]mong the most important rights guaranteed in the North Carolina Constitution" because it is "essential to preserve liberty and prevent tyranny." *Richmond Cty. Bd. of Educ. v. Cowell*, 803 S.E.2d 27, 30 (N.C. App. 2017), *review denied*, 809 S.E.2d 872 (N.C. 2018).

North Carolina's Separation of Powers Clause is violated "when one branch exercises power that the constitution vests exclusively in another branch" or "when the actions of one branch prevent another branch from performing its constitutional duties." *McCrory v. Berger*, 781 S.E.2d 248, 256 (N.C. 2016). If applied as the General Assembly claims, NC Gen. Stat. 1-72.2 violates the separation of powers in both ways: it allows the Legislative Branch to exercise a power—defense of legislation on behalf of the State—that the Constitution vests exclusively in the Executive Branch, and it interferes with the Executive Branch Defendants' performance of that core executive power.

The responsibility to "take care" that the laws are faithfully executed, including the decision of how to defend the constitutionality of legislation, is a uniquely executive function. The North Carolina Constitution commands that the Governor "shall take care that the laws be faithfully executed." N.C. Const. art. III, §§ 1, 5(4). And the North Carolina Supreme Court has held that the power "to take care that the laws are faithfully executed" is a core power of the executive. *McCrory*, 781 S.E.2d at 258.

Defending the constitutionality of legislation in this Court is part of the Executive Branch's "take care" duty. The Framers of the identically-worded federal Take Care Clause intended to ensure that Executive officers be duty-bound to defend the law. Todd Garvey, Cong. Research Serv., R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law* 5 (2014). Faithful execution requires not only enforcement but also defense when those laws are

challenged in court. *See* Note, *Executive Discretion and the Congressional Defense of Statutes*, 92 Yale L.J. 970 (1983). When the legislature assumes the power to defend the constitutionality of laws in a manner that *differs* from the method chosen by the Executive Branch Defendants, the legislature necessarily usurps and interferes with the executive's core "take care" power. *See Wallace*, 286 S.E.2d at 88.

By intervening in this lawsuit, the General Assembly seeks to take an active role in supervising and overseeing how North Carolina's legislation will be defended in the courts from constitutional attack. That oversight violates the separation of powers.

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court deny the Motion to Intervene.

Respectfully submitted, this 19th day of February, 2019.

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Dkt. 48

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA**

Case No. 1:18-cv-01034-LCB-LPA

[Filed: March 5, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL - CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP,

Plaintiffs,

v.

ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; ROBERT B. CORDLE, in his official capacity as Chair of the North Carolina State Board of Elections; STELLA E. ANDERSON, in her official capacity as Secretary of the North Carolina State Board of

PROPOSED INTERVENORS' REPLY TO THE RESPONSES TO THEIR MOTION TO INTERVENE

Elections; DAVID C. BLACK, KEN RAYMOND, and JEFFERSON CARMON III, in their official capacities as members 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,

Proposed Intervenors.

*[***Table of Contents and Table of Authorities omitted for printing purposes***]*

Notably absent from the filings of the named Defendants is any statement defending the constitutionality of North Carolina's voter ID law, S.B. 824. Although both Governor Cooper and the State Board Defendants have filed motions to dismiss, neither has argued that Plaintiffs' claims lack merit. Rather, Governor Cooper primarily argues that he should not be required to defend the law in the first place. *See* Gov. Cooper's Mem. in Supp. of Mot. to

Dismiss or, in the Alternative, for a Stay at 6-17 (Feb. 28, 2019), Doc. 45 ("Gov's. MTD Br."). And the Board argues that this Court should defer to the ongoing litigation in state court over the validity of S.B. 824 under the North Carolina Constitution. *See* State Bd. Defs.' Mem. in Supp. of Their Mot. to Dismiss or, in the Alternative, Mot. to Stay at 6-13 (Feb. 28, 2019), Doc. 43 ("Bd's. MTD Br."). Neither so much as hints that they believe S.B. 824 is constitutional. Governor Cooper for his part never repudiates his veto statement that S.B. 824 was "designed to suppress the rights of minority, poor and elderly voters," Proposed Intervenors' Mem. in Supp. of Their Mot. to Intervene (Jan. 14, 2019), Doc. 8, Ex. A ("Proposed Intervenors' Mem."), a statement that is tantamount to an admission of unconstitutionality. And the Board Defendants—who owe their positions to Governor Cooper and can be dismissed at his pleasure—can bring themselves only to say that S.B. 824 "*purports* to implement" the North Carolina Constitution's command that the General Assembly enact a voter ID law. Bd's. MTD Br. at 8 (emphasis added).

The named Defendants are thus either outright hostile towards or, at a minimum, unwilling to defend the General Assembly's validly enacted law. Proposed Intervenors must be permitted to intervene to provide S.B. 824 a full and fair defense. While Plaintiffs labor to resist this conclusion, all their arguments lack merit.

I. **Proposed Intervenors Have Standing To Intervene.**

Supreme Court precedent clearly establishes that state legislators have standing to defend state laws

when a state statute authorizes them to do so, as N.C. Gen. Stat. § 1-72.2 authorizes Proposed Intervenors to do here. *See Karcher v. May*, 484 U.S. 72, 81-82 (1987); *Hollingsworth v. Perry*, 570 U.S. 693, 710 (2013); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997).

Plaintiffs' attempts to distinguish these cases all fail. Plaintiffs argue that *Karcher* was not about standing. Yet the Supreme Court has expressly confirmed that it was, explaining that the state legislators who intervened in *Karcher* "lost **standing**" once they lost their leadership positions. *Hollingsworth*, 570 U.S. at 710 (emphasis added). Despite what Plaintiffs say, *Arizonans for Official English* also establishes that legislators have standing to defend when authorized to do so: Petitioners there were not "Article-III-qualified defenders" of state law under *Karcher* specifically because they were not "elected representatives" authorized to litigate "as agents of the people of Arizona." 520 U.S. at 65. And though Plaintiffs twice characterize *Spokeo, Inc. v. Robins* as holding that "a statute cannot confer Article III standing simply by granting a party the right to sue," Pls.' Opp'n to Mot. to Intervene at 9, 10 (Feb. 19, 2019), Doc. 38 ("Pls.' Opp'n"), *Spokeo* concerned whether a statute can create an injury where one does not exist in the real world—not whether an individual or entity has standing to defend against a real-world injury that undoubtedly is threatened to occur. *See* 136 S. Ct. 1540, 1549 (2016). And invalidating a state law clearly would cause a real injury. Indeed, "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a

form of *irreparable* injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (emphasis added) (brackets omitted).

Plaintiffs cite out-of-circuit cases applying the *Lujan* standing factors to intervenors. Pls.' Opp'n at 14. But none deals with legislative intervenors authorized to defend state law, and thus none is relevant. Nor is Plaintiffs' discussion of the *Lujan* factors. *See id.* at 15-17. The Court need not apply those factors to begin with, since Proposed Intervenors seek only to *prevent* the relief sought here. *Cf. Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) ("[A]n intervenor of right must have Article III standing in order to *pursue relief* that is *different* from that which is sought by a party with standing." (emphasis added)); *accord* 7C WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1908 (3d ed., Nov. 2018 update). Plaintiffs cite no Fourth Circuit case requiring that all intervenor defendants—let alone legislative intervenor defendants—establish Article III standing, and Proposed Intervenors have not found one either. Moreover, this case will remain justiciable even if the Court allows Proposed Intervenors to participate without determining whether they meet the *Lujan* factors, given that the Board has promulgated proposed temporary rules and therefore appears poised to enforce S.B. 824. *See* Proposed Temporary Rule, 08 NCAC 17 .0107 Voter Identification Card (Feb. 8, 2019) ("Exhibit A"). In this context, the Supreme Court has permitted a legislative intervenor to participate without determining whether the intervenor independently has standing. *See United States v. Windsor*, 570 U.S. 744, 761-62 (2013). Proposed

Intervenors' intervention would only ensure that this case maintains "that concrete adverseness which sharpens the presentation of issues." *Id.* at 760 (quotation marks omitted).

But if the Court applies the *Lujan* factors, *Karcher*, *Arizonans*, and *Hollingsworth* confirm that Proposed Intervenors meet them: the State—which State law authorizes Proposed Intervenors to represent—faces an imminent injury, namely the threat that its law will not be enforced; Plaintiffs have caused that injury by creating that threat; and the Court would redress that injury by dismissing this suit. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Cases like this one illustrate why the State "must be able to designate agents to represent it in federal court," *Hollingsworth*, 570 U.S. at 709-10, just as Section 1-72.2 designates Proposed Intervenors.

Plaintiffs argue that Section 1-72.2 does not authorize Proposed Intervenors to intervene because "the General Assembly must first enact a resolution authorizing or directing the Speaker and the President [Pro Tempore] to intervene in a lawsuit before they may do so." Pls.' Opp'n at 18. That requirement simply does not exist in Section 1-72.2, which designates Proposed Intervenors as agents of the State whenever a state law is challenged. *See* N.C. GEN. STAT. § 1-72.2.

Plaintiffs nevertheless argue that Section 1-72.2 is "best read" not to mean what it says, Pls.' Opp'n at 19, for four reasons. First, they argue that it should require a resolution because "[a]n essential element of agency is the principal's right to control the agent's actions." RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt.

f(1). But the General Assembly retains the authority to control Proposed Intervenors. If the Senate or House were dissatisfied with Proposed Intervenors' conduct in this litigation, it could relieve them of their leadership roles and hence of their representative capacities. *Cf. Karcher*, 484 U.S. at 81.

Second, Plaintiffs point out that other legislatures have passed resolutions designating member representatives for specific cases. Section 1-72.2 simply saves the General Assembly the trouble, establishing essentially a continuing resolution that Proposed Intervenors have authority to defend state statutes for the General Assembly, authority the Assembly conferred on Proposed Intervenors by giving them their leadership roles. That other states might structure things differently is of no moment.

Third, Plaintiffs argue that to apply Section 1-72.2 as written would cause an unconstitutional delegation of legislative power. *See* Pls.' Opp'n at 20. But the legislature has delegated power only to itself: Section 1-72.2 provides that "the General Assembly . . . constitutes the legislative branch" in federal suits about the validity of state laws and asks courts to allow "the legislative branch" to participate in such suits. N.C. GEN. STAT. § 1-72.2(a). Even Plaintiffs refer to Proposed Intervenors as "the General Assembly." *See, e.g.*, Pls.' Opp'n at 5. True, Proposed Intervenors are the Assembly's representatives in court. Yet they remain members of the legislature, so delegation concerns simply do not arise. *See Adams v. N.C. Dep't of Nat. & Econ. Res.*, 249 S.E.2d 402, 410 (N.C. 1978).

Finally, Plaintiffs argue that Section 1-72.2 violates the separation of powers because, by defending S.B. 824, Proposed Intervenors would interfere with the Governor's duty to "take care that the laws be faithfully executed." N.C. CONST. art. III, § 5(4). Plaintiffs imply that Section 1-72.2 creates this problem only "[i]f applied as the General Assembly claims." Pls.' Opp'n at 21. But if, as Plaintiffs say, deciding "how to defend the constitutionality of legislation[] is a uniquely executive function," then legislators violate the separation of powers whenever they defend a law, resolution or no resolution. Pls.' Opp'n at 22. That would mean that *Karcher* and its progeny condone constitutional violations, and that every example Plaintiffs cite to support their supposed resolution requirement was a constitutional violation as well. *See* Pls.' Opp'n at 19.

None of that is true, however, because defending a law is not the same as executing it. To execute a law means to put it into effect—to "abide by statutory mandates." *In re Aiken Cty.*, 725 F.3d 255, 259 (D.C. Cir. 2013). The Governor retains full authority to put S.B. 824 into effect by following its mandates; Proposed Intervenors seek only to defend it in court. And Plaintiffs' lone source for the proposition that defending laws is the sole province of the executive is a student note that in fact says the opposite. *See* Note, *Executive Discretion and the Congressional Defense of Statutes*, 92 YALE L.J. 970, 971 (1983) ("[T]his Note addresses the threshold jurisdictional issues raised by the congressional defense of federal statutes and concludes that no barrier exists to such congressional representation."); *accord I.N.S. v. Chadha*, 462 U.S. 919, 939 (1983) ("Congress is . . . a proper party to

defend the constitutionality of [a federal law.]"). Besides, the Governor is trying to leave this suit. So Proposed Intervenors could not interfere with his duty to defend S.B. 824 because he is not fulfilling it.

II. Proposed Intervenors Are Entitled To Intervene as of Right.

Plaintiffs do not dispute that Proposed Intervenors have made a "timely motion" and that an injunction against S.B. 824 would "impair or impede" Proposed Intervenors' interest in seeing that law enforced. FED. R. CIV. P. 24(a)(2). They also do not dispute—or mention—this Circuit's view that "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quotation marks omitted). And all the arguments they do make lack merit.

a. Proposed Intervenors Have a Significantly Protectable Interest in the Subject of this Suit.

Proposed Intervenors have a "significantly protectable" interest in the enforcement of a constitutionally valid law that the General Assembly enacted at the people of North Carolina's express command. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Plaintiffs say this interest amounts only to "strong feelings" about S.B. 824. Pls.' Opp'n at 5 (quoting *United States v. North Carolina*, No. 13-861, 2014 WL 494911, at *4 (M.D.N.C. Feb. 6, 2014)). But the Supreme Court has not been so dismissive: "No one

doubts that a State has a cognizable interest in the continued enforceability of its laws that is harmed by a judicial decision declaring a state law unconstitutional." *Hollingsworth*, 570 U.S. at 709-10 (quotation marks and citation omitted); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes"); *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2665 (2015) (holding that the Arizona legislature had an interest in preventing its laws from being "nullified"). Nor have this Court or the Fourth Circuit, which have both permitted Proposed Intervenors to defend North Carolina's interests pursuant to Section 1-72.2. *See* Proposed Intervenors' Mem. at 9-10. Indeed, the Court has already recognized Proposed Intervenors' interest in this case as "legitimate." Text Order (Feb. 4, 2019).

Proposed Intervenors' status as legislators and duty to defend S.B. 824 distinguish this case from those Plaintiffs cite—particularly the unpublished decision of this Court they cite most. *See North Carolina*, 2014 WL 494911, at *4 (denying a private group and individual's motion to intervene because the existing state defendants would "litigate vigorously"). Proposed Intervenors have not simply a general interest in vindicating the rule of law, but a specific interest in vindicating the law that Plaintiffs have challenged. And despite what Plaintiffs say, this case could affect the General Assembly's future ability to pass voter ID laws. For if this carefully crafted and voter-protective law is enjoined, the people of North Carolina have scant hope of seeing their voter ID amendment enforced. At a minimum an adverse outcome would

constrain the General Assembly's options moving forward.

b. The Governor and Board Have Demonstrated that They Will Not Adequately Represent Proposed Intervenors' Interest.

The Governor and Board have already shown that they will not mount the defense necessary to ensure S.B. 824's continued enforceability. In their Responses to the Motion to Intervene, neither argued that S.B. 824 is constitutional. They took no position on that question at all, revealing that their defenses of S.B. 824 would "materially differ[]" from Proposed Intervenors', *see* Text Order (Feb. 4, 2019), and might be nonexistent.

Their Motions to Dismiss have confirmed that their positions significantly differ from Proposed Intervenors'. Neither contains so much as a passing assertion that S.B. 824 is constitutional. Instead, the Governor seeks primarily to excuse himself from this suit, happy to leave S.B. 824's defense in other hands. *See* Gov's. MTD Br. at 6-17. Yet the Board does not defend S.B. 824 either: it merely asks the Court to "refrain" from deciding this case, or to abstain from doing so until the concurrent state litigation over S.B. 824 is resolved. *See* Bd's. MTD Br. at 6, 13; *accord* Gov's. MTD Br. at 17-21 (also arguing for abstention). The strength of these arguments is questionable. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) ("Federal courts have a virtually unflagging obligation to exercise the jurisdiction given them." (cleaned up)). But whatever their strength they evince

no intention to defend S.B. 824. Indeed, the Board's and Governor's abstention requests themselves evince doubt about S.B. 824's validity, for those requests reveal that they think S.B. 824's validity under the North Carolina Constitution is, in the Board's words, "far from settled." Bd's. MTD Br. at 11; *accord* Gov's. MTD Br. at 17–21.[1]

Far from "refut[ing] the General Assembly's claims that they will not uphold th[eir] duties" to defend S.B. 824, then, the Governor's and Board's conduct proves those claims to be true. Pls.' Opp'n at 6. Our disagreement with the Governor and Board is not over whether "to emphasize certain legal arguments at the expense of others." *North Carolina*, 2014 WL 494911, at *3. We disagree over whether to defend S.B. 824 at all. It is therefore irrelevant that courts might not permit legislators to intervene "when the Executive Branch [i]s defending the same issue in the lawsuit." Pls.' Opp'n at 10. The Governor and Board's objective thus far is for the Court to avoid the issue of S.B. 824's constitutionality altogether. That objective "diverge[s]"

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[1] Although the Board has baldly asserted in its state court briefing that S.B. 824 does not violate the North Carolina Constitution, its defense of S.B. 824's constitutionality has so far been a tepid one devoid of any substantive legal argument. *See* State Defs.' Br. at 6, *Holmes v. Moore*, No. 18 CVS 15292 (Wake Cty. Sup. Ct. Feb. 27, 2019). In contrast, Proposed Intervenors—who are named defendants in that case—have vigorously defended S.B. 824's constitutionality with over 70 pages of briefing. *See* Legislative Defs.' Br. in Supp. of the Mot. to Dismiss the Compl., *Holmes v. Moore*, No. 18 CVS 15292 (Wake Cty. Sup. Ct. Feb. 27, 2019); Legislative Defs.' Reply Br. in Supp. of the Mot. to Dismiss the Compl., *Holmes v. Moore*, No. 18 CVS 15292 (Wake Cty. Sup. Ct. Mar. 4, 2019).

starkly with Proposed Intervenors', and only increases the risk that this suit presents to their interest in the enforceability of S.B. 824. *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013). Proposed Intervenors therefore easily carry the "minimal" burden that, as even Plaintiffs admit, Rule 24(a) imposes in these circumstances. *Id.* at 351 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

III. Proposed Intervenors Are Also Entitled to Permissive Intervention.

Proposed Intervenors are entitled to intervene not only as of right but also pursuant to Rule 24(b)(1)(B), under which "the court may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact."[2] Plaintiffs' contention that Proposed Intervenors are not "eligible" to intervene under that Rule disregards that the Court has allowed Proposed Intervenors to do just that in other litigation. *See* Proposed Intervenors' Mem. at 16. It is also based on two false premises: first, that the Governor and Board will raise the same defenses as Proposed Intervenors, which the Governor and Board have disproven; and second, that Proposed Intervenors' legal defense of S.B. 824 would not constitute a "defense" under Rule 24(b)(1)(B), which of course it would. *See, e.g., Diamond v. Charles*, 476 U.S. 54, 76 (1986) (O'Connor, J., concurring in part and in the

[2] Contrary to Plaintiffs' characterization, Proposed Intervenors do not seek intervention under Rule 24(b)(2)(B). Although the Motion cites that Rule, the language that the Motion actually quotes and relies upon comes from Rule 24(b)(1)(B).

judgment) ("The words 'claim or defense' manifestly refer to the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit[.]").

Finally, Plaintiffs' speculation that Proposed Intervenors would delay this suit by participating in it is unfounded. Plaintiffs overtly mischaracterize our opposition to their own effort to delay resolution of the instant Motion as requesting "an indefinite stay of all motions." Pls. Opp. at 14. In fact, we asked that the Court *deny* their requested extension. *See* Opp'n to Mot. for Extension of Time to Respond to Mot. to Intervene (Jan. 31, 2019), Doc. 25.

Proposed Intervenors will continue to adhere to whatever deadlines the Court sets. It is no doubt in Plaintiffs' interest that the Court not hear any arguments on S.B. 824's behalf. But it is in the Court's interest—and the people of North Carolina's—that it does. *See Feller*, 802 F.2d at 729.

Dated: March 5, 2019 Respectfully submitted,

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Dkt. 52

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-1034**

[Filed: April 11, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al., Defendants.	**STATE BOARD DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STAY**

The State Board Defendants respectfully submit this reply in support of their motion to dismiss, or in the alternative, their motion to stay.

INTRODUCTION

The courts of North Carolina are actively examining whether North Carolina's voter identification law, N.C. Sess. Law 2018-144 (or "S.B. 824"), violates the civil

rights of North Carolina voters and should therefore be enjoined. State litigation is advancing, and it is likely that the Supreme Court of North Carolina will ultimately resolve those questions.

Meanwhile, Plaintiffs in this case seek federal court intervention to invalidate the same state law on similar grounds. Any merits decision by this Court would likely be appealed to the Fourth Circuit Court of Appeals, and then to the United States Supreme Court.

Before this case sets in motion federal court intervention on the validity of this state statute, the courts of North Carolina should first decide whether the law violates the rights of North Carolina voters, and should therefore be enjoined on state law grounds. That decision could obviate the need for this Court's intervention. Accordingly, a stay under the *Pullman* abstention doctrine—or, alternatively, in the interest of judicial efficiency—is warranted.

In opposition to the State Board's motion for abstention, Plaintiffs misconstrue the *Pullman* doctrine as applying *only* in cases where a statute is ambiguous and could be construed by a state court in a way that would avoid a federal constitutional violation. (Pls.' Opp'n 16, 18–20, ECF No. 50.) This analysis ignores an entire category of *Pullman* cases—those involving state statutes that are subject to invalidation by state courts under state constitutional law. It is this second category of *Pullman* abstention that is at issue here. (*See* State Bd. Defs.' Mem. 11–12, ECF No. 43).

Because this case fits squarely within the *Pullman* doctrine, and out of concern for the proper role of state

courts in adjudicating state election laws, this Court should abstain from intervening in this case.

UPDATE TO THE FACTUAL BACKGROUND

As an update on the latest activity in the state court case, the following litigation events have occurred since the filing of State Board Defendant's opening brief in this case:

- The Superior Court of Wake County heard and ruled on the motions to dismiss and motion for referral to a three-judge panel, granting dismissal with respect to one claim and ordering the case transferred to a three-judge panel. (State Defs.' Ex. H.)
- The Chief Justice of the North Carolina Supreme Court assigned a three-judge panel to the case. (State Defs.' Ex. I.)
- The executive director of the State Board has been deposed. (State Defs.' Ex. J.)
- The parties have completed one round of documentary discovery, with additional documentary discovery deadlines coming up shortly.
- The Wake County Superior Court issued a consent protective order regarding discovery of voter information. (State Defs.' Ex. K.)
- The parties have requested a status conference with the three-judge panel which will set hearing dates for pending injunctive and dispositive motions (likely in the spring of 2019),

as well as any trial dates. (State Defs.' Ex. O.) A trial in state court is expected before the end of 2019. (*Id.*)

In contrast, this case is in the nascent stage: the party alignment is not yet resolved, (*see* ECF No. 7), an answer has not been filed by any defendant, and discovery has not commenced.

Meanwhile, the North Carolina NAACP's separate state court challenge to the Voter Identification Constitutional Amendment, which the voters of North Carolina approved last year, has proceeded. After a North Carolina superior court granted summary judgment in favor of the NAACP on February 22, 2019, the Legislative Defendants appealed and have obtained a stay of that order and a writ of supersedeas in the North Carolina Court of Appeals while that court exercises review. (*See* ECF No. 43 at 5; State Defs.' Ex. L).

ARGUMENT

I. PLAINTIFFS' RESPONSE FOCUSES ON THE WRONG CATEGORY OF *PULLMAN* CASES.

The Plaintiffs misread the Supreme Court's *Pullman* line of cases by arguing that such abstention is "only" applicable where a state statute is ambiguous and therefore "susceptible to a limiting construction, which would obviate the need to resolve the federal question." (ECF No. 50 at 16; *see id.* at 18–21.)

Pullman abstention is not so narrowly applied as Plaintiffs argue. It is also enforced where a state

statute—including one that is not ambiguous—could be invalidated by a state court under state constitutional grounds, thereby avoiding the need for a federal court decision. *See Harris Cty. Comm'rs Court v. Moore*, 420 U.S. 77, 85–87 (1975); *Meredith v. Talbot Cty., Md.*, 828 F.2d 228, 232 (4th Cir. 1987) (*Pullman* abstention is "certainly appropriate" where a state court could enjoin the challenged law and "the federal constitutional questions raised in the complaint would disappear").

Plaintiffs derive their so-called rule regarding ambiguous statutes from the Supreme Court's decision in *Zwickler v. Koota*, 389 U.S. 241 (1967), and other cases that rely on its reasoning. (*See* ECF No. 50 at 16, 18–19.) But *Zwickler* addresses only one of the two types of *Pullman* abstention discussed above—the potential for a limiting construction of an ambiguous statute that would render the statute valid and therefore moot the federal case.

Contrary to Plaintiff's argument, however, abstention is also appropriate when there is a "fair possibility that the state court might hold that [the statute at issue] violates the state constitution." 17A Charles Alan Wright et al., Fed. Prac. & Proc. Juris. § 4242 (3d ed. Nov. 2018 update). For example:

- In *Harris County Commissioners' Court v. Moore*, which also involved an Equal Protection Clause challenge, the Court ordered the district court to abstain under *Pullman* because Texas courts could determine that the Texas Constitution forbade the application of the state statute in the way that the federal plaintiffs had challenged it. 420 U.S. at 85–87.

- In *Reetz v. Bozanich*, another Equal Protection Clause challenge, the Court ordered the district court to abstain from a federal constitutional ruling because an Alaska court decision under the Alaska Constitution "could conceivably avoid any decision under the Fourteenth Amendment and would avoid any possible irritant in the federal-state relationship." 397 U.S. 82, 87 (1970).

- And in *City of Meridian v. Southern Bell Telephone & Telegraph Co.*, the Court ordered *Pullman* abstention because a determination in Mississippi state court that a state statute violated Mississippi's Contracts Clause "may obviate any need to consider its validity under the [Contracts Clause of the] Federal Constitution." 358 U.S. 639, 641 (1959) (per curiam); *see also City of Meridian*, 256 F.2d 83, 84 (5th Cir. 1958) (opinion below) (explaining the factual background of the case).

In *Harris County*, the Supreme Court highlighted the distinction between abstention cases involving a "limiting construction" that would render a statute valid, and abstention cases like this one—where a state court could invalidate a statute as a matter of state constitutional law. The Court noted that the former scenario involves construction of the state statute in a way that avoids or significantly modifies the federal question. *Harris County*, 420 U.S. at 84. The Court then addressed the latter scenario, holding that "[t]he same considerations apply where, as in this case, the uncertain status of local law stems from the unsettled

relationship between the state constitution and a statute." *Id.* Accordingly, because the Texas statute at issue may have been invalid under the Texas Constitution, the Court determined that the district court should have abstained from deciding the case while the Texas courts resolved the state law issues. *Id.* at 86–87.

The Plaintiffs' legal authority therefore misses the mark. As noted above, *Zwickler* concerns a different category of abstention that is inapplicable here. Similarly, in *Harman v. Forssenius*, there were no unsettled issues of state law. *See* 380 U.S. 528, 535 n.10 (1965) ("[T]he statutory requirement is clear and unambiguous, and the sole question remaining is whether the state requirement is valid under the Federal Constitution."). And *French v. Blackburn*, 428 F. Supp. 1351, 1354 n.5 (M.D.N.C. 1977), which relies on *Zwickler* to conclude that abstention applies only to ambiguous statutes, is contradicted by the *Harris County* line of cases.

The Plaintiffs' citation to *FDIC v. American Bank Trust Shares* is unavailing for a separate reason: there was no parallel state action to determine the validity of the statutes at issue, unlike here. *See* 558 F.2d 711, 715 (4th Cir. 1977). "Where there is an action pending in state court that will likely resolve the state-law questions underlying the federal claim, we have regularly ordered abstention." *Harris County*, 420 U.S. at 83; *see also* Charles Alan Wright, *supra*, § 4242 ("A factor that will *tip the scales* in favor of abstention is if there is already pending a state court action that is likely to resolve the state questions without the delay

of having to commence proceedings in state court." (emphasis added)). *FDIC* is further distinguishable because the district court had erroneously proceeded to adjudicate claims that were dependent on a determination of the validity of the state statutes, a determination from which the court had abstained. *See* 558 F.2d at 715. In other words, the court had used *Pullman* abstention to put the cart before the horse and issue what amounted to an advisory opinion—a risk that is not present here.

Plaintiffs' brief also conflates two distinct concepts from the Supreme Court's abstention decisions: a statute's "uncertain" status as a matter of state law, and a statute's "ambiguity." (*See* ECF No. 50 at 18–19.) Uncertainty is a broader concept that can include n "unsettled relationship between the state constitution and a statute"—*i.e.*, whether the statute is unconstitutional as a matter of state law. *Harris County*, 420 U.S. at 84. Ambiguity is a narrower concept that refers to an unresolved construction of the statute's text. *E.g.*, *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 511–12 (1972). The State Defendants' argument rests mainly on the uncertain status of the Act as a matter of state constitutional validity, not as much on the statute's ambiguity. (*See* ECF No. 43 at 11 ("The state law on these issues is far from settled.".)[1]

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[1] In any event, the challenged state law is not so clear and unambiguous as Plaintiffs suggest. The contours of the Act continue to evolve as the General Assembly adjusts certain voter identification requirements based on local factual developments. *See* N.C. Sess. Law 2019-4 (delaying enforcement until 2020 elections); H.B. 646 (filed April 9, 2019; approved by the House April 11, 2019) (relaxing student and employment identification

In sum, there are *Pullman* cases involving (1) ambiguous statutes that could be construed in a way that would make them valid under the federal constitution, and (2) statutes that could be invalidated by a state court on state law grounds such that there would be no need for federal court intervention. The Plaintiffs focus on the first style of case. But that is less of an issue here. Instead, the case before this Court falls squarely under the second category of *Pullman* cases.

II. FEDERALISM CONCERNS HIGHLIGHT THE APPLICABILITY OF *PULLMAN* ABSTENTION IN THIS CASE.

As the Plaintiffs admit in their response, the "principles of federalism and comity" are squarely relevant to the Court' consideration of abstention under the *Pullman* doctrine. (ECF No. 50 at 17 (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996).) The State Board Defendants explained in their opening brief that numerous factors are at play which highlight the critical role of the state courts in resolving the status of S.B. 824. These include the U.S. Constitution's commitment of the regulation of the "manner of holding elections" to the States, U.S. Const. art. I, § 4,[2] the swiftly advancing status of parallel

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requirements). (State Defs.' Exs. M, N.)

[2] *See also Shelby Cty. v. Holder*, 570 U.S. 529, 543 (2013) ("[T]he Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections." (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461–462 (1991))).

litigation in state court over the challenged law, *see supra* pp. 2–3, the expression of the voters of North Carolina in favor of a state constitutional provision requiring voter ID, and continuing litigation in state court over the status of that amendment. (*See* ECF No. 43 at 6–9.) Additionally, North Carolina's mandatory procedure for a three-judge panel of superior court to hear challenges to the facial constitutionality of acts of its legislature demonstrates the importance the State places on carefully adjudicating the validity of the State's laws. *Id.* at 12–13; *see* N.C. Gen. Stat. § 1-267.1(a1). That procedure is well under way in the parallel state case challenging S.B. 824.

For these reasons, North Carolina has a strong interest in having its courts resolve the important questions of state law that this case raises. As *Pullman* explains, "[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies." *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 500 (1941). Accordingly, the principals of federalism and comity call for federal court abstention in this case.

III. RETENTION OF JURISDICTION BY THIS COURT IS APPROPRIATE PENDING THE OUTCOME OF THE STATE ACTION.

The State Board Defendants agree with Plaintiffs that, should the Court abstain from advancing these proceedings under the *Pullman* doctrine, "the court should retain jurisdiction over the lawsuit and stay the proceedings pending resolution of state court litigation." (ECF No. 50 at 16.) Although Plaintiffs are incorrect that dismissal is never an option under

Pullman abstention, *see, e.g.*, *Harris County*, 420 U.S. at 88; *Meredith*, 828 F.2d at 232; *Henson v. Atchley*, 453 F. Supp. 555, 556 (E.D. Tenn. 1978), under the circumstances of this case, the State Board Defendants do not oppose Plaintiffs' contention that retention of jurisdiction during a stay is the more appropriate course of action.

IV. ALTERNATIVELY, THE COURT SHOULD STAY THE PROCEEDINGS IN THE INTERESTS OF JUDICIAL ECONOMY AND EFFICIENCY.

Plaintiffs offer little response to the State Board Defendants' alternative request for a discretionary stay in the interest of judicial economy. (*See* ECF No. 43 at 13 (citing *Flanders Filters, Inc. v. Intel Corp.*, 93 F. Supp. 2d 669, 673–74 (E.D.N.C. 2000)); ECF No. 50 at 21–22.) Plaintiffs instead appear to conflate this type of stay with a court's decision to abstain, arguing that the Board Defendants' proposed alternative stay "do[es] not fit within any established doctrine of abstention." (ECF No. 50 at 22.) A stay for the purpose of sound case management is distinct from a stay under an abstention doctrine.

Courts generally consider three factors when deciding whether to exercise their discretion to stay a case in light of parallel proceedings: "the interests of judicial economy, the hardship and inequity to the moving party in the absence of a stay, and the potential prejudice to the non-moving party in the event of stay." *Yadkin Riverkeeper, Inc. v. Duke Energy Carolinas, LLC*, 141 F. Supp. 3d 428, 452 (M.D.N.C. 2015); *see*

Williford v. Armstrong World Indus., Inc., 715 F.2d 124, 127 (4th Cir. 1983).

The interests of judicial economy weigh in favor of a stay. It is a distinct possibility that the outcome in one of the pending state cases will eliminate the need for this Court to intervene at all. Indeed, if the state courts enjoin enforcement of S.B. 824, Plaintiffs will have no injury to raise in this Court.

The hardship and inequity to the State Board Defendants are significant factors that also support a stay. If forced to defend this matter in multiple forums, at the same time, Defendants will unnecessarily duplicate the expenditure of time and agency resources on litigation in state and federal courts. To complicate matters, that duplication occurs at a critical time when the State Board and its personnel are currently overseeing two special congressional elections and municipal elections this year, and are otherwise preparing for the 2020 general elections for which candidate filing begins this December. *See Agency Calendar*, N.C. State Bd. of Elections, https://www.ncsbe.gov/Elections/Agency-Calendar (last visited April 10, 2019).

The potential prejudice that a temporary stay would pose to Plaintiffs is minimal. Plaintiffs argue that they will be harmed because there would be an "unreasonable delay" in the enforcement of constitutional rights. (ECF No. 50 at 22.) But the General Assembly has delayed the requirement to present photographic identification at the polls until the 2020 elections. *See* N.C. Sess. Law 2019-4 (State Defs.' Ex. M). And the state court case challenging S.B.

824 is expected to be tried this year, with a preliminary injunction motion to be heard within weeks of this filing. (*See* State Defs.' Ex. O.) In any event, the facts developed in state litigation would be useful to the parties in this lawsuit if the state courts do not enjoin the law. Plaintiffs should then be able to quickly lift the stay and request relief from this Court. *See* Fed. R. Civ. P. 65. Therefore, the urgency of the Plaintiffs' request for federal relief is diminished.

The balance of these factors weighs in favor of a stay for the sake of judicial economy.

CONCLUSION

For the foregoing reasons, the State Board Defendants respectfully request that the Court stay this action pursuant to the *Pullman* abstention doctrine or, alternatively, in the interest of judicial economy.

Respectfully submitted, this 11th day of April, 2019.

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*[***Certificates omitted for printing purposes***]*

Dkt. 61

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CASE NO. 1:18-cv-01034-LCB-LPA

[Filed: July 19, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL – CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM – FORSYTH COUNTY NAACP,

Plaintiffs,

v.

ROBERT B. CORDLE, in his official capacity as Chair of the North Carolina State Board of Elections; STELLA E. ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; KENNETH RAYMOND, JEFFERSON CARMON III,

PROPOSED INTERVENORS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO INTERVENE

and DAVID C. BLACK, in their official capacities as members 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,

Proposed Intervenors.

*[***Tables omitted for printing purposes***]*

STATEMENT OF THE MATTER BEFORE THE COURT

The Plaintiffs in this litigation challenge the validity of North Carolina Senate Bill 824 ("S.B. 824"), legislation that implemented the state constitutional requirement that citizens of North Carolina be required to show photo identification when voting in person. The fate of Plaintiffs' challenge likely will depend upon the success or failure of their intentional discrimination claim, as their disparate impact and undue burden claims are difficult if not impossible to reconcile with

binding precedent. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008); *Lee v. Virginia State Bd. of Elections*, 843 F.3d 592 (4th Cir. 2016). And yet in the seven months that have elapsed since the filing of this case and a parallel case in state court, the State Board of Elections has not once defended S.B. 824 against the charge that it was designed to discriminate against racial minorities. In this case, the State Board has not offered any substantive defense of S.B. 824, instead unsuccessfully seeking to have the litigation stayed pending the outcome of the state case. In the state case, the State Board moved to dismiss every claim *except* the intentional discrimination claim, and it failed to mount *any* substantive defense to the plaintiffs' preliminary injunction motion. Indeed, in response to the preliminary injunction motion the State Board made clear that it has a primary objective simply of obtaining guidance from the courts on the constitutionality of S.B. 824, not of defending its constitutionality. The State Board's failure to defend S.B. 824 against the charge of racial discrimination should come as no surprise, as the Board is controlled by Governor Cooper, who has expressed the belief that the law "was designed to suppress the rights of minority . . . voters," Gov. Roy Cooper Objections and Veto Message, Ex. A attached to Mot. to Intervene, Doc. 8.1 at 2 (Dec. 14, 2018) ("Doc. 8.1"), and who is actively supporting a separate challenge to North Carolina's voter ID regime.

This Court has denied one motion by Proposed Intervenors to intervene, but in so doing the Court indicated that it would "entertain a renewed motion" in the event that it became "apparent" that the State

Board would "decline[] to defend the instant lawsuit." Mem. Op. and Order, Doc. 56 at 23 (June 3, 2019) ("Doc. 56"). In the aftermath of the preliminary injunction proceedings in the state court action, it has now become apparent that the State Board will decline to defend adequately, if at all, the key claim in this lawsuit, and thus Proposed Intervenors hereby file this renewed motion to intervene. The State of North Carolina unquestionably has a paramount interest in the validity of its laws, and state law expressly appoints Proposed Intervenors as agents of the State to defend that interest in litigation. Proposed Intervenors should be allowed to intervene to vindicate the State's and the General Assembly's interest in the validity of S.B. 824.

QUESTION PRESENTED BY THIS MOTION

Whether Proposed Intervenors should be granted leave to intervene in this case as of right under Federal Rule of Civil Procedure 24(a) or, alternatively, permissively under Rule 24(b).

STATEMENT OF FACTS

I. Pursuant to a Constitutional Mandate, the North Carolina General Assembly Passed One of the Most Lenient Voter ID Laws in the Nation.

As discussed in Proposed Intervenors' prior briefing, the General Assembly passed S.B. 824 pursuant to a constitutional mandate, and in so doing enacted one of the most lenient voter ID laws in the United States. *See* Proposed Intervenors' Mem. in Supp. of their Mot. to Intervene, Doc. 8 at 2–5 (Jan. 14, 2019) ("Doc. 8")

(discussing the legislative history of S.B. 824 and its specifics).

The General Assembly has twice since amended S.B. 824. First, on March 14, 2019, Governor Cooper signed into law a new bill that postponed the implementation of S.B. 824 until the March 2020 primaries while ensuring that "all implementation and educational efforts set forth in [S.B. 824] during 2019 by the State and counties shall continue." 2019 N.C. Sess. Laws 4, Ex. A at 1. On June 3, 2019, the Governor signed House Bill 646, which increased the time during which educational institutions and government employers can have their IDs approved to qualify as voter ID and relaxed certain requirements for approval. *See* 2019 N.C. Sess. Laws 22, Ex. B.

II. Plaintiffs File the Instant Suit, and the Court Denies Without Prejudice Proposed Intervenors' Motion to Intervene on the Basis of the Facts as They Existed in January 2019.

On December 20, 2018—the day after S.B. 824 became law—Plaintiffs filed this suit against the Governor and the members of the North Carolina State Board of Elections. Plaintiffs' suit alleges that S.B. 824 will disproportionately impact African-American and Latino voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; intentionally discriminates against African-American and Latino voters, in violation of Section 2 and the Fourteenth and Fifteenth Amendments of the United States Constitution; and will unduly burden the right to vote,

in violation of the Fourteenth Amendment. *See* Compl., Doc. 1 ¶¶ 105–46 (Dec. 20, 2018).

On January 14, 2019, Proposed Intervenors moved to intervene in this case. Mot. to Intervene, Doc. 7 (Jan. 14, 2019). When Proposed Intervenors filed that motion, the Governor was still a Defendant in this case, no State Board of Elections existed, and both this suit and the state-court litigation in *Holmes v. Moore*, No 18-cv-15292 (N.C. Super. Ct.), were in their infancy. Neither the Governor nor the State Board members opposed the motion to intervene, *see* Gov. Cooper's Resp. to Mot. to Intervene, Doc. 34 (Feb. 12, 2019); State Board Defs.' Resp. to Mot. to Intervene, Doc. 36 (Feb. 14, 2019), but Plaintiffs did, arguing that "[t]he Executive Branch Defendants individually and collectively have a duty to defend S.B. 824 against constitutional attacks" and claiming that they would do so, Pls.' Opp. to Mot. to Intervene, Doc. 38 at 6 (Feb. 19, 2019).

On June 3, 2019, this Court denied Proposed Intervenors' motion to intervene. Doc. 56. The Court initially found that Proposed Intervenors need not independently establish Article III standing. *Id.* at 5. The Court then went on to deny Proposed Intervenors' request to intervene as of right, largely because the Court concluded that Defendants were "presently defending the challenged legislation" and there was not "sufficient evidence in the record" to "rebut[]" the presumption that State Defendants will adequately represent Proposed Intervenors' interests." *Id.* at 11, 14. The Court also denied Proposed Intervenors' alternative request for permissive intervention, relying

again on lack of "evidence in the record" as to Defendants' ability to defend S.B. 824. *Id.* at 21–22. But this Court noted that this order was not necessarily its final word on the matter, stating that "should it become apparent during the litigation that State Defendants no longer intend to defend this lawsuit, the Court will entertain a renewed Motion to Intervene by Proposed Intervenors." *Id.* at 23.

III. Following Proposed Intervenors' Filing of Their Initial Motion to Intervene, Defendants Fail to Fully Defend S.B. 824.

Defendants' behaviors in both this case *and* the *Holmes* case—which have largely developed since Proposed Intervenors filed their motion to intervene in January—indicate that they are not mounting a meaningful defense to all the claims that the plaintiffs in the two cases raise.

A. Defendants' Actions in This Case Indicate That They Are Not Mounting a Full Defense of S.B. 824.

While the Governor and the State Board members both filed motions to dismiss in this case, neither motion defended the constitutionality of S.B. 824. The State Board members' motion simply argued that this Court should defer to the state court in the ongoing *Holmes* litigation. *See* State Bd. Defs.' Mem. in Supp. of Their Mot. to Dismiss or, in the Alternative, Mot. to Stay, Doc. 43 at 6–13 (Feb. 28, 2019). Indeed, in their reply brief the State Board clarified their preference that this Court "retain jurisdiction over the lawsuit and stay the proceedings pending resolution of the state

court litigation" rather than order outright "dismissal." State Bd. Defs.' Reply in Supp. of Their Mot. to Dismiss or, in the Alternative, Mot. to Stay, Doc. 52 at 9 (Apr. 11, 2019) (quotation marks omitted).

Similarly, although the Governor moved to dismiss himself from the lawsuit, he did not move to have the case dismissed. Gov. Cooper's Mem. in Supp. of Mot. to Dismiss or, in the Alternative, for a Stay, Doc. 45 at 6–17 (Feb. 28, 2019) ("Doc. 45"). The Governor explained that he "s[ought] dismissal of all claims *against him* on immunity grounds as well as on the separate grounds that he is not a proper party." Reply in Supp. of Gov. Cooper's Mot. to Dismiss, Doc. 53 at 2 (Apr. 11, 2019) (emphasis added). Indeed, the Governor's briefing made it clear that he was not seeking dismissal of the challenge to S.B. 824 altogether: he believes the State Board members "are the proper parties" to the lawsuit. *Id.* at 9.

This Court denied the State Board members' motion to stay and granted the Governor's motion, dismissing the Governor from the case. Mem. Op. and Order, Doc. 57 at 23 (July 2, 2019). In this case, then, the sole remaining named Defendants are the five members of the State Board, who are represented by the North Carolina Attorney General.

B. Defendants' Actions in *Holmes v. Moore* Indicate That They Are Not Mounting a Full Defense of S.B. 824.

The State Board of Elections is a defendant in the *Holmes* litigation, and, along with the State of North Carolina, it is being represented by the same litigation

team from the Attorney General's office as are the State Board members in this case. Proposed Intervenors in this case are named defendants in the *Holmes* case (often called the "legislative defendants" in that case). The *Holmes* plaintiffs—six individual North Carolina voters—filed their complaint and an accompanying motion for a preliminary injunction on December 19, 2018, alleging that S.B. 824 violates North Carolina's Constitution in six ways. *Holmes v. Moore*, No 18-cv-15292 (N.C. Super. Ct.), Compl. (Dec. 19, 2019), Ex. 1 attached to Doc. 45, Doc. 45-1 ¶ 6 (Feb. 28, 2019). Most notably, that complaint's first claim alleges that S.B. 824 is racially discriminatory and thus violates the North Carolina Constitution's guarantee of equal protection. *Id.* ¶¶ 173–78. The *Holmes* litigation has progressed significantly: following briefing and a decision on a state law jurisdictional issue, the case was transferred to a three-judge panel. The parties then fully briefed a motion to dismiss, engaged in extensive discovery, fully briefed the plaintiffs' motion for a preliminary injunction, and argued the motion to dismiss and motion for a preliminary injunction before the three-judge panel.

The State Board's litigation choices in *Holmes* demonstrate its unwillingness to fully defend S.B. 824. *First*, in *Holmes* the State Board did not move to dismiss the state constitutional racial-discrimination claim—the claim that is analogous to Count II in the instant case. State Defs.' Br. in Supp. of the Mot. to Dismiss, Ex. C at 1 (May 17, 2019). In other words, had the Proposed Intervenors not been named defendants in *Holmes*, there would have been *no argument that the Complaint should have been dismissed in its entirety*.

And the comparative length of the briefing indicates which Defendants took seriously their obligation to defend S.B. 824: the State Board's briefing in support of its partial motion to dismiss totaled twenty-four pages, while the Proposed Intervenors' briefing in support of their complete motion to dismiss totaled 113 pages. *See id.* at 13; *see also* State Defs.' Reply in Supp. of Their Mot. to Dismiss, Ex. D at 11 (June 25, 2019); Leg. Defs.' Br. in Supp. of Their Mot. to Dismiss, Ex. E at iii (May 17, 2019); Leg Defs.' Reply in Supp. of Their Mot. to Dismiss, Ex. F at i (June 25, 2019). There is no need to take our word for the fact that the State Board declined to fully defend the law: the plaintiffs in the *Holmes* litigation highlighted this failure on the very first page of their brief in opposition, arguing that "State Defendants, for their part, do not dispute that Plaintiffs' Complaint states a claim for intentional discrimination*, effectively conceding* that Count I sufficiently alleges that the General Assembly enacted in SB 824 a law intended to target voters of color." Pls.' Opp. to Defs.' Mots. to Dismiss, Ex. G at 2 (June 21, 2019) (emphasis added). The State Board in reply denied making any concession, but still declined to assert that the racial discrimination claim lacks merit. *See* Ex. D at 8 n.3.

Second, while perhaps standing alone the State Board's failure to move to dismiss the intentional discrimination claim could be viewed simply as a tactical decision, the State Board's actions in response to the *Holmes* plaintiffs' preliminary injunction motion make clear that the State Board does not intend to vigorously defend S.B. 824 on the merits. The *Holmes* plaintiffs supported their preliminary injunction

motion with nineteen affidavits, including affidavits from the plaintiffs themselves, other North Carolina voters, North Carolina legislators, county board of elections members, and expert witnesses. Declaration of Nicole Frazer Reaves, Ex. H ¶ 9-C (July 19, 2019) ("Reaves Decl."). While Proposed Intervenors fought for the right to depose these affiants to subject their assertions to cross examination, the State Board declined to support Proposed Intervenors in this fight and instead would have been content to allow the affidavits to go untested. *See* Email from Olga Vysotskaya, Special Deputy Atty. Gen., North Carolina, to Kellie Myers, Trial Court Administrator, Wake County, North Carolina, Ex. I at 1 (May 21, 2019, 12:07 PM, EST). After Proposed Intervenors earned the right to depose the plaintiffs' witnesses, *see* Order Denying Pls.' Emergency Mot. for a Protective Order and Granting Leg. Defs.' Mot. to Extend, Denying Leg. Defs.' Mot. to Strike, and Rescheduling Mots. Hearing at 2–3 (May 24, 2019), Ex. J, the State Board did not notice or subpoena a single deponent—while Proposed Intervenors did so and took eighteen depositions, Reaves Decl. ¶ 9-A. The attorneys for the State Board did not appear at a quarter of the depositions taken by the plaintiffs. *See* Tr. of Dep. of Keegan F. Callanan at 3:2–4:2 (June 21, 2019), Ex. K; Tr. of Dep. of Linda Devore at 3:2–4:3 (June 20, 2019), Ex. L. And when they did appear for depositions, the attorneys for the State Board at times did not have any questions and were generally passive participants. *See, e.g.*, Tr. of Dep. of Isela D. Gutierrez Vol. II at 83:13–16; 162:8 (June 7, 2019), Ex. M (asking no questions of an individual whose affidavit was submitted by the plaintiffs in support of their motion for a preliminary

injunction and who had been subpoenaed by Proposed Intervenors). Similarly, while the plaintiffs and Proposed Intervenors engaged in multiple rounds of written discovery requests, the State Board has made no written discovery requests. Reaves Decl. ¶ 9-B.

Third, the State Board's briefing on the preliminary injunction motion indicated why the Board was indifferent to deposing the plaintiffs' witnesses, as the State Board's response brief did not contest the plaintiffs' likelihood of succeeding on the merits. Rather than vigorously defending S.B. 824, the State Board indicated that it had "a primary objective . . . to expediently obtain clear guidance on what law, if any, will need to be enforced." State Defs.' Resp. to Pls.' Mot. for Prelim. Inj., Ex. N at 13 (June 19, 2019). "With that in mind," the State Board explained, "if the Court is inclined to issue an injunction at this stage, the State Board requests that it be granted some flexibility in making technical preparations that will allow it to implement the law in the event the injunction were later vacated." *Id.* The State Board's response and subsequent supplemental brief therefore were focused not on the merits but rather on advising the three-judge panel on how it could craft injunctive relief in a manner that would permit the State Board "some flexibility to account for the possibility of enforcing the law in the future." *Id.*; *see also* State Defs.' Supp. Br., Ex. O (July 1, 2019). In support of this response, the State Board offered a sole affiant: Karen Brinson Bell, the newly appointed executive director of the State Board of Elections, who spoke only as to implementation of S.B. 824 that had begun and potential issues going forward. *See* Aff. of Karen

Brinson Bell, Ex. P (June 18, 2019); Reaves Decl. ¶ 9-B. The State Board did not offer any affiants defending S.B. 824's constitutionality, but Proposed Intervenors offered seven—three experts; former Senator Joel Ford, an African American Democrat who was a primary sponsor of S.B. 824; and three county board of elections officials. Reaves Decl. ¶ 9-C.

The *Holmes* plaintiffs seized upon the State Board's refusal to oppose a preliminary injunction: a leading argument in their reply brief was that the "State Defendants do not dispute that Plaintiffs are likely to succeed on the merits of their claims." Reply in Supp.of Pls.' Mot. for Prel. Inj., Ex. Q at 1 (June 24, 2019). And while at argument the Board once again insisted that it was not conceding the validity of any claims, it also did not argue that the intentional discrimination claim lacked merit, and it focused its argument on the preliminary injunction motion on the implementation issues discussed in its brief. Oral Argument at 2:50:34–3:10:31, *available at Judges hear latest challenge to voter ID*, WRAL.COM (June 28, 2019, 6:05 PM), https://www.wral.com/judges-hear-latestchallenge-to-voter-id/18479653/ ("Oral Argument").

ARGUMENT

I. Proposed Intervenors Are Entitled To Intervene as of Right.

Under Federal Rule of Civil Procedure 24(a), a court "must permit anyone to intervene who" (1) makes a timely motion to intervene, (2) has "interest relating to the property or transaction that is the subject of the action," (3) is "so situated that disposing of the action

may as a practical matter impair or impede the movant's ability to protect its interest," and (4) shows that he is not "adequately represent[ed]" by "existing parties." FED. R. CIV. P. 24(a). As the Fourth Circuit has noted regarding intervention as of right, "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quotation marks omitted).[1]

A. Proposed Intervenors' Motion is Timely.

Three criteria determine whether a motion to intervene is timely: (1) "how far the underlying suit has progressed"; (2) the "prejudice" that granting the motion would cause to the other parties; and (3) the reason for the delay—if any—in filing the motion. *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014). This suit has progressed very little since Plaintiffs filed their complaint. The Governor succeeded in having himself dismissed from the suit, and the State Board members filed an unsuccessful motion to stay the case—and the Court has in no way considered the merits of the issues this case implicates. And because the case has not substantially progressed, granting Proposed Intervenors' motion to intervene would not prejudice the parties. What is more, there has been no

[1] Proposed Intervenors respectfully continue to believe that they were entitled to intervene as of right based on the arguments made in their prior briefing to the Court, *see* Doc. 8; *see also* Proposed Intervenors' Reply to the Resps. to Their Mot. to Intervene, Doc. 48 (Mar. 5, 2018) ("Doc. 48"), and hereby reserve the right to challenge the Court's rejection of those arguments on appeal.

delay in filing this motion: the Court denied Proposed Intervenors' initial motion to intervene around six weeks ago, and Proposed Intervenors filed the instant motion shortly after the major new developments in the *Holmes* case demonstrating Defendants' failure to adequately defend S.B. 824.

B. Defendants Have Declined to Defend S.B. 824, so Proposed Intervenors Have a Significantly Protectable Interest in the Subject of this Suit.

Proposed Intervenors have a "significantly protectable" interest in the enforcement of a constitutionally valid law that the General Assembly enacted at the people of North Carolina's express command. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Proposed Intervenors have two independent significantly protectable interests that entitle them to defend S.B. 824: (1) the interest of *the State* in defending the constitutionality of S.B. 824; and (2) the interest of *the Legislature* in defending the constitutionality of S.B. 824. *See Virginia House of Delegates v. Bethune-Hill*, 139 U.S. 1945, 1951 (2019) (treating these as two separate interests). The Supreme Court's decision in *Bethune-Hill*, which postdates this Court's denial of Proposed Intervenors' initial motion to intervene, has clarified the existence of Proposed Intervenors' significantly protectable interests.

As an initial matter, no party has disputed that the State itself has an interest in defending the validity of its laws, so the only question is whether Proposed Intervenors can assert that interest—which they undoubtedly have the right to do. Indeed, North

Carolina law expressly authorizes Proposed Intervenors, on behalf of the General Assembly, to defend the constitutionality of legislation as "agents of the State." N.C. GEN. STAT. § 1-72.2(b); *see id.* § 120-32.6(b); *see also* Doc. 8 at 7–8 (discussing the legislative scheme in more detail). And the Supreme Court's recent decision in *Bethune-Hill* confirms that these sorts of laws allow a legislature to represent the State's interests in court, explaining that "[s]ome States" "have authorized" one or both houses of the legislature "to litigate on the State's behalf." *Bethune-Hill*, 139 U.S. at 1951; *see also id.* (pointing to an Indiana statute similar to North Carolina's as an example of a statute that "authorize[s]" a legislative body "to litigate on the State's behalf"); Brief of State Appellees 47–48, *Bethune-Hill*, 139 S. Ct. 1945 (No. 18-281), 2019 WL 410765, at *47–48 (quoting N.C. GEN. STAT. § 120-32.6(b) as "providing that the state legislature 'shall be deemed the State of North Carolina' for purposes of defending the constitutionality of state law").

And if anything the legislature—*not* the Attorney General—has primacy in defending the State under North Carolina law: if the General Assembly "employs counsel in addition to or other than the Attorney General," the legislative litigants may "designate the counsel employed by the General Assembly as lead counsel in the defense" and the General Assembly's counsel "shall possess final decision-making authority with respect to the representation, counsel, or service for the General Assembly." N.C. GEN. STAT. § 120-32.6(c). And this interest in representing the State is not dependent in any way on whether the executive branch is involved in defending the State as well;

North Carolina law does not suggest any such limitation. Instead, North Carolina law provides that "[*w*]*henever* the validity or constitutionality of an act of the General Assembly . . . is the subject of an action in any . . . federal court," Proposed Intervenors, "as agents of the State through the General Assembly, *shall be necessary parties* . . . ." *Id.* (emphasis added). The State's interest in defending the law, which Proposed Intervenors have a full right to vindicate, is a "significantly protectable" interest that alone suffices to support intervention as of right.

And Proposed Intervenors have a second significantly protectable interest entitling them to defend S.B. 824: the interest of the General Assembly itself in defending the constitutionality of S.B. 824. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2665 (2015); *cf. Bethune-Hill*, 139 U.S. at 1953–54. Proposed Intervenors respectfully believe that given the fact that they represent both houses of the Legislature this interest in ensuring that their enactments are not "nullified," *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2665, is a significantly protectable interest, regardless of whether the State Board members are robustly defending the law, and they preserve all arguments to this effect for the purposes of appeal, *see* Doc. 8 at 7–10; Doc. 48 at 7–8. And analysis of the State Board members' efforts more properly should be considered under the adequacy of representation factor, not this factor. At any rate, it is clear that the State Board is not fully defending the constitutionality of S.B. 824 in numerous ways, and thus Proposed Intervenors have a significantly protectable interest in defending their

legislative enactment under any potentially applicable standard.

First, the executive branch has declined to robustly and fully defend S.B. 824 in this suit. As discussed previously, *see supra* Statement of Facts Section III-A, the Governor has succeeded in extricating himself from this case, and the only remaining Defendants, the State Board members, have not defended this lawsuit on the merits. Instead, the only challenge they have mounted to Plaintiffs' complaint is a request for this case to be stayed on abstention grounds—a request that this Court denied. The State Board members have in no way challenged the merits of Plaintiffs' allegations; they did not move to dismiss the complaint under Rule 12(b)(6), and the time for them to do so has expired.

Second, the State Board has declined to adequately defend S.B. 824 in the *Holmes* litigation in North Carolina state court, and there is no reason to believe that its approach in this case will be any different. As discussed previously, *see supra* Statement of Facts Section III-B, the State Board's unwillingness to robustly defend S.B. 824 has permeated its behavior in the *Holmes* litigation. As an initial matter, the State Board has not moved to fully dismiss the complaint and has failed to mount a challenge to the intentional-discrimination claim—a fact that the *plaintiffs* used to support their argument that the *Holmes* case must continue. This is especially problematic because the intentional-discrimination claim is the key claim in both *Holmes* and the instant suit: it is the claim that prevailed against the State's prior voter ID law. *See*

North Carolina State Conf. of NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016).

And it is a particularly difficult claim for the State Board to defend, because of the Governor's control of the State Board and because of the Attorney General and Governor's longstanding opposition to such laws. The Governor's ability to control the policies embraced by the State Board is required by the North Carolina Constitution, as he has previously argued and as the Supreme Court of North Carolina has recognized. *See Cooper v. Berger*, 809 S.E.2d 98, 115–16 (2018). This means that the Governor's control of the State Board is a *necessary component* of the State Board's current structure. This control, paired with the Governor's opposition to voter ID, likely explains the State Board's reticence to wholeheartedly defend S.B. 824. When vetoing S.B. 824, the Governor stated that he believed that the law was "*designed* to suppress the rights of minority, poor and elderly voters." Doc. 8.1 at 2 (emphasis added). And the Governor is actively supporting Plaintiff North Carolina NAACP's state-court challenge to the constitutional amendment requiring voter ID. He has filed an amicus brief in support of the invalidation of the amendment, criticizing it for its alleged "disproportionate[] impact" on "racial minorities." Br. of Gov. Roy Cooper as Amicus Curiae at 17, attached to Mot. for Leave to File Amicus Curiae Br. by Gov. Roy Cooper (July 12, 2019), *North Carolina State Conference of the NAACP et al. v. Moore et al.*, COA 19-384 (N.C. Ct. App.), Ex. R.

It therefore should come as no surprise that the State Board has assiduously *refused* to defend the

merits of the intentional discrimination claim. Indeed, nothing in the State Board members' recently filed Answer suggests that they plan to vigorously defend the intentional discrimination claim. *See* State Bd. Defs.' Answer and Defenses, Doc. 59 ¶ 147 (July 15, 2019) (raising no affirmative defenses); *see also id.* ¶¶ 96–104 (stating that that the State Board members "lack . . . knowledge or information sufficient to form a belief as to the truth or falsity" of paragraphs including allegations of racial discrimination). The State Board also did not seriously engage in discovery—failing to fight for discovery in the first place and then failing to notice a single deposition. The State Board likewise *did not oppose entry of an injunction preventing S.B. 824 from going into effect*—a clear indicator that it is declining to robustly defend S.B. 824. Put another way, had Proposed Intervenors *not* been named defendants in *Holmes*, there would have been *no* discovery, *no* full motion to dismiss, and the Court could have entered an *unopposed* preliminary injunction barring S.B. 824 from going into effect.

It is clear from the record in this and the *Holmes* litigation that the State Board members have declined to adequately defend S.B. 824. Proposed Intervenors have a significantly protectable interest in defending the constitutionality of S.B. 824 and are entitled to intervene as of right under Rule 24(a)(2).

C. The Court's Disposition of This Case Will Impair Proposed Intervenors' Significantly Protectable Interest.

Intervention is required under Rule 24(a) where "the disposition of a case would, as a practical matter,

impair the applicant's ability to protect his interest." *Spring Const. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). The disposition of this case will certainly impair Proposed Intervenors' established significant interest in defending the constitutionality of S.B. 824. The Court need only look to the State Board's behavior in the *Holmes* litigation: it failed to engage in discovery, failed to seek dismissal of all claims, and failed to oppose a preliminary injunction. Assuming the State Board members take such an approach in the instant litigation (and there is no reason to believe they will not), barring intervention, the Court may very well be faced with a trial on a least some claims that are unopposed on the merits and a request to enjoin S.B. 824 that is unopposed. If the Court grants this relief, the State's interest in the validity of its laws will have been undermined. The General Assembly's efforts to pass S.B. 824 will have been "completely nullified." *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2665 (quotation marks omitted). And its continuing authority to enact voting laws will be burdened—itself a significantly protectable interest. *See Francis v. Chamber of Commerce of U.S.*, 481 F.2d 192, 195 n.8 (4th Cir. 1973) (noting that stare decisis, which would attach to an adverse appellate ruling in the case, "by itself may furnish the practical disadvantage required under [Rule] 24(a)").

The grant of amicus status to Proposed Intervenors will in no way cure the imminent impairment to Proposed Intervenors' interests: an amicus cannot engage in discovery, seek dismissal of a claim, or oppose a preliminary injunction. Given the litigation decisions the State Board made in *Holmes*, without

Proposed Intervenors' involvement in this suit it is likely that *no* party will take these actions—and the disposition of this case will impair Proposed Intervenors' significant interest in defending S.B. 824, because without intervention, no party will fully defend the law from all the challenges raised against it.

D. The Existing Defendants Will Not Adequately Protect Proposed Intervenors' Significantly Protectable Interest.

"The requirement of [inadequate representation] is satisfied if the applicant shows that representation of his interest *may be* inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added; quotation marks omitted); *accord United Guaranty Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc'y*, 819 F.2d 473, 476 (4th Cir. 1987). "[A]nd the burden of making that showing should be treated as minimal." *Trbovich*, 404 U.S. at 538 n.10.

Proposed Intervenors clear this hurdle. The State Board members have not opposed the racial-discrimination allegations raised against S.B. 824, which indicates that they will not fully defend S.B. 824. What is more, the State Board has indicated that it has "a primary objective . . . to expediently obtain clear guidance on what law, if any, will need to be enforced." *See* Ex. N at 13. Given this state of affairs, Proposed Intervenors and the State Board members cannot be said to have the same "ultimate objective," *see* Doc. 56 at 16, and thus there is no reason to deny intervention. Defendants are not adequately protecting Proposed Intervenors' significantly protectable interest;

therefore, Proposed Intervenors have a right to intervene under Rule 24(a).[2]

II. Alternatively, Proposed Intervenors Satisfy the Minimal Requirements for Permissive Intervention.

This Court has previously permitted Proposed Intervenors to intervene under Rule 24(b) to defend North Carolina law. *See, e.g.*, *Carcaño v. McCrory*, 315 F.R.D. 176, 177 (M.D.N.C. 2016); *see also* Mem. Order, *People for the Ethical Treatment of Animals v. Stein*, 1:16-cv-00025, Doc. 92 (M.D.N.C. May 14, 2019), Ex. S (allowing private parties to intervene to defend a North Carolina law also being defended by the Attorney General). Under Rule 24(b), the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1)(B). Intervention must also not deprive the Court of subject-matter jurisdiction. *See Carcaño*, 315 F.R.D. at 178 n.2.

Timeliness is measured by the same three criteria used for intervention as of right. *Students for Fair Admissions Inc. v. Univ. of North Carolina*, 319 F.R.D. 490, 494 (M.D.N.C. 2017). As explained above, *see supra* Argument Section I-A, Proposed Intervenors meet these criteria.

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[2] Proposed Intervenors continue to believe that the present and past activities of the Governor and Attorney General support the contention that Defendants will not adequately protect Proposed Intervenors' interests and hereby preserve those arguments for the purposes of appeal. *See* Doc. 8 at 11–16; Doc. 48 at 8–10.

And as shown in the Proposed Answer, Proposed Intervenors' defenses share with the "main action" questions of both law and fact. FED. R. CIV. P. 24(b)(1)(B). Proposed Intervenors directly respond to Plaintiffs' claims, *see supra* Statement of Facts Section II, by arguing that S.B. 824 does not display discriminatory intent, and will neither unduly burden the right to vote nor have a disparate impact on minority voters—and thus S.B. 824 fully complies with the Constitution and the Voting Rights Act. These arguments present completely overlapping questions of fact and law. And because the legal questions are ones of federal law, intervention will not deprive the Court of subject-matter jurisdiction.

What is more, given the current state of facts, it is clear that Proposed Intervenors will enhance, not hinder, the timely adjudication of this case, *see* Doc. 56 at 21, and permissive intervention should be granted. Proposed Intervenor's actions in *Holmes* indicate that the Court will benefit from their involvement in this case. Proposed Intervenors were responsible for the robust motion to dismiss in *Holmes*—arguing that *all* of the plaintiffs' claims were insufficiently pleaded. And Proposed Intervenors were also responsible for the comprehensive opposition to the *Holmes* motion for a preliminary injunction—fighting for and taking extensive discovery from the plaintiffs, developing a factual record in support of S.B. 824, fully opposing the motion for a preliminary injunction, and strongly arguing in support of S.B. 824 at the *Holmes* hearing. *See supra* Statement of Facts Section III-B. The State Board, by contrast, was content to allow Proposed Intervenors to take the lead on these matters. *See, e.g.*,

Oral Argument at 2:51:40–2:52:08. The Court will benefit from the robust arguments that Proposed Intervenors bring to the table. Indeed, allowing Proposed Intervenors to intervene is crucial to ensure that the Court is able to fairly adjudicate this case. Our system is an adversarial system, and if there is no robust response to Plaintiffs' arguments, the Court will not be exposed to the best arguments against Plaintiffs' positions.

Proposed Intervenors therefore satisfy all requirements for permissive intervention (which should be granted "liberal[ly]" *see Feller*, 802 F.2d at 729), and the Court should grant their request to intervene.

CONCLUSION

Proposed Intervenors have a significantly protectable interest in S.B. 824. Because Defendants have declined to adequately defend the law, this Court must allow Proposed Intervenors to intervene under Rule 24(a) or, at a minimum, under Rule 24(b).

Dated: July 19, 2019

Respectfully submitted,

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*[***Certificates omitted for printing purposes***]*

Dkt. 61-3

EXHIBIT C

[Filed: July 19, 2019]

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR., Plaintiffs, v. TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the	**STATE DEFENDANTS' BRIEF IN SUPPORT OF THE MOTION TO DISMISS** (Three-Judge Court Pursuant to N.C. Gen. Stat. § 1-267.1)

2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	)
Defendants.	)

Defendants the State of North Carolina and the North Carolina State Board of Elections (collectively, the "State Defendants") hereby move to dismiss Claims II through VI of Plaintiffs' Complaint for failure to state a claim of facial unconstitutionality of North Carolina Session Law 2018-144 (the "Photo ID law" or "SB 824"). Plaintiffs' allegations of facial unconstitutionality fail to meet the heavy burden of alleging that there are no circumstances under which the Photo ID law could comply with the relevant constitutional provisions.

FACTUAL BACKGROUND

Plaintiffs filed a Complaint seeking to invalidate and enjoin enforcement of the Photo ID law, which implements a recently enacted amendment to the North Carolina Constitution that requires voters to present photographic identification before voting in person. Compl. ¶¶ 2–3.

Plaintiffs allege that the Photo ID law was enacted with the same discriminatory motivation as a prior law, Sess. Law 2013-381, *as amended by* Sess. Law 2015-103, which also included an ID requirement for voting, but was struck down by the Fourth Circuit Court of Appeals in July 2016. *Id.* ¶¶ 4–5; *see NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). The newly enacted Photo ID law features significant differences that bear upon this case.

First, under the new law, the DMV and county boards of elections must issue IDs upon request, free of charge. Sess. Law 2018-144, secs. 1.1.(a), 1.3.(a). All that is required to obtain an ID from a county board is for the voter to report her name, date of birth, and last four digits of her Social Security number. *Id.*, sec. 1.1.(a), § 163A-869.1(d). Under the prior law, county boards did not issue IDs, and before obtaining a free ID from the DMV, the voter had to fill out a form declaring that they were registered to vote but had no other valid ID. Moreover, the DMV had to confirm voter registration. *See* Sess. Law 2013-381, sec. 3.1.

Second, the new Photo ID law expands the "reasonable impediment" exception to presenting photo ID. The prior law permitted a voter without ID to fill out a form indicating that a reasonable impediment prevented them from obtaining ID, and thereafter cast a provisional ballot. Sess. Law 2015-103, sec. 8.(d). That ballot would be counted if: (1) the voter returned to the county board with acceptable photo ID by noon of the day prior to the election canvass (which occurs ten days after an election); (2) the voter presented a voter registration card issued by the county board of

elections; (3) the voter presented "a current utility bill, bank statement, government check, paycheck, or other government document" that shows their name and address; or, (4) the voter provided the last four digits of their Social Security number and date of birth. *Id*. The new Photo ID law eliminates the voter's additional burden of producing one of these forms of evidence. Now, once a voter fills out a reasonable impediment form and casts a provisional ballot, the ballot "shall" be counted "unless the county board has grounds to believe the [reasonable impediment form] is false." Sess. Law 2018-144, sec. 1.2.(a), § 163A-1145.1(e).

Third, the new law expands the types of IDs that are acceptable for voting. *Id.*, sec. 1.2.(a). These include drivers licenses, nonoperators licenses issued by the DMV, passports, military ID cards, veteran ID cards issued by the U.S. Department of Veterans Affairs, voter ID cards issued by the county boards of elections, tribal enrollment cards, and qualifying IDs issued by colleges, universities, and government employers. *Id.* The prior law did not permit the use of student or government employee IDs. *See* Sess. Law 2013-381, sec. 2.1.

Plaintiffs are six North Carolina voters who contend that the new Photo ID law is unlawful both facially and as applied to their particular circumstances. See Compl. ¶ 6. They bring six claims regarding the Photo ID law under the North Carolina Constitution:

I. The Photo ID law was enacted with discriminatory intent against African-American and American-Indian voters, in violation of Article I, § 19.

II. The law unjustifiably and significantly burdens the fundamental right to vote, in violation of Article I, § 19.

III. The law creates classifications of voters—based on the possession of photo ID, whether the voter is in college, and whether the voter is over 65—and those classifications determine how freely a voter can cast a ballot, in violation of article I, § 19.

IV. The law imposes a cost for voting, in violation of Article I, § 10.

V. The law imposes a property requirement for voting, in violation of Article I, § 10.

VI. The law inhibits the freedom of expression for those not possessing acceptable ID, in violation of Article I, § 12 and 14.

Plaintiffs moved to transfer venue to a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1, on the basis that the Complaint alleged facial challenges to the Photo ID law. *See* Am. Order of March 14, 2019. The Court held that every claim in the Complaint included a facial challenge to the law given the "nature and breadth of these challenges, each of which seeks invalidation of SB 824 in its entirety." *Id.* ¶ 11. The Court then referred the entire case to a three-judge panel for consideration of the facial challenges. *See id.* ¶¶ 14–15.

Before the case was transferred, the Court also considered the Legislative Defendants' Motion to Dismiss a portion of the third claim based on standing.

In response to this Motion, the Court dismissed the claim to the extent it pertained to any allegation of an impermissible classification based on whether a voter is over 65. *Id.* ¶ 27. Accordingly, Plaintiff's third claim is now limited to whether the Photo ID law creates impermissible classifications based on a voter's possession of an acceptable ID or whether the voter is a college student. *See* Order of April 9, 2019 (granting motion for clarification that only the 65-year-old classification was dismissed).

LEGAL STANDARD

When ruling on a Rule 12(b)(6) motion to dismiss, the Court determines "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Corwin v. British Am. Tobacco PLC*, 821 S.E.2d 729, 730 (N.C. 2018) (quoting *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 51, 790 S.E.2d 657, 659 (2016)). More specifically, "dismissal pursuant to Rule 12(b)(6) is proper when '(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.'" *Id.* (quoting *Wood v. Guilford County*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002)).

ARGUMENT

The State Defendants move to dismiss Counts II through VI of the Complaint because those allegations fail to meet the heavy burden of showing that there are

no circumstances under which the law could be deemed constitutional.

I. The Standard for Assessing the Facial Constitutionality of a Statute is High.

"[A] facial challenge to a legislative Act is, of course, the 'most difficult challenge to mount successfully.'" *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 485 (2005) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). A plaintiff must show that "there are no circumstances under which the statute might be constitutional.'" *N.C. State Bd. of Educ. v. State*, 814 S.E.2d 67, 74 (N.C. 2018) (citing *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009)). "The fact that the [challenged statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 282 (1998) (quoting *Salerno*, 481 U.S. at 745).

Additionally, North Carolina statutes are presumed to be constitutional. *Wayne Cty. Citizens Ass'n for Better Tax Control v. Wayne Cty. Bd. of Comm'rs*, 328 N.C. 24, 29, 399 S.E.2d 311, 314-15 (1991). "[T]his Court gives acts of the General Assembly great deference, and a statute will not be declared unconstitutional under our Constitution unless the Constitution clearly prohibits that statute." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 167, 594 S.E.2d 1, 7 (2004) (quoting *In re Spivey*, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997)). The North Carolina Supreme Court recently reaffirmed its longstanding holding that "we will not declare a law invalid unless we determine that

it is unconstitutional beyond a reasonable doubt." *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 111 (2018).

II. The Complaint Does Not Foreclose the Possibility That the Photo ID Law Will Be Enforced Consistent with the North Carolina Constitution.

Claims II through VI of the Complaint cannot meet the high threshold required to maintain a facial challenge to a North Carolina statute.

These claims all depend on assumptions regarding the practical implementation of the Photo ID law. However, the allegations in the Complaint, combined with the plain provisions of the Photo ID law, do not foreclose the possibility that there are circumstances under which the law might be constitutional. *See N.C. State Bd. of Educ.*, 814 S.E.2d at 74.

Claim II

Claim II contends that the Photo ID law unduly burdens the fundamental right to vote, in violation of Article I, Section 19 of the state constitution. The theory behind this claim is that the law's burden on the right to vote outweighs the State's justifications for requiring photo identification at the polls. *See* Compl. ¶¶ 180–82, 200–01. The claim depends on the analysis set forth in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

Under *Burdick* the court must first determine if the law's burden on the right to vote is "severe," in which case the law must be "narrowly drawn to advance a state interest of compelling importance." 504 U.S. at

434. On the other hand, if the court determines that the law "imposes only 'reasonable, nondiscriminatory restrictions'" on the right to vote, "the State's important regulatory interests are generally sufficient to justify" the law. *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

Plaintiffs appear to concede that the legislature's need to implement the constitutional amendment requiring photo ID for voting is an important governmental interest. *See id.* ¶ 182 ("While of course the State must comply with the new constitutional provision requiring photo ID . . . ."). Additionally, it is beyond dispute that the State has a "compelling interest in preventing voter fraud," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *see Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194–97 (2008) (Stevens, J.) and in promoting "public confidence in the integrity of the electoral process" *Crawford*, 553 U.S. at 197 (Stevens, J.). The State's important interests, therefore, are apparent from the face of the Complaint and from applicable jurisprudence.

Accordingly, to survive this 12(b)(6) motion under our state's heightened facial-challenge standard, Plaintiffs must sufficiently allege that there exists no conceivable method of implementing the Photo ID law in a way that imposes a less-than-severe burden on the right to vote. Plaintiffs have not done so. Instead, implementation of the Photo ID law could impose a less-than-severe burden on the right to vote. In this regard, the differences between the old photo ID law and the new one are critical.

- The State will now offer free IDs through DMV offices and all county boards of elections, thereby making it much easier for voters of all income levels to comply with requirement. *See* Sess. Law 2018-144, secs. 1.1.(a), 1.3.(a).

- Additionally, any voter who is unable to obtain one of the free IDs may still vote through a provisional ballot which will be counted, assuming that the voter declares a bona fide reason for being unable to obtain an ID. *See id.*, sec. 1.2.(a), § 163A-1145.1(e). This is an important improvement over the earlier law, which required an additional step to provide identity verification before a voter's ballot would count. *See* Sess. Law 2015-103, sec. 8.(d).

- The Photo ID law now also added new categories of valid IDs that will serve to expand the number of eligible voters who can comply with the law, even if they have no driver's license. These new IDs include student and government employee IDs. *See* Sess. Law 2013-381, sec. 2.1.

Beyond these burden-reducing changes, the State is also required to engage in a number of activities that minimize any burden upon voting. These efforts include:

- An "aggressive voter education program" about the ID requirement, beginning now and lasting through 2020, when the first elections requiring photo ID take place, *see* Sess. Law 2018-144, sec. 1.5.(a);

- Two statewide mailings in 2019, and two in 2020, to all residential addresses informing North Carolinians of the requirement to present photo ID for voting, Sess. Law 2018-144, sec. 1.5.(a)(9); and,

- Data analysis to determine which registered voters have no DMV-issued ID, accompanied by the mailing of a notice to these voters by September 2019 informing them of the requirement to obtain photo ID for voting, and the availability of free IDs from county elections boards, *see id.*, sec. 1.5.(a)(8).

For these reasons, it is possible that any burden imposed by the implementation of the law will be less-than-severe. Because the Photo ID law serves to advance important governmental interests, the less-than-severe burden demonstrates that Plaintiffs cannot maintain their facial challenge to the law.

Claim III

Claim III asserts that the law creates classifications of voters and treats those classes of voters differently, in violation of Article I, Section 19 of the state constitution. Allegedly, those classifications are based on (1) whether a voter has an acceptable photo ID, and (2) whether the voter is young or old. Compl. ¶¶ 186–87. The portion of the age-based theory in Claim III that concerns voters over 65 years old has been dismissed, leaving only the alleged classification of "young voters attending institutions of secondary education,"who are allegedly more likely to rely on student IDs versus other forms of ID. *See id.* ¶ 187.

Although the Plaintiffs' and Legislative Defendants' briefs dispute the proper level of scrutiny to apply to these alleged classifications, the threshold question for the purposes of the facial challenge is whether voters on either side of the classifications' dividing lines are going to be treated differently for the purposes of exercising the right to vote under every plausible scenario.

As discussed above, a voter who lacks acceptable ID may cast a provisional ballot, which the law instructs the boards of elections to count, as long as the voter provides a bona fide reason for failing to bring acceptable ID to the polls. *See* Sess. Law 2018-144, sec. 1.2.(a), § 163A-1145.1(d)(2), (d1), (e). Thus, the Plaintiffs' first classification may not lead to disparate treatment in practice. Under a facial challenge, Plaintiffs must make such a showing.

Similarly, the law does not treat voters attending college differently than other voters. Under the Photo ID law, voters of all ages, regardless of whether they are enrolled in an institution of secondary education, are able to obtain free IDs from county elections boards and DMV offices. *See id.*, secs. 1.1.(a), 1.3.(a). Indeed, college students benefit from potentially possessing an *additional* form of ID if their school's ID has been approved by the State Board of Elections. *See id.*, sec. 1.2.(b). On its face, the Photo ID law does not treat college-attending voters any worse than it treats all other voters.

Plaintiff's alleged classifications in Claim III do not necessarily result in disparate treatment as alleged by

Plaintiffs. Consequently, this Court may dismiss Claim III.

Claims IV and V

As Plaintiffs made clear in their brief opposing Legislative Defendants' Motion to Dismiss before the initial judge in this case, Claims IV and V are both premised on the assertion that the Photo ID law violates the state constitution's prohibition on imposing a cost for voting—whether that prohibition is found in the Free Election Clause or the Property Qualification Clause of Article I, Section 10.

Plaintiffs and Legislative Defendants disagree as to whether either of these clauses actually prohibit the imposition of monetary costs on voting. Even assuming that one or both of these clauses do prohibit a cost for voting, in light of the availability of free IDs and reasonable impediment provisions, the Photo ID law will not necessarily impose such a cost.

Voters may obtain free IDs to comply with the Photo ID law by visiting their county board of elections or DMV location during weekday business hours. *See* Sess. Law 2018-144, secs. 1.1.(a), 1.3.(a); Compl. ¶¶ 47, 51, 84, 91–93. Plaintiffs allege that these options are insufficient as some voters lack transportation, while others may be compelled to take a day off from work to visit these locations during business hours. However, the reasonable impediment form authorized by the Photo ID law explicitly provides that "[l]ack of transportation" and "[w]ork schedule" are reasonable impediments to obtaining photo ID, thereby permitting

a voter to cast a ballot without permissible photo ID. Sess. Law 2018-144, sec. 1.2.(a), § 163A-1145.1(d1), (e).

The law also features the "[l]ack of birth certificate or other underlying documents required" for an ID as a reasonable impediment, thereby permitting any person for whom obtaining out-of-state underlying documents might be too costly to nevertheless cast a ballot. *Id.*, sec. 1.2.(a), § 163A-1145.1(d1). As the plurality in *Crawford* concluded, "[t]he severity of that burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted." 553 U.S. at 199 (Stevens, J.). The State's expanded reasonable impediment provision mitigates, as a matter of law, even those specific burdens on obtaining a free photo ID, as alleged by Plaintiffs.

Accordingly, the combination of the free ID and reasonable impediment provisions of the Photo ID law make it possible for the law to be enforced without imposing a cost on franchise rights, even under Plaintiffs' interpretation of the Free Election Clause or the Property Qualification Clause of Article I, Section 10. As such, these facial challenges to the Photo ID law are subject to dismissal.

Claim VI

Finally, Claim VI asserts that the law inhibits the freedom of expression for those not possessing acceptable ID, in violation of Article I, Sections 12 and 14 of the state constitution.

Here too, Plaintiffs and Legislative Defendants disagree over the proper standard to apply to this

claim, with Legislative Defendants arguing that the *Burdick* analysis controls, while Plaintiffs submit a type of intermediate scrutiny that is applied to the regulation of content-neutral speech. Nevertheless, under either standard, Plaintiffs have failed to demonstrate that it is impossible to implement the law in compliance with the state constitution.

As noted in the discussion of Claim II, under the *Burdick* test, the Photo ID law could be implemented in a way that it imposes a less-than-severe burden on the right to vote. *Supra* pp. 7–8. Because the law serves important governmental purposes, the law survives the *Burdick* test. *Id.*

The Photo ID law also survives Plaintiffs' intermediate scrutiny analysis. Under this framework, the law must be upheld if it is "narrowly tailored to serve a significant governmental interest," and "leaves open ample alternatives for communication." *State v. Petersilie*, 334 N.C. 169, 183, 432 S.E.2d 832, 840 (1993) (quoting *Burson v. Freeman*, 504 U.S. 191, 197 (1992)). A law is narrowly tailored if it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

The Photo ID can be implemented in a way that will not burden voters more than necessary to satisfy the important governmental interest in protecting against voter-impersonation fraud. That is because the law provides opportunities for voters to comply with the law through the issuance of free IDs, and the expansion of IDs that may be presented at the polling location. Sess. Law 2018-144, secs. 1.1.(a), 1.3.(a), 2.1. It also

includes the failsafe reasonable impediment declaration for voters who legitimately cannot obtain acceptable ID. *See id.*, sec. 1.2.(a). These provisions could operate, in practice, to impose only minimal burdens on the right to vote, and such a burden would not substantially exceed what is necessary to combat voter-impersonation fraud. *See Ward*, 491 U.S. at 799. Consequently, Plaintiffs' freedom of expression claim is subject to dismissal.

CONCLUSION

For the foregoing reasons, the Court should dismiss the facial challenges in Claims II through VI with prejudice.

Respectfully submitted, this 17th day of May, 2019.

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Dkt. 61-14

EXHIBIT N

[Filed: July 19, 2019]

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,	)
Plaintiffs,	)
v.	)
TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF	)

NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

STATE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

(Three-Judge Court Pursuant to N.C. Gen. Stat. § 1-267.1)

NOW COME Defendants the State of North Carolina and the North Carolina State Board of Elections (collectively, "State Defendants"), and hereby respond to Plaintiffs' Motion for Preliminary Injunction, which seeks to enjoin implementation of North Carolina Session Law 2018-144, as amended by Session Law 2019-4 and Session Law 2019-22 ("Photo ID Law" or "SB 824").

The Photo ID Law's mandatory implementation has now been in place for a period of roughly six month since the law went into effect. The State Board of Elections, ("State Board"), the agency charged with administering many aspects of the Photo ID Law, began the process of implementing the General Assembly's directives related to the requirements of photographic voter identification. Much work still remains to be completed by the State Board prior to the elections cycle of 2020, when the photographic identification requirements for voting are scheduled to

go into effect.[1] To address the impact of a preliminary injunction and to assist the Court in weighing the equities associated with a preliminary injunction, the Board's response highlights:

- The timing and substance of various legislative mandates impacting statewide implementation of the Photo ID Law;
- The State Board's progress towards compliance with the statutory deadlines and directives; and,
- Critical aspects of election administration that could be adversely impacted by the requested injunction.

PROCEDURAL BACKGROUND

Plaintiffs filed a Complaint seeking to invalidate and enjoin enforcement of the Photo ID Law, which implements a recently adopted amendment to the North Carolina Constitution requiring voters to present photographic identification before voting in person. Compl. ¶¶ 2–3.

Plaintiffs are six North Carolina voters who allege that the new Photo ID law is unconstitutional both

[1] The Photo ID Law was originally scheduled to become effective, in large part, immediately upon becoming law. Sess. Law 2018-144, sec. 5. However, the effective date of certain provisions of the law was amended by N.C. Sess. Law 2019-4 (delaying photographic voter identification requirement for voting until 2020 elections cycle), and N.C. Sess. Law 2019-22 (delaying and relaxing certain photographic voter identification requirements for, e.g., colleges and universities). All other educational, outreach and implementation requirements and deadlines remain intact.

facially, and as applied to their particular circumstances. *See* Compl. ¶ 6. Plaintiffs assert six constitutional claims regarding the Photo ID Law:

I. The Photo ID Law was enacted with discriminatory intent against African-American and American-Indian voters, in violation of Article I, § 19.

II. The law unjustifiably and significantly burdens the fundamental right to vote, in violation of Article I, § 19.

III. The law creates classifications of voters—based on the possession of photo ID, whether the voter is in college, and whether the voter is over 65—and that those classifications determine how freely a voter can cast a ballot, in violation of Article I, § 19.

IV. The law imposes a cost for voting, in violation of Article I, § 10.

V. The law imposes a property requirement for voting, in violation of Article I, § 10.

VI. The law inhibits the freedom of expression for those not possessing acceptable ID, in violation of Article I, §§ 12 and 14.

All Defendants have moved to dismiss the Complaint. The Legislative Defendants moved to dismiss the Complaint in its entirety, while the State Defendants have moved to dismiss the facial constitutional challenges featured in Claims II through VI.

Plaintiffs moved to transfer venue to a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1, asserting that the Complaint alleged facial challenges to the Photo ID Law. *See* Am. Order of March 14, 2019. The Court referred the entire case to this panel for consideration of the facial challenges. *See id.* ¶¶ 14–15. Plaintiffs subsequently requested a preliminary injunction to halt the implementation of the law pending determination on the merits.

UPDATED FACTUAL BACKGROUND

The parties have outlined their understanding of the relevant factual background in their respective briefs in support of pending motions to dismiss and for preliminary injunction. State Defendants rely upon and incorporate herein by reference their statement of facts as set forth in their brief in support of the motion to dismiss, filed on May 17, 2019. An update on the State Board's efforts to implement the Photo ID Law, and an insight into critical aspects of election administration, is provided below to assist the Court as it deliberates on whether an injunction is appropriate.

A. General Provisions and Recent Changes

The Photo ID Law was initially enacted on December 19, 2018, and was made effective as of that date. *See* Sess. Law 2018-144, sec. 5. On March 14, 2019, the General Assembly postponed enforcement of photo ID requirement for in-person voting until the 2020 elections. *See* Sess. Law 2019-4, sec. 1.(a).

The Photo ID Law lists the ten types of ID that qualify for use during voting, which include a (1) drivers license; (2) DMV-issued nonoperators ID

card; (3) passport; (4) voter ID card issued by a board of elections; (5) tribal enrollment card; (6) student ID card; (7) public employee ID card; (8) out-of-state drivers license or nonoperators ID card, but only if the person registered to vote within 90 days of the election; (9) military ID card; and, (10) veterans ID card. Sess. Law 2018-144, sec. 1.2.(a), § 163A-1145.1(a).

As originally enacted, the Photo ID law prescribed that by March 15, 2019, student IDs and state or local government employee IDs had to meet certain rigorous statutory criteria for approval. *Id.* sec. 1.2.(b), § 163A-1145.2(a). As a result, the State Board was able to certify IDs from only a limited number of educational institutions and government agencies as of the March deadline. *See* Affidavit of Karen Brinson Bell ("Bell Aff."), Ex. D. On June 3, 2019, the General Assembly amended the approval requirements for these IDs, thereby making the approval process less stringent and providing for additional opportunities for these IDs to be approved prior to the 2020 elections. *See* Bell Aff. ¶ 12 & Ex. E. Institutions that had not sought approval before March may now do so before November 1, 2019; institutions that had their IDs rejected in March have until November 15, 2019 to reapply under the new requirements. *Id.* ¶ 12 & Ex. E.

B. Outreach and Training

Since this lawsuit was filed in December 2018, the State Board has engaged in a number of endeavors in anticipation of enforcement of the Photo ID Law. Those efforts include public outreach and education, and the training of local elections officials.

The State Board has prepared county boards to begin issuing free voter ID cards, pursuant to the Photo ID Law, and those cards are now available from each of the 100 county boards of elections in the State. *Id.* ¶ 9. To accomplish this, as of April 29, 2019, the Board adopted a temporary rule governing the issuance of these ID cards. *Id.* ¶ 7. The rule requires county boards to issue ID cards upon request from voters at the county board office, and it permits the county boards to go to other locations in the county to issue IDs upon a majority vote of the board. *See* 08 N.C.A.C. 17.0107(a) (attached as Exhibit A to the Bell Affidavit). A voter need only provide her full name, date of birth, and the last four digits of her Social Security Number to obtain such an ID card. *Id.* Every county board of elections has purchased a machine to print these IDs and is being reimbursed for that cost by the State Board. Bell Aff. ¶ 9. The State Board has also provided training to county staff on printing the ID cards. *Id.* ¶ 10 & Ex. C.

The State Board has formed a training and outreach team that is tasked with educating the public and county boards on Photo ID implementation. *Id.* ¶ 13. That team currently has five full-time employees and one temporary employee, and will soon hire two additional full-time staff members. *Id.* The team is led by the State Board's Chief Learning Officer, who was with the Board during the implementation of photo ID in 2015 and 2016. *Id.*

As of May 2019, the State Board's outreach team began conducting public seminars on photo ID, in coordination with county boards. *Id.* ¶ 14. The team will host two such seminars in each county before

September 1, 2019. *Id.* ¶ 14. The seminars are being advertised in local media. *Id.* As of June 18, 2019, 48 such seminars have been conducted, while 154 more have been scheduled. *Id.* ¶ 14 & Ex. F.

This year the State Board will conduct two mass-mailings to every household in North Carolina to inform the public of the requirements of the Photo ID Law. *See* Sess. Law 2018-144, sec. 1.5.(a)(9). Two additional mailings will go out in 2020. *Id.* The mailings will describe, at a minimum, the forms of acceptable photo ID, the options for provisional voting for voters who do not present photo ID, and a description of voting mail-in absentee. *Id.* The State Board has a pending request for proposal with the State Procurement Office to procure a vendor to conduct the two mass-mailings this year. Bell Aff. ¶ 18.

The State Board has also created a webpage devoted to photo ID information, which can be found at ncsbe.gov/voter-id (or alternatively, voterid.ncsbe.gov). *Id.* ¶ 15. The webpage displays which forms of ID are acceptable at the polls, and includes a link to a form that allows a voter to request a free photo ID from their county board. *Id.* That webpage also includes information on the aforementioned seminars. *Id.*

The State Board has created photo ID posters and informational handouts that will be provided to the county boards of elections to be placed in every precinct and one-stop early voting location for the 2019 elections. *Id.* Exhibit G of the Bell Affidavit displays one such handout. It explains that photo ID will be required in the 2020 elections, identifies which IDs are acceptable, and explains how a voter can obtain an

acceptable ID if they do not have one. *See* Bell Aff., Ex. G. The handout also explains that a voter can cast a provisional ballot if they do not show ID, and that their ballot will count if they sign a reasonable impediment affidavit or later present their ID at the county board. *Id.* The handout will also be available in Spanish. Bell Aff. ¶ 15. A similar handout will be provided to college students when they obtain an ID card from their academic institution, if that institution' ID card has been approved by the State Board. *Id.* ¶ 16; *see* Sess. Law 2018-144, sec. 1.2.(b), § 163A-1145.2(a)(1)h.

County board staff and local poll workers will be responsible for the on-the-ground implementation of the Photo ID Law when it comes time to vote. The State Board has scheduled a statewide conference for county board members and their staff at the end of July 2019, where State Board staff will provide presentations and training materials on photo ID implementation. Bell Aff. ¶ 19. The State Board is also drafting poll worker training documents that include information about the Photo ID Law. *Id.* This includes updating the official polling "station guide" to ensure uniform actions by poll workers related to photo ID in 2020. *Id.* ¶ 17. The "station guide" is essentially a handbook for poll workers distributed to every precinct.

Apart from the station guide, and in contemplation of the Photo ID law, the State Board is revising a number of other documents and forms that it uses for election administration. *Id.* This includes updating the official voter registration form to incorporate information about photo ID, and updating the provisional ballot application form to address photo ID

provisions, including the reasonable impediment requirement. *Id.* The State Board is also in the process of updating its absentee ballot request form and absentee container return envelope in order to effectuate new photo ID requirements for absentee-by-mail voting. *Id.*

C. Technological Implementation and Deadlines

As the State Board administers municipal and special elections in 2019, it is also planning for changes to its systems that are required by the Photo ID Law. For instance, the Board operates the Statewide Elections Information Management System (SEIMS), which is the informational backbone of elections administration in the state. *Id.* ¶ 21. There are aspects of the SEIMS system that touch on photo ID, including the processing of absentee-by-mail ballot requests, which will require revisions to the computer coding and functionality of SEIMS. *Id.* Making changes to the SEIMS system takes approximately four months, from documenting business requirements, development, testing, and final production. *Id.*

SEIMS must be ready to implement the 2020 primary on the date that absentee primary ballots are mailed, which is January 13, 2020. *Id.* ¶ 22. Accordingly, because of the four-month development period for SEIMS, the State Board must initiate changes by mid-September in order for the system to be capable of carrying out the legal requirements of photo ID in January. *Id.* ¶ 23. In light of this litigation, the Board's executive director has instructed the staff responsible for making changes to SEIMS to include the ability to return to the current version of SEIMS in

the event of a court-ordered injunction against Photo ID implementation prior to the 2020 elections. *Id.* ¶ 21. Unless ordered otherwise by this Court, that instruction works to assist the State Board in incorporation of system changes due to the Photo ID Law into SEIMS, and helps the Board with any reversal of the incorporated changes (to the current version of the system) if the Photo ID Law is ultimately invalidated in the courts.

LEGAL STANDARD

A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *DaimlerChrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 578, 561 S.E.2d 276, 281 (2002) (quoting *Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)). A preliminary injunction may issue only if: (1) the plaintiff shows a likelihood of success on the merits of the case, and (2) the plaintiff "is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *Id.* (quoting *Investors, Inc.*, 293 N.C. at 701, 239 S.E.2d at 574). The party moving for a preliminary injunction bears the burden of establishing entitlement to the relief. *Pruitt v. Williams*, 25 N.C. App. 376, 379, 213 S.E.2d 369, 371 (1975).

The issuance of a preliminary injunction "is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities" *Horner Int'l Co. v. McKoy*, 232 N.C. App. 559, 561, 754 S.E.2d 852, 855 (2014) (quoting *A.E.P. Indus., Inc. v. McClure*,

308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983)). However, "[a] preliminary injunction should not be granted if a serious question exists in respect of the defendant's right to do what the plaintiffs seek to restrain and the granting thereof would work greater injury to the defendant than is reasonably necessary for the protection *pendente lite o*f the plaintiffs' rights." *Setzer v. Annas*, 286 N.C. 534, 540, 212 S.E.2d 154, 157-58 (1975) (*citing Huskins v. Hospital*, 238 N.C. 357, 361, 78 S.E. 2d 116, 120 (1953); *Board of Elders v. Jones*, 273 N.C. 174, 182, 159 S.E. 2d 545, 551-552 (1968)). The hearing judge must consider the relative conveniences and inconveniences of the parties in determining the propriety of a preliminary injunction and the terms thereof. *Id.*

ARGUMENT

I. ENJOINING THE PHOTO ID LAW WILL HALT THE STATE BOARD'S EFFORTS TO EDUCATE THE PUBLIC AND LOCAL BOARDS ON THE LAW'S REQUIREMENTS.

The State Board is in the middle of voter outreach and county board training for the implementation of the Photo ID Law. *See* Bell Aff. ¶¶ 6–16, 18–19. County boards have acquired the necessary equipment for printing free photo identification cards for voters, the State Board has trained local boards on the use of that equipment, and the State Board is in the process of reimbursing the county boards for that expense. *Id.* ¶¶ 9-10. The State Board has commenced a statewide public seminar campaign, as required by the Photo ID Law, to educate voters on the requirements of the Photo ID law. Soon, the State Board will make

technical changes to its systems, processes, and forms so that elections administrators can enforce the photo ID requirement when the first ballots go out on January 13, 2020. *See id.* ¶¶ 17, 21–23.

The Photo ID Law equires the State Board to conduct "an aggressive voter education program concerning the provisions" of the law. Sess. Law 2018-144, sec. 1.5.(a). Outreach, public education, and training are now taking place, and some of these efforts will necessarily continue well into 2020. However, if the law is enjoined, certain activities will necessarily cease or be severely impacted, including:

- The requirement to coordinate "with each county board of elections so that at least two seminars are conducted in each county prior to September 1, 2019" *Id.* § 1.5.(a)(4).
- The requirement to notify "each registered voter who does not have a North Carolina issued drivers license or identification card a notice of the provisions of this act by no later than September 1, 2019." *Id.* § 1.5.(a)(8).
- The State Board's timely mailing of "information to all North Carolina residential addresses, in the same manner as the Judicial Voter Guide, twice in 2019 and twice in 2020 that, at a minimum, describes forms of acceptable photo identification when presenting to vote in person, the options for provisional voting for registered voters who do not present the required photo identification, and a description of voting mail-in absentee." *Id.* § 1.5.(a)(9).

- The State Board's ability to create "a list containing all registered voters of North Carolina who are otherwise qualified to vote but do not have a North Carolina drivers license or other form of identification containing a photograph issued by the Division of Motor Vehicles of the Department of Transportation, as of September 1, 2019." *Id.* § 1.5.(b).

The above represents a non-exhaustive list. If an injunction were imposed now, and then later lifted during a subsequent hearing by either this Court, or an appellate court, the State Board will likely be unable to timely meet all of the outreach and training efforts mandated by the law, including the training of local administrators, conducting of public educational seminars, and the dispatch of mass-mailings. Bell Aff. ¶ 24. For instance, an injunction may lead to an unequal distribution of public information among the State's counties: some counties have already had an opportunity to start education of their residents on the photo ID requirements of the law through free public seminars coordinated by the State Board, while many other counties will be left with either no opportunity to timely educate their residents through free seminars, or with a delayed opportunity to do so. *Id.* ¶¶ 14-24.

As explained *supra*, the State Board's elections information management system, SEIMS, also requires sufficient lead time for proper design and testing. An injunction that exceeds the mid-September timeframe may severely disrupt development, testing, and production of SEIMS. That is so because while the Executive Director instructed the Board to make

preparations to be able to reverse any SEIMS changes related to the Photo ID Law in case if this law is invalidate by the Court, the same is not true if incorporation of the Photo ID related changes is halted altogether. Any injunction that pauses incorporation of the Photo ID Law requirements past mid-September would likely result in the State Board not being able to incorporate those changes in time for 2020 election due to the design, development and testing requirements, even if the law is ultimately upheld.

Naturally, future litigation outcomes cannot be precisely predicted. Nevertheless, it can be safely assumed that the imposition of an injunction that is subsequently vacated by this or another court will result in a severe impediment in the State Board's efforts to prepare public, and prime the machinery of election administration, for the photo ID requirement. *See* Bell Aff. ¶ 24. A preliminary injunction, that is later lifted, will result in multiple adverse consequences upon the administration of elections by the State Board.

The likelihood of a harm to the State Board from an injunction is further highlighted by the State Defendants' Motion to Dismiss Plaintiffs' facial challenge to the Photo ID Law. With respect to Claims II through VI, the State Defendants have argued that Plaintiffs are unable to meet the high burden required to establish that the legislation is invalid on its face. Specifically, Plaintiffs are required to show there are no circumstances in which the State would be able to implement the Photo ID Law in a way that satisfies the requirements of the State constitution, and that as a

consequence, the law is invalid as written. As argued in the State Defendants' motion to dismiss, Plaintiffs have failed to meet that exacting standard. This reality weighs against the issuance of injunction: Plaintiffs' inability to ultimately succeed on the merits will almost certainly subvert the State Board's ability to comply with duly enacted legislation.

II. A SWIFT DECISION ON THE MERITS WILL WELL-SERVE THE STATE BOARD AND THE PUBLIC.

The State Board is justifiably wary of the consequences for election administration if an injunction is issued and later lifted. Meanwhile, the State Board also recognizes that if it were to continue implementation of the Photo ID law, only to find later that the Photo ID requirement is struck down, the Board will encounter different challenges and obstacles. The Board will have to expend its limited resources, both fiscal and available time, on retraining poll workers and county board staff on *not* requiring photo ID. This expenditure is compounded by the fact that the State Board will also have to re-educate voters that the photo ID requirements are no longer operative.

Recognizing that the path of litigation is unpredictable, a primary objective for the State Board is to expediently obtain clear guidance on what law, if any, will need to be enforced. With that in mind, if the Court is inclined to issue an injunction at this stage, the State Board requests that it be granted some flexibility in making technical preparations that will allow it to implement the law in the event the injunction were later vacated. This flexibility would

include being permitted to develop updates to the SEIMS system to account for the administration of an election with, and without, photo ID, while also directing county boards not to discard pre-photo ID materials in anticipation of the possibility that those materials become necessary to use again.

CONCLUSION

The State Defendants respectfully ask the Court to consider the outlined challenges faced by the State Board in determining whether an issuance of any injunction of the Photo ID Law is appropriate. If the Court ultimately leans in favor of injunctive relief, the State Defendants request to be permitted some flexibility to account for the possibility of enforcing the law in the future.

Respectfully submitted, this 19th day of June, 2019.

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Dkt. 65

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: August 9, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al. Defendants.	**STATE BOARD DEFENDANTS' RESPONSE TO SECOND MOTION TO INTERVENE**

Defendants State Board of Elections Chair Damon Circosta, *in his official capacity*[1]*;* State Board of

[1] Former State Board of Elections Chair Robert B. Cordle, sued in his official capacity only, has recently resigned his position as the Chair of the State Board of Elections. Damon Circosta has been appointed as the new Chair of the State Board of Elections. State Board Defendants hereby give a notice of this appointment. The new Board of Elections Chair Circosta should be automatically

Elections Secretary Stella E. Anderson, *in her official capacity*; State Board of Elections member David C. Black, *in his official capacity*; State Board of Elections member Ken Raymond, *in his official capacity*; and, State Board of Elections member Jefferson Carmon III, *in his official capacity*, ("State Board Defendants"), neither consent nor object to the renewed motion to intervene ("Second Motion to Intervene") filed by President Pro Tempore of the North Carolina Senate Phillip Berger, and Speaker of the North Carolina House of Representatives Timothy Moore ("Proposed Intervenors") [DE 60].

ARGUMENT

The State Board Defendants remain ready to defend the constitutionality of N.C. Sess. Law 2018-144, "AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE" ("Photo ID Law") in this action. Indeed, to date, the State Board Defendants have defended the constitutionality of the subject measure, as they have done in many other cases in which they have been called upon to defend many other measures enacted by the General Assembly that affect the administration of elections in North Carolina.

While the State Board Defendants neither oppose nor consent to the Proposed Intervenors' Second Motion to Intervene, they nevertheless offer this response to certain arguments and representations made by the

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substituted as a named Defendant for a former Chair pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 25(d).

Proposed Intervenors. The State Board Defendants are properly and lawfully positioned to defend the constitutionality of the Photo ID Law, have not declined to defend the constitutionality of any aspect of that law in either in this action or the contemporaneous State proceeding, and continue to adequately represent all "protectable interest" in the subject of this action.

First Motion to Intervene by Proposed Intervenors

On January 14, 2019, the Proposed Intervenors moved to intervene in this case. [DE 7] ("First Motion to Intervene"). The State Board Defendants filed their response to the First Motion to Intervene on February 14, 2019. The State Board Defendants neither consented nor objected to the First Motion to Intervene. With their response, the State Board Defendants noted for the Court the inaccuracy of the Proposed Intervenors' contention that they were permitted to intervene, by right, pursuant to N.C. Gen. Stat. § 1-72.2. That response further served to dispute the contention that the State Board Defendants, represented by the Attorney General's Office, were incapable of defending this lawsuit. [DE 36 at 2] Plaintiffs objected to the First Motion to Intervene. [DE 38]

This Court denied the First Motion to Intervene, concluding that:

- "State Defendants are represented by the Attorney General and are presently defending against Plaintiffs' challenge to the constitutionality of S.B. 824[,]" [DE 56 at 10]

- "Proposed Intervenors have failed to demonstrate that they have a significantly protectable interest in likewise defending the constitutionality of S.B. 824 sufficient to warrant a right to intervene under Rule 24(a)(2)," [DE 56 at 11]

- "Proposed Intervenors have likewise failed to demonstrate that any interests they may have are not adequately represented by State Defendants," [DE 56 at 11]

- "Proposed Intervenors share the same objective as State Defendants, namely, defending the constitutionality of the existing law—S.B. 824[, and] 'disagreement over how to approach the conduct of the litigation is not enough to rebut the presumption of adequacy.'" [DE 56 at 16] (citations omitted).

- "[S]imilarity in the defenses of Proposed Intervenors and State Defendants (citing to several parallel arguments in State Board Defendants' motions to dismiss and Proposed Intervenors' affirmative defenses) further undermines Proposed Intervenors' attempt to rebut the presumption of adequate representation by showing adverse interests[,]" [DE 56 at 18]

- "Finally, Proposed Intervenors' assertion that, solely because the BOE Defendants were appointed by the Governor, they are unable to defend this action lacks support in the record. Nowhere in the record have BOE

> Defendants indicated an intention not to defend this action." [DE 56 at 18].

Based on the above findings, the Court concluded "that Proposed Intervenors have failed to satisfy their burden of demonstrating a right to intervene pursuant to Rule 24(a)(2). As a result, the motion to intervene as of right will be denied." [DE 56 at 19]

In its discretion the Court also denied Proposed Intervenors' request for permissive intervention under Rule 24(b). The Court's predicate for that legal conclusion was that:

- "[T]he addition of Proposed Intervenors as a party in this action 'will hinder, rather than enhance, judicial economy,' and will 'unnecessarily complicate and delay" the various stages of this case, to include discovery, dispositive motions, and trial[,]'" [DE 56 at 21]
- "[T]he inclusion of Proposed Intervenors would likely detract from, rather than enhance, the timely resolution, clarity, and focus on, solely the weighty and substantive issues to be addressed in this case[,]" [DE 56 at 21]
- "[A]llowing this requested intervention could place additional burden on the Court in expending unnecessary judicial resources on [Proposed Intervenors'] contentions [regarding the Attorney General's level of interest in and ability to litigate this case]," [DE 56 at 22]

- "Plaintiffs will likely suffer prejudice in having to address dueling defendants, purporting to all represent the interest of the State, along with their multiple litigation strategies." [DE 56 at 22].

Although the Court denied the permissive intervention request by the Proposed Intervenors, it permitted President Pro Tempore Phillip Berger, and Speaker Timothy Moore to submit *amicus* briefs in the case. [DE 56 at 22]

Second Motion to Intervene by Proposed Intervenors

With their Second Motion to Intervene, the Proposed Intervenors repackage much of their previous arguments in support of their First Motion to Intervene. [DE 61 at 10-21] The Proposed Intervenors' instant Motion once again questions whether the current State Board Defendants can defend the case, as well as the ability of the Attorney General's Office to serve as defense counsel. [DE 61 at 12-17] The new variable featured in the instant Motion is the Proposed Intervenors' disagreement over the best approach in addressing facial constitutional challenges, and with the specific litigation strategy decisions made by the North Carolina State Board of Elections in the related State court proceeding that challenges the Photo ID Law under several provisions of the North Carolina Constitution, *Holmes v Moore*, No. 18-cv- 15292 ("*Holmes*"). [DE 61 at 6-11]

While the State Board Defendants continue to neither consent nor oppose the Proposed Intervenors Motions to Intervene, this Court should reaffirm that

disagreements over litigation strategy do not establish sufficient grounds to permit intervention as of right.

Moreover, the very thrust of the Proposed Intervenors' Second Motion substantiates the Court's concerns expressed during the denial of the First Motion to Intervene about judicial economy and "multiple litigation strategies[,]" to wit: that "allowing this requested intervention could place additional burden on the Court in expending unnecessary judicial resources on [Proposed Intervenors'] contentions [regarding the Attorney General's level of interest in and ability to litigate this case]." [DE 56 at 22] And most importantly, despite its different packaging, the Proposed Intervenors' Second Motion continues to suffer from the same weaknesses in legal justifications for mandatory intervention, as did their First Motion to Intervene.

First, movants cite no authority for their overall suggestion that because the Attorney General's Office takes a certain position in one action, the Proposed Intervenors are vested with the authority to intervene in a different litigation, where the Attorney Generals' Office expressed its intent to appropriately defend the subject legislation. The test for an intervention as of right is straightforward: the movant must demonstrate "(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation." *Stuart v. Huff*, 706 F.3d 345 at 349 (4th Cir. 2013) (citing *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991)). Because

the State Board Defendants moved to dismiss this action, and subsequently denied all substantive allegations of unconstitutionality in their Answer in the instant case, the Proposed Intervenors have failed to meet the inadequacy and impairment prongs of the *Stuart* test. More so, that failure exists irrespective of the Proposed Intervenors apparent preference for a different litigation strategy in *Holmes*.

Second, Proposed Intervenors erroneously branded the State and State Board of Elections' position in *Holmes* as a declination to defend the Photo ID Law. [DE 60 at 12] ("Defendants Have Declined to Defend S.B. 824") To be clear: the State Defendants represented by the Attorney General in *Holmes* have defended the Photo ID Law, as they are charged to do pursuant to North Carolina law.[2] Specifically, despite the Proposed Intervenors unwarranted claims, in *Holmes* the State Defendants moved to dismiss a large number of claims in that action and participated in oral

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[2] To confuse matters further, the Proposed Intervenors refer to the alleged "primacy" of the General Assembly "in defending *the State* under North Carolina law." [DE 61 at 12-13] (emphasis added) The State, however, is not a Defendant in this lawsuit. The named Defendants are the State Board of Elections' members, sued in their official capacities for their connection to enforcement of the Photo ID Law. The Proposed Intervenors do not claim (nor could they) that they have any authority, much less "a primary" authority, to direct the defense of the State Board members.
In any event, this Court need not rule on the interpretation of sections 1-72.2 and 120-32.6 that the Proposed Intervenors have advanced in this lawsuit. These are issues of state law, and the Attorney General reserves the right to challenge more comprehensively, in an appropriate setting, the Proposed Intervenors' interpretation.

arguments in favor of dismissal and in opposition to preliminary injunction. [See DE 43-2 at ¶¶ 173-201, DE 61-3, DE 61-4, DE 61-4 at 9 fn 3] The State Board appropriately advocated for the transfer of the case to a three-judge panel charged with authority to hear facial challenges to state laws, moved and advocated for the dismissal of 5 out of 6 claims for those plaintiffs' failure to state a claim, participated in extensive fact discovery, worked professionally and courteously with all parties in state court, and highlighted various weaknesses and harms implicit in *Holmes* plaintiffs' request for preliminary injunction. [See *Holmes* State Def Brief attached hereto as State Def Ex A (internal exhibits omitted); *Holmes* Joint Status Report attached hereto as State Def Ex B; See also DE 61-3, DE 61-4, DE 61-14 at 9-12, DE 61-15][3]

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[3] The Proposed Intervenors' argument that their interest is not adequately protected because the State Board did not move to dismiss Claim I (intentional discrimination claim) at the pleadings stage in the *Holmes* litigation fares no better than their other arguments. The fact that the Proposed Intervenors themselves vigorously argued for that dismissal after much expenditure of time and resources, and nevertheless lost, emphasizes why legal tactics may differ across various teams of lawyers, and why a different litigation tactic may be soundly pursued by the State Defendants. Significantly, as Proposed Intervenors ultimately admit, the State Defendants in *Holmes* never conceded the merits of plaintiffs' assertions in Claim I, [DE 61 at 8, DE 61-4 at 9 fn 3], and in fact argued that issuance of preliminary injunction would cause a multiplicity of "implementation issues discussed in [their] brief[,]" [DE 61 at 10], therefore characterization of the State Defendants' position as a declination of defense is simply inaccurate.

Decisions by both the Superior Court judge initially assigned to the *Holmes* matter, and the three-judge panel of Superior Court, Wake County vindicate the State Defendants' chosen litigation strategy. Indeed, *Holmes* was transferred to the three-judge panel as advocated by the Attorney General's Office on behalf of the State Defendants, where nearly all claims were subsequently dismissed as failing to meet the stringent "facial unconstitutionality" test. [See DE 52-1] Likewise, while the Court denied most of the Proposed Intervenors' standing arguments and their motion to dismiss Claim I, it contemporaneously dismissed 5 of *Holmes* plaintiffs' 6 facial challenges, (Claims II through VI), for the reasons outlined by the State Defendants. [See *Holmes* 3 Judge Panel Order attached hereto as State Def Ex C] In other words, the outcomes in *Holmes* reflect that the straightforward approach taken by the State Defendants, through the Attorney General's Office, has been just as, if not more efficient, than the Proposed-Intervenors' approach, and was more successful.

It is understandable that the State Board Defendants' manner of engaging with the opposing side, their guarding of taxpayer resources, and their choice of litigation tactics may all depart from the manner preferred by the Proposed Intervenors. Yet, those anticipated differences do not entitle the Proposed Intervenors to intervention as of right under the existing federal body of law. [*See* DE 56 at 16-17] (citing cases and authorities that hold that disagreements over conduct of the litigation and litigation strategy is insufficient to rebut the presumption of adequacy)]

Moreover, there is no adversity of interest. The Proposed Intervenors and State Board Defendants share the common objective of defending the validity of the Photo ID Law. While the respective motivations that underpin their pursuit of that objective may differ, they both nevertheless seek to uphold the constitutionality of the statute. Allowing the Proposed Intervenors to intervene here, without a showing of adverse interests, would "simply open the door to a complicating host of intervening parties with hardly a corresponding benefit." *Stuart*, 706 F.3d 353 (emphasis added).

The Proposed Intervenors argue that the Attorney General's Office cannot adequately represent their interests because the Attorney General and the Governor expressed personal opposition to such laws. [DE 61 at 15-16] But any questions the Proposed Intervenors raised about the State Board's defense of the Photo ID Law, as this Court well knows, have been answered by the State Board's motion to dismiss all of the claims in this case and answer. In light of what the State Board Defendants actually filed, including arguments in favor of dismissal that were not made by Proposed Intervenors, movants' entire argument is without merit.

Finally, "the duties of the Attorney General in North Carolina as prescribed by statutory and common law include the duty to appear for and to defend the State or its agencies in all actions in which the State may be a party or interested." *Martin v. Thornburg*, 320 N.C. 533, 546 (1987); see also *Fisher-Borne v. Smith*, 14 F.Supp.3d 699, 704 (M.D.N.C. 2014) (setting

out the Attorney General's duties). The Attorney General's Office is meeting its duty to defend this action, and has propounded arguments beyond those offered by the Proposed Intervenors. *See Stuart*, 706 F.3d at 350 (nothing that "the trial court's superior vantage point was evident in this very case when the judge noted the Attorney General's 'detailed, thorough, and substantial brief' … in opposition"). The Proposed Intervenors have failed to make any showing, much less a "strong showing of inadequacy," that would entitle them to intervention as of right.

For the reasons discussed in their previous response, [DE 36], by Governor Cooper in his response, [DE 34 at 1-2], and in this current response, the State Board Defendants continue to disagree with the Proposed Intervenors' contention that intervention is necessary, or required based on N.C. Gen. Stat. § 1-72.2, or that the State Board Defendants represented by the undersigned counsel are not capable of defending this lawsuit.

Nevertheless, State Board Defendants continue to neither consent to nor oppose the Legislative Intervenors' Motions to Intervene, and instead, would duly abide by whatever determination this Court may make with respect to what role, if any, the Proposed Intervenors will have during the remainder of this action.

Respectfully submitted, this 9th day of August, 2019.

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*[***Certificate omitted for printing purposes***]*

Dkt. 66

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: August 9, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al., Defendants.	**PLAINTIFFS' OPPOSITION TO SECOND MOTION TO INTERVENE**

*[***Tables omitted for printing purposes***]*

INTRODUCTION AND STATEMENT OF FACTS

Just six weeks after this Court denied their first motion to intervene, Philip E. Berger, the President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, the Speaker of the North Carolina House of Representatives ("Proposed Intervenors"), purportedly acting on behalf of the General Assembly, have filed what they style as a renewed intervention

motion pursuant to Federal Rule of Civil Procedure 24 that recycles many of the same arguments this Court already explicitly rejected. In truth, it is a thinly-veiled motion for reconsideration of this Court's well-reasoned opinion that comes nowhere close to meeting the recognized standard for reconsideration and should be denied for that reason alone.

To the extent the Court sees fit to reach the merits of Proposed Intervenors' motion, it should be denied *again*, this time with prejudice. This expedited action has barely had a chance to move forward in the six weeks since Proposed Intervenors were last denied intervention, and already Proposed Intervenors are making another effort to inject themselves. The Court has held that "Proposed Intervenors are granted the right to participate in this action by filing *amicus curiae* briefs." Dkt. 56, at 2. But the mere right to present their merits arguments to the court is not enough for Proposed Intervenors. Proposed Intervenors are determined not just to argue this case on the merits but to "hinder, rather than enhance, judicial economy," and "unnecessarily complicate and delay the various stages of this case, to include discovery, dispositive motions, and trial," Dkt. 56, at 21, through lengthy, repetitious, and frivolous motions.

North Carolina's State Board of Elections ("SBOE") is clearly defending this case. SBOE has shown no signs whatsoever that it is not defending S.B. 824 to the fullest extent that it can, having already sought to dismiss this action once. Dkt. 42. And SBOE has now twice told this Court that it will defend S.B. 824. *See* Dkt. 36, at 2; Dkt. 65, at 2. The Governor, moreover,

has already won substantial relief for the State, persuading the Court that North Carolina enjoys Sovereign Immunity from this lawsuit, and invoking it on North Carolina's behalf. Dkt. 57, at 17.

In fact, the Court's holding that North Carolina has Sovereign Immunity conclusively bars Proposed Intervenors from intervening in this lawsuit. Proposed Intervenors are purporting to intervene on behalf of the State in this action. Dkt. 61, at 12 (arguing that Proposed Intervenors are attempting to intervene as "agents of the State." (quoting N.C. Gen. Stat. § 1-72.2(b) and citing § 120-32.6(b)); *see also id*. at 13 (arguing that "if anything the legislature—not the Attorney General—has primacy in defending the State under North Carolina law"). But only North Carolina's Attorney General can waive North Carolina's Sovereign Immunity under North Carolina law. *See Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 462-70 (1945) (explaining that only a "properly authorized executive or administrative officer of the state" may waive "the state's immunity to suit in the federal courts") *as modified by Lapides v. Bd. of Regents of Univ. Sys. of Georgia*, 535 U.S. 613, 621-23 (2002) (explaining that an "attorney general" authorized "[t]o represent the state in all civil actions tried in any court" may waive a State's Sovereign Immunity); *Gen. Synod of the United Church of Christ v. Resinger*, No. 14-cv-00213, 2014 WL 5094093, at *3 (W.D.N.C. Oct. 10, 2014) (noting that N.C. Supreme Court has held that the N.C. Attorney General has a duty "prescribed by statutory and common law" "to defend the State . . . in all actions in which the State may be a party").

Moreover, it is Proposed Intervenors, not Defendants, whose litigation decisions are likely to disserve the State. By intervening, Proposed Intervenors will prejudice North Carolina by waiving North Carolina's Sovereign Immunity in this case. Sovereign immunity is "central to sovereign dignity," *Alden v. Maine*, 527 U.S. 706, 715 (1999), designed to guard against "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Id*. at 749. Proposed Intervenors' participation will expose North Carolina to significant financial liability, including eventual attorneys' fees (52 U.S.C. § 10310(e)). It is mystifying that Proposed Intervenors would criticize the Governor's decision to invoke the State's Sovereign Immunity and thereby shield the state from those financial consequences.

The proposed motion to intervene should be denied with prejudice. Defendants are defending the law. Proposed Intervenors have no significantly protectable interest in the subject of this suit. Proposed Intervenors' participation will prejudice both parties through undue delay and the State of North Carolina by waiving its Sovereign Immunity.

ARGUMENT

I. The General Assembly's Thinly-Veiled Motion for Reconsideration Should Be Rejected Because It Does Not Meet the Standard for Reconsideration

Proposed Intervenor's thinly-veiled motion for reconsideration should be denied. The Fourth Circuit has held that motions to reconsider earlier decisions

"are not subject to the strict standards applicable to motions for reconsideration of a final judgment," under Rule 59(e). *Hatch v. DeMayo*, No. 1:16CV925, 2018 WL 6003548, at *1 (M.D.N.C. Nov. 15, 2018) (Biggs, J.) (citation omitted); *Garey v. James S. Farrin, P.C.*, No. 1:16CV542, 2018 WL 6003546, at *1 (M.D.N.C. Nov. 15, 2018) (Biggs, J.). Nonetheless, courts in this Circuit have frequently looked to the standards under Rule 59(e) for guidance in considering motions for reconsideration. *See Hatch*, 2018 WL 6003548, at *1 & n.3. Accordingly, reconsideration "is appropriate on the following grounds: (1) to account for an intervening change in controlling law; (2) to account for newly discovered evidence; or (3) to correct a clear error of law or prevent manifest injustice." *Id*. Although motions for reconsideration are held to a less stringent standard than motions Rule 59(e) motions, such motions "should not be used to rehash arguments the court has already considered" or "to raise new arguments or evidence that could have been raised previously." *Id*. (citation omitted).

Proposed Intervenor's motion should be denied because Proposed Intervenors fail to identify any previously unavailable evidence or intervening changes in law that would warrant reconsideration of this Court's earlier decision denying Proposed Intervenors' motion to intervene. *See infra* Section II.A.2. Because Proposed Intervenors simply restate arguments previously considered and rejected by the Court with respect to mandatory and permissive intervention, Proposed Intervenors have failed to establish any basis for reconsideration of this issue under the controlling standard for reconsideration motions. *See Hatch*, 2018

WL 6003548, at *1 & n.3; *Garey*, 2018 WL 6003546, at *1 & n3. The motion should be denied for that reason alone.

II. The General Assembly Is Not Entitled to Intervene as of Right

Proposed Intervenors are not entitled to intervene "as of right" pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. A Party may intervene as of right if, in addition to timeliness, the movant demonstrates: "(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation." *Teague v. Bakker*, 931 F.2d 259, 260–61 (4th Cir. 1991). "[A] would-be intervenor bears the burden of demonstrating to the court a right to intervene." *Arista Records, LLC v. Doe No. 1*, 254 F.R.D. 480, 481 (E.D.N.C. 2008) (alteration in original) (quoting *In re Richman*, 104 F.3d 654, 658 (4th Cir. 1997)). "If the movant fails to satisfy any one of the requirements, then intervention as of right is defeated." *Students for Fair Admissions Inc. v. Univ. of N.C.*, 319 F.R.D. 490, 494 (M.D.N.C. 2017) (citing *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999)); *see United Guar. Residential Ins. Co. of Iowa v. Phila. Sav. Fund Soc'y*, 819 F.2d 473, 474 (4th Cir. 1987) ("In order to successfully intervene, . . . [movant] must meet all three requirements [of Rule 24(a)].").

A. Proposed Intervenors Do Not Have A Significantly Protectable Interest

1. This Court has Already Held that Proposed Intervenors Lack a Significantly Protectable Interest

Proposed Intervenors still lack a protectable interest in the subject matter of this suit. In federal court, while a party challenging the constitutionality of a law may elect to name the state legislature as a defendant, legislators are not automatically entitled to intervene as of right in such a suit, particularly where the State is defending the challenged law. As explained by another district court,

> If a legislator's . . . support for a piece of challenged legislation gave rise to an interest sufficient to support intervention as a matter of right, then legislators would have the right to participate in every case involving a constitutional challenge to a state statute. But Rule 24 is not designed to turn the courtroom into a forum for political actors who claim ownership of the laws that they pass. The legislators' interest in defending laws that they supported does not entitle them to intervene as of right.

One Wis. Inst., Inc. v. Nichol, 310 F.R.D. 394, 397 (W.D. Wis. 2015). The Supreme Court "has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's

passage." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019).

At best,[1] "legislators have an interest in defending the constitutionality of legislation passed by the legislature" only "*when the executive declines to do so*." *Fisher-Borne v. Smith*, 14 F. Supp. 3d 699, 703, 707, 710 (M.D.N.C. 2014) (emphasis added). "Once legislation is enacted, legislators… do not have a significantly protectable interest in its implementation to entitle them to intervene as of right." *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm'n*, No. 3:16-CV-00897, 2017 WL 63918, at *4 (M.D. Pa. Jan. 5, 2017); *see Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 251–52 (D.N.M. 2008) (concluding that a state senator's "interest as a legislator who voted for the [challenged] statute does not give him a protectable interest under [R]ule 24(a)); *Roe v. Casey*, 464 F. Supp. 483, 486 (E.D. Pa. 1978) (finding that a legislator could not intervene because his interest as a member of the General Assembly and co-sponsor of the challenged legislation was insufficient as the court was not addressing whether the legislation was "duly and lawfully enacted," but rather, whether it was constitutional). SBOE is presently defending the challenged legislation and has expressed no intention

[1] For the reasons explained in Plaintiffs' opposition to Proposed Intervenors' first motion to intervene, the legislative branch of a State does not have a significantly protectable interest in defending laws that do not uniquely harm the legislative branch itself. *See* Dkt. 38, at 8-10, 15-17. The General Assembly's interest in protecting S.B. 824 from invalidation amounts to nothing but a generalized interest, shared by all North Carolinians, in having laws enforced.

to do otherwise. Thus, Proposed Intervenors have—again—failed to demonstrate that they have a significantly protectable interest in likewise defending the constitutionality of S.B. 824 sufficient to warrant a right to intervene under Rule 24(a)(2).

For the reasons this Court has already explained, Proposed Intervenors are incorrect that North Carolina law can grant the legislature a significantly protectable interest for purposes of federal intervention out of thin air. Dkt. 12-13. As Plaintiffs argued in the opposition to the first intervention motion, "North Carolina law does not vest the General Assembly with a protectable interest[; for] State law cannot confer an interest where none otherwise exists." Dkt. 56, at 9 (citation omitted). And this Court agreed with that argument: "[A] state statute" cannot "supplant a federal court's obligation to determine whether the requirements for intervention as of right by a non-party have been satisfied under federal law." *Id*. at 10 (citing *Virginia v. Westinghouse Elec. Co.*, 542 F.2d 214, 216 (4th Cir. 1976) ("The district court is entitled to the full range of reasonable discretion in determining whether the[] requirements [of Rule 24(a)(2)] have been met.")).

Proposed Intervenors' reliance on *Bethune-Hill* as support for a contrary proposition is misplaced. *See* Dkt. 61, at 12-13. *Bethune-Hill* is irrelevant to any Rule 24 issues in this case. *Bethune-Hill* held that the Virginia House of Delegates, which had been permitted to intervene in the case, lacked Article III standing to appeal a lower court's conclusion that Virginia's legislative maps were an unconstitutional racial gerrymander. 139 S. Ct. at 1950-51. The Supreme

Court did not address in *Bethune-Hill* whether the Virginia House of Delegates should have been allowed to intervene in the first instance. *See* 139 S. Ct. at 1945. Nor did it address whether that intervention would have been permissive or as of right. *See id.* Whether the Virginia House of Delegates should have been allowed to intervene in *Bethune-Hill* was simply not at issue in that case. In fact, the only other examples of intervention the Virginia House of Delegates provided were instances in which "Virginia *state* courts have permitted it to intervene to defend legislation." *Id.* at 1952. And the only Rule 24 holding the Court cited favorably held that a State legislative body had a legally protectable interest where the law at issue would have cut the size of the legislative chamber "in half." *Id.* at 1954-55. Because the Supreme Court ultimately held that the Virginia House of Delegates lacked Article III standing to represent Virginia's interests—in a case where the state decided not to continue defending the law on appeal—*Bethune-Hill* at best shows that even when a state is *not* defending the law, a legislatures' ability to intervene in litigation to defend a state law is limited. Proposed Intervenors' reliance on the case is surprising.

Proposed Intervenors, as representatives of North Carolina's legislative branch, have no legally protectable interest in this case. Only lawsuits where legislators lose uniquely legislative powers give rise to legally protectable interests. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015); *Coleman v. Miller*, 307 U.S. 433, 436 (1939); *see also Bethune-Hill*, 139 S. Ct. at 1953-54 (explaining holdings in *Ariz. State Legislature* and *Coleman*).

Moreover, the legislature cannot have a significantly protectable interest unless and until SBOE declines to defend the law. *See* Dkt. 56, at 7-11. As the Court has already explained, contrary to Proposed Intervenor's contention, the General Assembly's interest in protecting S.B. 824 from invalidation amounts to nothing but a generalized interest, shared by all North Carolinians, in having laws enforced. *Compare* Dkt. 56, at 14 (arguing the Assembly has a significantly protectable interest in ensuring that S.B. 824 is not "nullified"), with Dkt. 56, at 11 (explaining that Proposed Intervenor's rule would mean "legislators would have the right to participate in every case involving a constitutional challenge to a state statute"). Proposed Intervenors have no legally protectable interest in this case twice-over.

2. Proposed Intervenors Have Failed to Adduce Any New Evidence or Law That Would Change the Court's Conclusion

No matter how often or strenuously Proposed Intervenors say the Attorney General is not defending this case, the record remains devoid of supporting evidence. On behalf of the SBOE, the Attorney General is defending the state's interests. This Court has already held that SBOE is adequately defending the law. Dkt. 56, at 14-19. And no relevant facts or circumstances have changed in the two months since it reached that conclusion. SBOE has twice told this Court that it will defend S.B. 824. Although the SBOE takes no position on the instant Motion to Intervene, SBOE stated that it is "properly and lawfully

positioned to defend the constitutionality of the Photo ID law[] [and] have not declined to defend the constitutionality of any aspect of that law in either this action or the contemporaneous State proceeding." Dkt. 65, at 2. In response to Proposed Intervenors' first motion to intervene, SBOE "dispute[d] the contention raised by the [P]roposed [I]ntervenors that . . . the State Board members represented by the Attorney General's Office are not capable of defending this lawsuit." *See* Dkt. 34 at 2; *see* Dkt. 36, at 2 ("For the reasons discussed by Governor Cooper in his response, the State Board Defendants [likewise] disagree with the Proposed Intervenors' contention . . . that the State Board Defendants represented by the [Attorney General] are not capable of defending this lawsuit." (citation omitted)).

Proposed Intervenors advance four arguments in support of their renewed motion, and each fails. First, Proposed Intervenors claim that the SBOE is not defending the law because "they did not move to dismiss the complaint under Rule 12(b)(6)" in this case. Dkt. 61, at 14. But SBOE filed a "Motion to Dismiss or, in the Alternative, Motion to Stay" on February 28, 2019. *See* Dkt. 43, at 1 ("Defendants State Board of Elections … respectfully move the Court to dismiss Plaintiffs' Complaint … pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)….").

Second, Proposed Intervenors claim that SBOE's actions in *Holmes v. Moore*, 18 CVS 15292 (N.C. Super. Ct.) relating to S.B. 824 show that SBOE has "declined to adequately defend S.B. 824" and "there is no reason to believe that its approach in this case will be any

different." Dkt. 61, at 15. Whatever the Attorney General's litigation tactics may have been in that case, they are not part of the record before this Court. Moreover, the Proposed Intervenors' arguments that the Attorney General's litigation decisions in *Holmes* were wanting—for example, not arguing that racial discrimination claims failed to meet pleading standards or not deposing the plaintiffs making a facial challenge to S.B. 824—are unpersuasive. The Attorney General was not required to advance frivolous positions or take burdensome and, ultimately, irrelevant discovery in order to defend the statute. In any event, the Attorney General's conduct of different litigation does not warrant speculation in this case about the state's litigation choices.[2]

Third, Proposed Intervenors claim that the Governor's opposition to S.B. 824 in a different case means that SBOE is not (or will not) adequately defend S.B. 824 in this case. Dkt. 61, at 15-16. Putting aside the wholly speculative nature of this argument, it is irrelevant because the Governor (named in his official capacity derived from the State of North Carolina) is no longer a party in this case because he *successfully*

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[2] Under Rule 19(d) of the North Carolina Rules of Civil Procedure, "[t]he Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, must be joined as defendants in any civil action challenging the validity of a North Carolina statute or provision of the North Carolina Constitution under State or federal law." N.C.R. Civ. P. 19(d) (emphasis added). As this Court recognized in denying the first intervention motion, their status as a party in state court litigation over S.B. 824 has no relevance to whether they should be a party in federal court. *See* Dkt. 56, at 10-11.

defended the State of North Carolina and got dismissed from this case. *See* Dkt. 57, at 21-22. Thus, any claim from Proposed Intervenors about what the Governor would do in this case is nothing but a guess. Undeterred, Proposed Intervenors argue that the SBOE will not defend this lawsuit because the Governor controls the SBOE. Dkt. 61, at 15-16. This argument is directly contrary to the Court's holding that Governor Cooper does not have a sufficient relationship to the execution of S.B. 824 to make him subject to suit under *Ex Parte Young*. Dkt. 57, at 21-22 ("In sum, the court concludes that neither the Governor's general responsibility for enforcing the laws of this State, nor his responsibility for appointing and removing State Board members and other officials constitute a 'special relation' to the challenged statute.").[3] Proposed Intervenors point to zero evidence either before or after the Court's ruling on the motions to dismiss suggesting that the Governor controls SBOE's litigation decisions in this case. *See* Dkt. 61, at 15-16. And it would be irrelevant anyway because SBOE is defending S.B. 824 in this case.

Fourth, Proposed Intervenors claim that SBOE's failure to contest Plaintiffs' intentional discrimination claims in the same manner that Proposed Intervenors would *necessarily means* that SBOE is failing to

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[3] Recognizing the Court's order on the motions to dismiss, Plaintiffs nonetheless maintain that Governor Cooper is a proper party in this case both because the VRA abrogated North Carolina's sovereign immunity and because Governor Cooper is subject to suit under the doctrine of *Ex parte Young*. *See* Dkt. 50, at 6-15.

adequately defend S.B. 824. Dkt. 61, at 16. For example, Proposed Intervenors argue that SBOE should have raised more affirmative defenses in its answer. Dkt. 61, at 16. Proposed Intervenors themselves, however, only propose to raise four affirmative defenses and all four of them are frivolous: (1) failure to state a claim (conclusively overcome by the Fourth Circuit's holding in *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016)); (2) lack of standing (same defect); (3) ripeness (same defect); and (4) abstention (SBOE raised it and lost, Dkt. 57, at 11). *See* Dkt. 7-1 (Proposed Intervenors' proposed Answer). Not only do Proposed Intervenors *fail* to identify a defect in how SBOE has pursued this case, Proposed Intervenors themselves wish to waive, on behalf of the entire State, North Carolina's sovereign immunity. *See* Dkt. 61, at 12-13.

B. Even If Proposed Intervenors Had a Significantly Protectable Interest, The Court's Disposition of This Case Would Not Impair It

Proposed Intervenors "cannot show that this case threatens to impair any [protectable] interests." *One Wis. Inst.*, 310 F.R.D. at 397. "Where no protectable interest is present, there can be no impairment of the ability to protect it." *Herrera*, 257 F.R.D. at 252. Proposed Intervenors can alleviate any conceivable risk to their the purported interests by participating in this action as *amici curiae*. *See Ohio Valley Envtl. Coal., Inc. v. McCarthy*, 313 F.R.D. 10, 26 (S.D.W. Va. 2015) ("[T]he impairment prong is not met if the would-be intervenor could adequately protect its interests in the

action by participating as amicus curiae." (citing *McHenry v. Comm'r*, 677 F.3d 214, 227 (4th Cir. 2012)).

C. The State Board of Elections Will Adequately Protect Proposed Intervenors' Interests

As this Court has already explained, Dkt. 56, at 13-14, where the Defendant in an action is a government agency, "the putative intervenor must mount a strong showing of inadequacy." *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013). "[W]hen a statute comes under attack, it is difficult to conceive of an entity better situated to defend it than the government." *Id.* at 351. Therefore, "[t]o rebut the presumption of adequacy, Proposed Intervenors must show either collusion between the existing parties, adversity of interests between themselves and the State Defendants, or nonfeasance on the part of the State Defendants." *United States v. North Carolina*, No. 1:13CV861, 2014 WL 494911, at *3 (M.D.N.C. Feb. 6, 2014) (citing *Stuart*, 706 F.3d at 350, 352–55). *See also Boothe v. Northstar Realty Fin. Corp.*, Civil No. JKB-16-3742, 2019 WL 587419, at *5 (D. Md. Feb. 13, 2019) ("Where the presumption of adequate representation applies, intervenors have the 'onerous' burden of making a compelling showing of the circumstances in the underlying suit that render the representation inadequate." (quoting *In re Richman*, 104 F.3d at 660)).

As Plaintiffs have already explained at length above, Proposed Intervenors have failed to carry the "onerous burden" of rebutting the presumption that SBOE will adequately defend the law. *See supra*

Section II.A.2. Proposed Intervenors contend that SBOE has "*a[n]* . . . objective . . . to expediently obtain clear guidance on what law, if any, will need to be enforced," in upcoming elections in North Carolina means that SBOE does not share the General Assembly's "ultimate objective" in this litigation. Dkt. 61, at 18. At best, this argument is a non sequitur. SBOE can both ask the court to rule *quickly* to ensure clarity in the administration of elections while also vigorously defending the law; these objectives are not mutually exclusive.

For all the reasons this Court gave in its first opinion denying intervention, Proposed Intervenors have failed to show that SBOE is not adequately representing Proposed Intervenors' interest. "Proposed Intervenors . . . present no evidence showing collusion between State Defendants and Plaintiffs. Nor does the record before the Court reflect nonfeasance on the part of State Defendants . . . in defense of the lawsuit." Dkt. 56, at 14. Proposed Intervenors' inadequacy argument should be rejected.

III. Permissive Intervention Should Be Denied Because Proposed Intervenors' Participation Will Prejudice Plaintiffs and the State of North Carolina

The Court should deny Proposed Intervenors permissive intervention. The decision to grant or deny permissive intervention "lies within the sound discretion of the trial court." *Smith v. Pennington*, 352 F.3d 884, 892 (4th Cir. 2003). This Court should once again exercise its sound discretion and deny Proposed Intervenors' motion to intervene.

The same balance of equities that determined this Court's original ruling on permissive intervention apply with even greater force now. In ruling against Proposed Intervenors' first motion for permissive intervention, this Court noted that it had "significant concern that the inclusion of Proposed Intervenors would likely detract from, rather than enhance, the timely resolution, clarity, and focus on, solely the weighty and substantive issues to be addressed in this case." Dkt. 56, at 21-22. As the Court explained, "Plaintiffs will likely suffer prejudice in having to address dueling defendants, purporting to all represent the interest of the State, along with their multiple litigation strategies." *Id.* at 22. vAnd "[t]o the extent that Proposed Intervenors have special expertise they believe that they bring to the defense of S.B. 824, such expertise can be provided through the submission of *amicus* briefs." *Id.* at 23.

Two facts further support denial of permissive intervention with prejudice. *First*, Proposed Intervenors filed this motion only six weeks after this Court denied substantially the same motion, even though no relevant changes of fact or law warrant reconsideration of that earlier ruling. Even as non-parties, Proposed Intervenors are gratuitously slowing this lawsuit. *Second*, Proposed Intervenor's intervention in this case—even if voluntary—will constitute waiver of North Carolina's Sovereign Immunity. *See Lapides*, 535 U.S. at 620-21 (explaining that where State affirmatively invokes and avails itself of federal jurisdiction it waives sovereign immunity). That is because a "Rule 24 intervenor … participate[s] *on an equal footing* with the original parties to the

suit." *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 732 (D.C. Cir. 2003) (emphasis added). Proposed Intervenor's participation will expose North Carolina to significant money liability, including the possibility of additional attorneys' fees (52 U.S.C. § 10310(e)). Granting Proposed Intervenors' motion for permissive intervention thus goes beyond merely permitting Proposed Intervenors to file some motions and take a little discovery, Dkt. 20-21—it exposes the State of North Carolina's treasury to financial liability.

Proposed Intervenors offer nothing to rebut this Court's previously stated concerns that "Plaintiffs will likely suffer prejudice in having to address dueling defendants, purporting to all represent the interest of the State, along with their multiple litigation strategies" or explain why any "expertise can [not] be provided through the submission of *amicus* briefs." Dkt. 56, at 21-23. Proposed Intervenor's motion for permissive intervention should be denied with prejudice.

IV. Proposed Intervenors Cannot Intervene In This Lawsuit for Additional Reasons

Proposed Intervenor's also have no right to intervene in this suit for additional reasons stated in Plaintiffs' Opposition to Proposed Intervenor's first motion to intervene. *First*, the General Assembly cannot intervene because it lacks Article III standing. Dkt. 38, at 14-17 (explaining why Proposed Intervenors do not have a concrete and particularized injury). To intervene in a federal lawsuit, a party must have Article III standing. *See Fund For Animals, Inc.*, 322 F.3d at 731-32; *see also Safe Streets All. v.*

Hickenlooper, 859 F.3d 865, 912 (10th Cir. 2017); *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009); *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1023 (8th Cir. 2003); *Solid Waste Agency v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 507 (7th Cir. 1996).

Second, N.C. Gen. Stat. § 1-72.2, requires the General Assembly to authorize intervention in this *specific* lawsuit. Dkt. 38, at 17-20. Any other reading of NC Gen. Stat. § 1-72.2 violates North Carolina's non-delegation doctrine. *See Adams v. N.C. Dep't of Nat. & Econ. Res.*, 249 S.E.2d 402, 410 (N.C. 1978); *see also Conner v. N.C. Council of State*, 716 S.E.2d 836, 842 (N.C. 2011).

Third, the North Carolina Constitution bars the General Assembly from intervening in this suit because permitting the General Assembly to defend the constitutionality of laws would violate North Carolina's separation of powers. Dkt. 38, at 21-23. Under the North Carolina Constitution, defending the constitutionality of laws is a core Executive Branch function and the General Assembly's intervention would interfere with the Executive Branch Defendants' exercise of that core "take care" responsibility. *See* N.C. Const. art. III, §§ 1, 5(4); *McCrory v. Berger*, 781 S.E.2d 248, 256 (N.C. 2016); *Richmond Cty. Bd. of Educ. v. Cowell*, 803 S.E.2d 27, 30 (N.C. Ct. App. 2017), *review denied*, 809 S.E.2d 872, 872-73 (N.C. 2018).

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court deny the Second Motion to Intervene.

Respectfully submitted, this 9th day of August, 2019.

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*[***Certificates omitted for printing purposes***]*

Dkt. 69

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA**

Case No. 1:18-cv-01034-LCB-LPA

[Filed: August 19, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL - CARRBORO NAACP,GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM - FORSYTH COUNTY NAACP,

Plaintiffs,

v.

ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections; STELLA E. ANDERSON, in her official capacity as Secretary of the North Carolina State Board of

PROPOSED INTERVENORS' REPLY TO THE RESPONSES TO THEIR RENEWED MOTION TO INTERVENE

Elections; DAVID C. BLACK, KEN RAYMOND, and JEFFERSON CARMON III, in their official capacities as members 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,

Proposed Intervenors.

*[***Tables omitted for printing purposes***]*

Proposed Intervenors have renewed their motion to intervene because it has become increasingly apparent that the State Board does not intend to adequately defend S.B. 824 and, therefore, that it is critical that Proposed Intervenors be allowed to intervene in this litigation. In particular, in response to a preliminary injunction motion in parallel state-court litigation, *Holmes v. Moore*, No. 18-cv-15292 (N.C. Super. Ct.), the

State Board declined to defend S.B. 824 against the charge that the General Assembly enacted it with a racially discriminatory purpose, instead leaving that task to Proposed Intervenors, who are parties in *Holmes*. As in *Holmes*, the issue of intentional discrimination is front and center here, and the outcome of this case likely will turn on its resolution.

The urgency of Proposed Intervenors' motion has increased since its filing. On July 19, the state court in *Holmes* refused to enter a preliminary injunction based *exclusively* on the *Holmes* plaintiffs' failure to demonstrate a likelihood of success on the merits of their intentional discrimination claim. Order Denying Pls.' Mot. for Preliminary Injunction, Doc. 67-3 at 6 (July 19, 2019) ("Doc. 67-3"). Again, the State Board did not address this key issue *at all*, demonstrating that Proposed Intervenors' participation was critical to the successful defense of S.B. 824. Then, on August 7, Governor Cooper named Damon Circosta to the State Board, and on August 13 the State Board selected him as chair.[1] Mr. Circosta is the Executive Director of an organization that provides grant money to the Southern Coalition for Social Justice, plaintiffs' counsel in *Holmes*.[2]

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[1] *Governor Announces State Board of Elections and Other Boards and Commissions Appointments* (Aug. 7, 2019), http://bit.ly/2H6M7N4; *Damon Circosta Unanimously Selected Chair of State Board* (Aug. 13, 2019), http://bit.ly/2H5aavA.

[2] AJ FLETCHER FOUNDATION: CURRENT PARTNERS, https://ajf.org/current-partners/ (accessed Aug. 16, 2019).

In addition, since Proposed Intervenors renewed, time has become increasingly of the essence: On August 13, this Court scheduled an initial pretrial conference for September 30. Proposed Intervenors will be prejudiced if not able to participate in that hearing and in the discovery planning that occurs in the weeks before. *See* FED. R. CIV. P. 26. Proposed Intervenors therefore request that the Court decide their motion by September 30 at the latest.

Proposed Intervenors have been appointed by North Carolina to represent its interests—interests the State Board has shown itself unwilling to adequately defend. Any further delay in intervention would harm North Carolina's interest in defending a duly enacted law, the General Assembly's interest in defending its own enactments, and this Court's interest in receiving a full adversarial presentation concerning the constitutionality of S.B. 824. Especially considering the liberal standard that governs intervention, *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986), the Court should permit Proposed Intervenors to intervene.

I. Proposed Intervenors Are Entitled To Intervene as of Right.

Proposed Intervenors have a right to intervene in this case. Plaintiffs argue that Proposed Intervenors possess no protectable interest that may be impaired by the disposition of this action and that the State Board will adequately represent whatever interests Proposed Intervenors have, and the State Board echoes the latter argument. These arguments lack merit.

a. Proposed Intervenors Have Protectable Interests that Support Intervention.

Proposed Intervenors have two protectable interests: (1) the State's interest in the validity and enforcement of its laws, and (2) the Legislature's institutional interest in defending its enactments against nullification and preserving its legislative authority.

First, no one disputes that North Carolina has a protectable interest in seeing its laws enforced. The question is whether Proposed Intervenors may assert that interest. The Supreme Court has held that a State may "designate agents"—including legislators or legislative bodies—"to represent it in federal court" and that the designated representatives have standing to defend the State's interests. *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (quotation marks omitted). And if a legislative agent has standing to represent an interest in Court, there is no apparent reason (and Plaintiffs have not cited one) why it should not be able to assert that interest as a protectable one for purposes of intervention. Here, North Carolina has unambiguously designated Proposed Intervenors to represent the State's interest in federal court. *See* N.C. GEN. STAT. §§ 1-72.2(b), 120-32.6(b); *see also* Mem. Op. and Order, Doc. 56 at 9 (June 3, 2019) ("Doc. 56").

Plaintiffs protest that States cannot fabricate cognizable interests, but that is not what North Carolina has done. Instead, it has taken what is undeniably a cognizable interest (the State's interest in seeing its laws enforced) and assigned its protection in

a manner that is undeniably proper. *See Bethune-Hill*, 139 S.Ct. at 1951.

Second, the General Assembly's institutional interests support intervention as of right. Plaintiffs argue that "once legislation is enacted, legislators do not have a significantly protectable interest in its implementation." Pls.' Opp'n to Second Mot. To Intervene, Doc. 66 at 6 (Aug. 9, 2019) ("Doc. 66") (quotation marks omitted). But Proposed Intervenors invoke the institutional interests of the *General Assembly*, not their individual interests as *legislators*. Plaintiffs' cases denying intervention (or standing) to individual legislators[3] or one branch of a bicameral legislature[4] are therefore inapposite. Plaintiffs do not cite a single case holding that a legislature lacked a protectable interest in defending the validity of legislation it had enacted.

Plaintiffs do cite one case in which the intervenors acted on behalf of the entire *legislature—Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 135 S. Ct. 2652 (2015)—but in that case the State Legislature *did* have standing to challenge an action that "deprived the [legislature] of [its] role in the redistricting process." *Bethune-Hill*, 139 S.Ct. at 1953. Here, too, the General Assembly risks suffering a

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[3] *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm'n*, No. 3:16-CV-0087, 2017 WL 63918 (M.D. Pa. 2017); *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015); *American Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236 (D.N.M. 2008); *Roe v. Casey*, 464 F. Supp. 483 (E.D. Pa. 1978).

[4] *Bethune-Hill*, 139 S. Ct. 1945.

deprivation of its legislative authority because Plaintiffs seek judicial supervision of North Carolina's legislative process under Section 3 of the Voting Rights Act. Complaint ¶ 147(d), Doc. 1 (Dec. 20, 2018). It follows that Proposed Intervenors assert a protectable interest sufficient to support intervention.

Echoing this Court's earlier decision on intervention, Plaintiffs also argue that Proposed Intervenors could have a protectable interest only if the State Board were not defending S.B. 824. *See* Doc. 66 at 6; Doc. 56 at 11. Proposed Intervenors respectfully submit that any analysis regarding the adequacy of an existing party's representation is better suited for the inadequacy prong of the Rule 24(a) standard.[5] Proposed Intervenors either possess a protectable interest or they do not. It should not matter for purposes of this factor whether that interest is shared in common with other parties purporting to represent the State. *Fisher-Borne v. Smith* is not to the contrary: it merely shows that inadequate representation of the State's interest in seeing its laws enforced is *sufficient* to support a protectable interest that could be compromised in the litigation—not that it is *necessary*. 14 F. Supp. 3d 699, 703 (M.D.N.C. 2014). At any rate, regardless of how the adequacy of representation

[5] Because every Rule 24(a) applicant must satisfy the inadequacy prong, the Court need not fear that recognizing Proposed Intervenors' protectable interests will result in automatic intervention as-of-right by every legislative body in every case involving a challenge to a statute. *Contra* Doc. 66 at 9. The inadequacy prong will foreclose intervention as of right in cases in which another party adequately represents the Legislature's protectable interest.

factors into the analysis, as explained below, the State Board will be an inadequate representative.

b. Proposed Intervenors' Interests Would Be Impaired Absent Intervention.

Plaintiffs argue that Proposed Intervenors cannot show that any interests will be impaired because the Court authorized them to participate as amicus curiae. But "[p]articipation . . . as amicus curiae is not sufficient to protect against" the practical impairments that will occur if the State Board fails adequately to defend S.B. 824. *Feller*, 802 F.2d at 730. "Amicus participants are not able to make motions or to appeal the final judgment in the case," *id*., nor can they participate in discovery or at trial. "Accordingly, the 'practical impairment' requirement for intervention is satisfied." *Id*.

c. The Board Has Demonstrated that It Will Not Adequately Represent Proposed Intervenors' Interest.

The record before the Court rebuts any presumption that the State Board will adequately represent Proposed Intervenors' interests.[6] Indeed, that rebuttal

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[6] Proposed Intervenors dispute the applicability of the presumption of adequate representation. The Fourth Circuit developed the presumption in the context of proposed intervention by "self-interested" "private persons and entities," who are not as well situated as "the government" to defend statutes because "[i]t is . . . the government that, through the democratic process, gains familiarity with the matters of public concern that lead to the statute's passage in the first place." *Stuart v. Huff*, 706 F.3d 345, 351 (4th. Cir. 2013). This rationale does not extend to intervention

has gotten even stronger since the filing of Proposed Intervenors' renewed motion. Since that time, the court in *Holmes* refused to preliminarily enjoin S.B. 824 because it determined that the plaintiffs were unlikely to succeed on the merits of their intentional discrimination claim—an argument that the State Board did not make. Also since the filing of the motion, the Governor appointed, and the State Board elected as Chair, a member who has a leadership role in an organization that monetarily supports counsel for the *Holmes* plaintiffs. *See supra*. These developments add to the evidence Proposed Intervenors previously brought to the Court's attention. *See, e.g.*, Prop. Int. Memo. In Supp. of their Renewed Mot. to Intervene, Doc. 61 at 14–16, 19 n.2 (July 19, 2019).

Rather than defend against the preliminary injunction for intentional discrimination on the merits in *Holmes*, the State Board explained that it had "a primary objective . . . to expediently obtain clear guidance on what law, if any, will need to be enforced." *Id*. at 9. Plaintiffs protest that the existence of this primary objective does not foreclose the existence of others, Doc. 66 at 14, but the State Board's statement, coupled with the lack of *any* argumentation on the merits of the intentional discrimination claim, speaks

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by *other* government representatives intimately involved in the democratic process leading to the challenged enactment. Because this Court already has held that the presumption applies, Doc. 56 at 13-14, Proposed Intervenors do not further address the issue here but preserve the argument for appeal. Even if the presumption applies, however, Proposed Intervenors need only show that the State Board's representation *may be* inadequate. *See Fisher-Borne*, 14 F. Supp. 3d at 709.

volumes about the State Board's order of priorities. Plaintiffs also protest that the State Board's litigation tactics in *Holmes* are not before this Court, *see* Doc. 66 at 11, but they clearly are, *see* Reaves Decl.

Although purportedly not taking a position on Proposed Intervenors' motion, the State Board argues that Proposed Intervenors have not satisfied the inadequacy requirement for two reasons: first, because the State Board's conduct in *Holmes* is not probative of the course it will take here, and second, because Proposed Intervenors' characterization of the State Board's conduct in *Holmes* reflects a mere disagreement over litigation tactics. Doc. 67 at 6–8. Neither argument has merit.

First, the State Board gives no reasoned explanation for why it would take a different approach in this case than it has taken in *Holmes*. Indeed, to the extent experience informs the issue, it indicates that the State Board is likely to be *less* assertive in defending S.B. 824 in this case than in *Holmes*. There, as the State Board emphasizes, it sought to dismiss 5 of the 6 claims asserted by the plaintiffs on the merits. *See* Doc. 65 at 7. Here, the State Board did not move to dismiss a *single* claim on the merits, but rather sought to dismiss for non-merits-based reasons that would not have led to a dismissal with prejudice.

One possibility the State Board does not raise is that it chose to defer to Proposed Intervenors in *Holmes* because Proposed Intervenors were parties in that case, but if forced to proceed alone here it would behave differently. As an initial matter, this would not explain why the State Board did not include a *single*

line in its preliminary injunction response in *Holmes* contesting the plaintiffs' likelihood of success on their intentional discrimination claim. Furthermore, the State Board's willingness to defer hardly displays enthusiasm for defending S.B. 824. At a minimum, it supports permissive intervention to allow a similar division of labor in this case, as explained below.

Second, this is no mere disagreement on litigation tactics. Even if choosing not to move to dismiss could be construed as a tactical decision, the same cannot be said for failing to contest likelihood of success on the merits in response to a preliminary injunction motion. Particularly in challenges to the constitutionality of a statute, a motion for a preliminary injunction may turn *entirely* on likelihood of success. *See Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[A] prospective violation of a constitutional right constitutes irreparable injury."); *K.A. v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013) ("[T]he enforcement of an unconstitutional law vindicates no public interest."). And the likelihood of success argument proved decisive in the state court's decision not to enjoin S.B. 824, meaning that whatever label one chooses to assign to the State Board's choices, they have proven to be material. *Fisher-Borne*, 14 F. Supp. 3d at 709–11 (recognizing validity of defendants' litigation strategy but authorizing intervention as of right for purpose of preserving outcome-determinative appellate argument).

II. Proposed Intervenors Should Be Permitted To Intervene.

As discussed in the previous section, Proposed Intervenors are entitled to intervene as of right. But should the Court wish to avoid resolving issues such as the sufficiency of Proposed Intervenors' interest in this litigation and the degree to which the State Board will protect those interests, it can do so by granting permissive intervention under Rule 24(b), a determination that all agree is subject to this Court's "sound discretion." Doc. 66 at 15.

The *Holmes* litigation demonstrates why this Court should exercise its discretion to allow Proposed Intervenors to intervene. In previously denying permissive intervention, this Court expressed concern about the challenges of "dueling defendants." Doc. 56 at 22. But this was not an issue in the *Holmes* preliminary injunction. Proposed Intervenors took the lead on the merits (exclusively so on the intentional discrimination claim) and in discovery while the State Board addressed issues relating to its implementation of S.B. 824. Indeed, the State Board claimed that it "limited its briefing knowing that we have legislative leaders who are represented by counsel here who have made arguments on their behalf regarding legislative intent and the claims made about intentional discrimination," and it instead chose to "provide the Court some perspective along what the state board has done and what challenges the state board would face if it were given direction to . . . enjoin activity on implementation." Tr. at 101:13–17 (June 28, 2019), Ex. A. There is no reason why a similar approach would not

obtain here were Proposed Intervenors permitted to intervene.

What is more, denying intervention would make litigation of this case *less efficient*, even assuming for the sake of argument and against all evidence that the State Board would vigorously defend S.B. 824 in Proposed Intervenors' absence. In *Holmes*, Proposed Intervenors engaged several experts and developed robust factual and legal arguments to defend S.B. 824 from the charge that it is intentionally discriminatory. The State Board did none of these things, as it did not address the merits of the intentional discrimination claim, and it submitted zero expert reports. Proposed Intervenors would bring their knowledge and experience from *Holmes* to bear on the similar issues in this case, while the State Board would be starting from scratch.

Plaintiffs also complain that Proposed Intervenors are "gratuitously slowing" this lawsuit because we filed a new motion to intervene less than six weeks after our initial motion was denied. Doc. 66 at 16. But we renewed our motion based on recent developments in *Holmes*, and our choice to do so promptly should be seen as a virtue, not a vice. What is more, the mere filing of the motion does not stay this litigation in any way.

Finally, Plaintiffs complain that allowing Proposed Intervenors to intervene could expose North Carolina to attorneys' fees. Doc. 66 at 16.[7] It is telling that the

[7] Plaintiffs confusingly cast this argument in terms of sovereign immunity. Unlike the State defendants in *Lapides v. Bd. of*

State Board, whose members are being sued in their capacity as agents of the State, has not raised this argument. Because the State Board members remain party to this case, Proposed Intervenors' participation has no effect on the availability of attorneys' fees. Indeed, by increasing the likelihood that S.B. 824 will be upheld, Proposed Intervenors' participation will *decrease* the likelihood of a fee award.

III. Plaintiffs' Remaining Arguments Against Intervention Are Without Merit.

Plaintiffs incorporate several other arguments against intervention from their first opposition. Doc. 66 at 17–18. First, Plaintiffs contest Proposed Intervenors' standing, but the Court has already held that Article III standing is not a prerequisite to defensive intervention, Doc. 56 at 5, a holding the U.S. Supreme Court since validated, *Bethune-Hill*, 139 S. Ct. at 1951. Second, Plaintiffs argue that the General Assembly must specifically authorize intervention in this lawsuit, but that requirement is absent from N.C. GEN. STAT. § 1-72.2, and the non-delegation doctrine offers no support for inserting it. Proposed Intervenors' Reply to the Responses to their Mot. To Intervene, Doc. 48 at

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Regents of Univ. Sys. of Georgia, however, Proposed Intervenors' intervention could not be construed as a waiver because they do not propose to invoke the jurisdiction of this Court. *Compare* 535 U.S. 613, 620 (2002) (finding waiver where State "voluntarily invoked the federal court's jurisdiction"), *with Bethune*, 139 S. Ct. at 1951 (serving as an intervenor does not "entail[] invoking a court's jurisdiction"). At any rate, the argument is utterly irrelevant given the presence of the State Board members as defendants in their official capacities in this case.

4–5 (Mar. 5, 2019). Finally, Plaintiffs argue that Section 1-72.2 usurps the Governor's executive power, but it does no such thing. *Id*. at 6–7.

CONCLUSION

The Court should grant the renewed motion to intervene.

Dated: August 19, 2019

Respectfully submitted,

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Dkt. 69-1

EXHIBIT A

NORTH CAROLINA GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION COUNTY OF WAKE

Case No. 18 CVS 15292

[Filed August 19, 2019]

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,	)
Plaintiffs,	)
vs.	)
TIMOTHY K. MOORE, in his official capacity as speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as president pro tempore of the North Carolina Senate; RALPH E. HISE, in his official capacity as chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; DAVID R. LEWIS, in his official capacity as chairman of the House Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH	)

CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

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TRANSCRIPT, Volume I of I
Friday, June 28, 2019
Pages 1 - 125

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Honorable Nathaniel J. Poovey, Judge Presiding
Michael J. O'Foghludha, Judge Presiding
Vince M. Rozier, Jr., Judge Presiding

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MR COX: Your Honors, may it please the Court. Thank you. I am Paul Cox with the North Carolina Department of Justice, and with my colleague, Olga Vysotskaya de Brito, we represent the State of North Carolina and the State Board of Elections. I will use my brief time to just – not rehash a lot of the arguments that have been made, but address a couple of the specific issues that have been raised by Your Honors and anything to clean up from the argument on our perspective.

First of all, Judge O'Foghludha, on your point about the Court's jurisdiction or ability to hear the facial versus as-applied challenges, it's our view that the statute that grants the three-judge panel jurisdiction is limited to facial challenges. And, in fact, Rule 42

mentions that "The Court in which . . . " – I'm quoting here – "The Court in which the action originated shall maintain jurisdiction overall matters other than the challenge to that facial validity."

So we do believe that this Court is limited to ruling now on the facial challenges to the act, and then anything that would remain would go back to superior court for a single judge to determine as to the as-applied challenges.

Also, as a housekeeping matter, I just want to make clear that the State is not conceding any of the claims are valid or that they should proceed. The State has limited its briefing knowing that we have legislative leaders who are represented by counsel here who made arguments on their behalf regarding legislative intent and the claims made about intentional discrimination. We've limited our briefing to claims two through six.

Also, with respect to preliminary injunction, as Your Honors can note from our motion to dismiss, we do not believe there is a likelihood of success on the merits on facial claims because we believe those should be dismissed, so we have not conceded that a preliminary injunction should issue. We limited our briefing on that matter, not to flood the Court with paper, but to limit – to provide the Court some perspective along what the state board has done and what challenges the state board would face if it were given direction to – to enjoin activity on implementation of the – the act.

I wanted to speak a little bit about the standard, as we have in our briefing, for a facial attack on the constitutionality of the state statute because we do

believe that it's very important here. And in our motion to dismiss, you can rule on the facial validity of an act. Again, you're taking as true all the plaintiffs' factual allegations, but inferences from those facts or suppositions about what may happen in the future based upon a different law, we do not believe you have to take those as fact. And you look at the facial – you look at the statute on its face -- the terms of the statute on its face to determine if there is no way that this statute can be implemented in away that comports with our state constitution.

Quoting here from State v. Thompson, "The fact that a challenged statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." And, again, you accept the factual accusation as true, but accusation – quoting here from Laster v. Francis, a North Carolina Court of Appeals case, "Allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences are not to be taken as true."

As we argue in our brief, we do not believe the facial constitutionality standard has been met here. We believe that – we agree with legislative defendants in a way in discussing the standards that apply to counts two through six in that really all of them collapse down to a determination as to whether there's an impermissible burden on a right. The Anderson/Burdick, by everyone's admission, applies to claim two. We also believe that it applies to other – other constitutional claims regarding the right to vote.

In effect, I can point the Court's attention to the Libertarian Party case. I know my counsel already has, but it bears – it bears pointing this out, because the Libertarian Party case was a ballot access case, so it's slightly different, but the Court did limit its discussion about the Anderson/Burdick test to ballot access cases. It says first that not all infringements on the right to ballot access warrant strict scrutiny. This is at pincite 50. In fact, requiring every voting ballot and campaign regulation to meet strict scrutiny would tie the hands of states seeking to assure that elections are operated equitably and efficiently. So in our view, and certainly in the State Board of Elections' view, every regulation they make should not be subject to strict scrutiny, and we believe that the Anderson/Burdick test has been adopted as to constitutional challenges to election regulations, as is the case in this case.

And I'll make one note about the malapportionment cases. Reference has been made to the Stephenson case, the Drainage District cases. Those cases, too, have to look at the burden on the voter. If you look at Stephenson, you read the remedial passage, the first thing that the Court does is determine what really is the burden on this voter. The burden on the voter there is that they have less weight to their vote than a voter in a neighboring district. If they have five representatives they can vote for in a multi-member district, and someone in the next county only has one representative to vote for, the weight of their vote is different, and you have to look at the burden first before you determine that you're going to apply strict scrutiny. In our view, the burdens here are not high enough to subject this law to strict scrutiny, and for

that reason, the facial constitutional claim – claims should not prevail and not move forward as to counts two through six.

I won't rehash a lot of the information that my co-counsel has on how the burdens are – are ameliorated here or are limited here, but just to reiterate, there are more IDs that are available – more types of IDs that are available, there are free IDs being offered through county Boards of Elections.

And I do want to make one note, one factual correction, for the record, Your Honors. We had put forward an affidavit, and in our executive director's deposition we noted that at the time we put forth that affidavit, our understanding was that all counties were issuing IDs for free. We learned subsequently that one county, Perquimans County, had not ordered its machine yet. When we found that out earlier this week, we had an extra machine at the State Board of Elections, shipped it down there and they are now able to issue free IDs. And our understanding is no one has come to request them anyway, so there's been no – no burden on anyone in that regard. But I did want to correct the record in full candor.

And finally, on top of the free ID availability, there's a reasonable impediment fail-safe. And my co-counsel has gone through this, but it does bear repeating, that it is a different reasonable impediment provision than in the VIVA litigation, the VIVA law. The VIVA law provided for three different bases for the Board of Elections to adjudicate and determine that a reasonable impediment ballot should not be counted. It was falsity, which is retained in this law, but it also

included that the reasons given were nonsensical or that the reasons merely denigrated the purpose of photo identification requirement for voting. And those are – those are admittedly very – subject to subjective judgments and discretion on the Board of Elections' part.

Here we have something very straightforward. The board has to have grounds, grounds, to believe that the affidavit is false. Again, referring back to the standard here, the Court should – should presume that the legislation is constitutional, and if there are different ways that you can interpret that legislation, one comporting with the state constitution, the other not, you have to presume that the weight of that statute is going to be implemented on a facial attack is the constitutional way.

So referring back to the standard here, as I mentioned, we don't take as true unreasonable and unwarranted inferences from past events, and certainly on a facial attack, where we have to look at whether on its face this law has no way of being applied in a constitutional manner – there's a high standard – we have to – we – the plaintiffs' allegations really about the reasonable impediment provision pertain to what happened in the past with a law that had different reasonable impediment provisions. We submit that with the high burden of a facial constitutional challenge, with the presumption of its constitutionality, we do not believe that inferring that, events that happened in the past that are alleged in the complaint would happen again is proper at a facial constitutional challenge.

Turning now to the preliminary injunction, Your Honors, again, the – I will limit our discussion here, unless the Court has questions, to the board's implementation and the harms it would face. As our briefing made clear, the state board is already under way in educating voters through two seminars per county by – by September. The board is having its training next month, the end of next month, of all county board officials. And just for the Court's clarification, the way that training happens is that the board trains county officials first through its annual meetings and through ongoing memos, and guidance is put out, webinars, for example. The voter – the free voter ID machines that were provided for the counties, there is a webinar that the state board provided to all counties, where they would get trained online about how to issue those IDs.

Those activities are ongoing between the state boards and the county boards. There will be the – there's two annual conferences where the state board trains county board officials and staff. One of those will be next month, the end of July. As our executive director mentioned, photo ID will be part of that training. It will not be the sole focus, because, of course, after that July training, there will be an election in which photo ID is not required.

So the next training will be late December/January time frame, before the next election, 2020 elections, when a photo ID is required. And that moment it will be a greater focus of the – the training. So the state board trains county boards. In turn, the county boards train their poll workers. The state board provides a lot

of training materials to the county boards. Again, the state board wants to make sure that it is informing the public and it is informing county boards of the requirement upcoming of the photo ID requirement in 2020, but it is sensitive to not train poll workers at this point about requirements of photo ID when there is an election coming up, municipal elections, in October and November, that do not require voter ID.

So by our executive director's testimony in her deposition, the predominant focus of the training in January and then the subsequent training of poll workers at that point will be on enforcement of the photo ID requirements. We don't want any confusion about what voters are required to do on the poll workers' perspective in the interim elections.

We've made clear that there are – there are certain aspects of the state board's processes that need to be considered if the Court is inclined to issue an injunction or however this matter proceeds. This case is not like, for example, whether someone's name gets on a ballot or what gets put next to their name. That's the sort of thing that can happen very quickly before an election, before ballots get put out. This case concerns the actual processes that are conducted at the polling stations and with absentee ballots and during election day and post-election canvass and review of provisional ballots.

JUDGE POOVEY: I have that you have approximately ten minutes on this side left.

MR. COX: Oh, total?

JUDGE POOVEY: I don't know if you want to reserve any after they have their rebuttal to have your surrebuttal, I suppose, but I have that you have approximately ten minutes left.

MR. COX: Thank you, Judge Poovey. I will – I will just briefly say we'll rest on our brief with regard to the administrative challenges that the board faces and are happy to answer any questions, but briefly just say that there is a lead time required to put in place technological requirements for voter ID that has to take place – start taking place around September of this year for photo ID to be used in elections. And I'll reserve any more time left.

JUDGE O'FOGHLUDHA: I guess – I guess your ten minutes for me would be well used by answering this question. I understand from some of the briefs that the AG filed that there were certain things, that if we do grant an injunction, you would – you would like the state board to be able to continue to do. So I would like a very clear list of what you think, if an injunction would be issued, the things that you would – the state board would like to be able to continue to do in case the court of appeals or the supreme court decided that we were wrong, if that's what we decided to do, versus things that could or should be enjoined if we were going to grant an injunction in terms of the burden on the State Board of Elections.

MR. COX: Thank you, Your Honor. Do you want me to respond to that now?

JUDGE O'FOGHLUDHA: Yeah, absolutely.

MR. COX: Okay.

JUDGE O'FOGHLUDHA: Or in – or in writing later. I don't –

MR. COX: Sure.

JUDGE O'FOGHLUDHA: To me, the practicalities of it are important.

MR. COX: Yes, Your Honor. Agreed. It's difficult for me to provide at this moment – and even if we work with the state board – to identify every single process. We could attempt to, but as a counterproposal, if you – if you like, what we would suggest is that any processes that are internal to the state board, as opposed to external facing, as opposed to education of the public and telling people and poll workers that they have to enforce and bring photo ID, any processes that are internal to the state board, whether it's technological, putting together materials, putting together training materials, all of that would not be subject to an injunction, so that the state board would have the flexibility to address whatever this Court or a subsequent court decides.

JUDGE O'FOGHLUDHA: So internal versus external.

MR. COX: Yes, Your Honor.

JUDGE O'FOGHLUDHA: Okay.

MS. VYSOTSKAYA DE BRITO: Your Honor, may I just inject for a second?

JUDGE O'FOGHLUDHA: You can absolutely.

MS. VYSOTSKAYA DE BRITO: My name is Olga Vysotskaya. I am co-counsel with Mr. Cox, representing – I represent the State Board of Elections and the State as well. And what we would like to do, if the Court would like to get a more precise list, is to request an opportunity to submit, let's say by Monday – if that's your support request – a very short, supplemental briefing outlining those items. In general, we did point out in our response to a motion for preliminary injunction that the board would like to continue implementing the SIMS system. It's a computer system that governs the election process, and it takes at least four months before – it has to be started in mid-September. And as a way it is set up right now, our executive director has ordered that the system is being implemented with voter ID requirement being in place, but she backordered that system and said that we should be able to reverse it if the voter ID requirement is lifted. So, therefore, it's important that the board continues with that process. We could reverse it if needed, but we couldn't go the other way.

Another item that would be in our list, it would be – continue to -- at least, if not adoptable, but continue at least promulgating the rules internally without making adoption of those rules by the – our office of administrative hearings, so that if the voter ID law is upheld, that the board would very quickly need something for adoption as emergency rule, a temporary rule, and also preparation of voter materials, educating voters about voter ID requirements without maybe external circulation of those materials. So in case the appellate court upholds the voter ID requirement,

those materials could be quickly circulated to the public. But we would love to have an opportunity to put it down in writing.

JUDGE ROZIER: Just another question just for you all, going to the reasonable impediment comparison between 2015 and 2018 that was provided earlier, just looking at the two statutes side by side, is it an administrative interpretation about who the burden is on in terms of proving a falsity? The contention has been that in 2015, that the burden was more or less on the person, that if it seemed like there was something else false, then that was just too bad for that person. Now it seems as though the burden shifted to – to the poll workers or to the Board of Elections. Is that a matter of interpretation?

Looking at the statute, it's very similar in language, but is – could another administration come in and a director have a different interpretation and then regardless of what our ruling is and what happens with this case, later on, a different administration interprets it differently and the ramifications are different?

MR. COX: That is a possibility in the future, Your Honor. What I would submit is that at the facial constitutionality stage, the presumption has to be that if you have two interpretations, one is a permissible one and one is an impermissible one, you have to assume that the State is going to follow the permissible version. Otherwise, it's an as-applied challenge. If a new administration comes in and has a different interpretation that makes it burdensome – unduly burdensome, then that would be as-applied in the way that that administration applied the law.

JUDGE ROZIER: I understand just in terms of us being able to interpret what is constitutional. I guess what we need to figure out – take the same evaluation into consideration that the next administration may take. They may deem a different constitutional interpretation is appropriate and so – anyway, thank you.

MR. COX: Yes, Your Honor. I'll reserve the balance. Thank you, Your Honors.

JUDGE POOVEY: Thank you, too. Ms. Riggs?

MS. RIGGS: Do I have ten minutes left?

JUDGE POOVEY: About – somewhere between five and ten.

MS. RIGGS: I'm going to apologize to the court

* * *

[pp. 125]

CERTIFICATE

I , Tammy G. Bates, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing, pages 1 through 124 inclusive, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action, this the 17th day of July, 2019.

/s/ Tammy G. Bates
Tammy G. Bates, CVR-CM

Dkt. 97

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA

CIVIL ACTION NO. 1:18-cv-01034

[Filed October 30, 2019]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al., Defendants.	**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

*[***Index omitted for printing purposes***]*

*[***Table of Cases and Authorities omitted for printing purposes***]*

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA

CIVIL ACTION NO. 1:18-cv-01034

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al. Plaintiffs, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina; et al., Defendants.	**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Defendants Damon Circosta, Stella E. Anderson, David C. Black, Ken Raymond,and Jefferson Carmon III, in their official capacities as members of the North Carolina State Board of Elections ("SBOE"), oppose Plaintiffs' motion for a preliminary injunction prohibiting enforcement of NC Session Law 2018-144, or Senate Bill 824 ("SB824"), as amended by Session Laws 2019-4 and 2019-22.[1] **Exhibits 1-3**.

[1] To simplify otherwise lengthy citations, this brief cites to the law under challenge by citing to SB824.

Plaintiffs have failed to show that they are likely to succeed in proving that SB824 was enacted with discriminatory intent, or in a manner that disproportionately burdens minority voters. The Court should deny Plaintiffs' motion.

INTRODUCTION

States' interests in "deterring and detecting voter fraud[,]" in pursuit of election modernization, and "in safeguarding voter confidence" expressed through photographic voter ID statutes are "unquestionably relevant to the State's interest in protecting the integrity and reliability of the electoral process." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (plurality op.). At the federal level, the Help America Vote Act ("HAVA"), 42 U.S.C. § 15483, requires identification for certain voters, and "Congress believes that photo identification is one effective method of establishing a voter's qualification to vote[.]" *Id.* at 193. At the state level, "States employ different methods of identifying eligible voters at the polls . . . ; and in recent years an increasing number of States have relied primarily on photo identification." *Id.* at 197.

In keeping with these aims, the NC Constitution now requires that "voters offering to vote in person shall present photographic identification before voting," and mandates the General Assembly to "enact general laws governing the requirements" of this constitutional provision, "which may include exceptions." N.C. Const., Art. VI, §§ 2(4),3(2). Accordingly, the General Assembly enacted a statute implementing this constitutional command which contains exceptions and

accommodations designed to ensure that "all registered voters will be allowed to vote with or without a photo ID card." SB824, sec. 1.5.(a)(10). Because SB824 does not deny, abridge, or significantly burden any voter's right to vote, Plaintiffs' motion for a preliminary injunction should be denied; they have shown no likelihood of success on the merits.

The equities also disfavor the issuance of a preliminary injunction at this critical stage of SB824's implementation. An injunction would interfere with SBOE's outreach to voters who may lack IDs; halt the education of voters, local boards of elections, and poll workers; prevent the issuance of free voter IDs; and halt the implementation of all the other features of SB824 that have been crafted to help voters comply with the law. Further, an injunction would contravene the will of NC voters, who ratified the constitutional requirement for voter ID in the 2018 statewide election.

STATEMENT OF FACTS

A. Constitutional Amendment

In June 2018, the General Assembly approved the placement of six constitutional amendments on the November 2018 general election ballot, one of which called for imposing a requirement to show photo identification when voting in person. 2018 N.C. Sess. Laws 128, House Bill 1092 ("HB1092"). **Exhibit 4**. There was a robust public debate on these amendments, including a widely publicized campaign by the amendments' opponents commonly referred to as

"Nix All Six."[2] **Exhibit 5**, Ford T p 57. On November 8, 2018, two constitutional amendments were defeated at the polls, and four were approved by the voters. **Exhibit 6**. The photo ID constitutional amendment passed with 55% of the electorate voting in favor of the measure. **Exhibit 7**.

Pursuant to this referendum, the Constitution of NC was amended by adding two new subsections to read:

> Voters offering to vote in person shall present photographic identification before voting. The General Assembly *shall enact* general laws governing the requirements of such photographic identification, which may include exceptions.

N.C. Const., Art. VI §§ 2(4), 3(2) (emphasis added). Accordingly, in December 2018, the General Assembly enacted SB824, which is the implementing legislation that requires voter ID for in-person voting, with exceptions.

B. SB824's Provisions

In broad terms, SB824 identifies the categories of photo IDs permitted for in-person and absentee voting, authorizes the issuance of free photo IDs, provides a number of exceptions to the photo ID requirement,

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[2] Melissa Boughton, N.C. Policy Watch, "Faith leaders call for congregations to 'nix all six' constitutional amendments," Nov. 1, 2018, http://pulse. ncpolicywatch.org/2018/11/01/faith-leaders-call-for-congregations-to-nix-all-six-constitutional-amendments/ (retrieved on October 28, 2019)

mandates that SBOE engage in a variety of voter outreach and other implementation activities, and, funds the statute's implementation.

Under SB824, a voter may vote, in-person or by absentee ballot, if he or she presents one of the following IDs:

- NC driver's license
- NC nonoperator's ID
- Passport
- NC voter ID
- Tribal ID
- Approved Student ID issued by private and public colleges, universities and community colleges
- Approved State, local government, and charter school employee ID
- Driver's license and nonoperator's ID issued by another state, for newly registered voters
- Military ID
- Veterans ID

SB824, sec. 1.2(a), § 163A-1145.1(a). Military, veterans, and tribal IDs may be presented even if the card has no expiration or issuance date. *Id.* § 163A-1145.1(a)(2). Moreover, if a voter is sixty-five years old or older, an expired ID is accepted as long as it was unexpired on the voter's sixty-fifth birthday. *Id.* § 163A-1145.1(a)(3). The remaining IDs may be presented if they are unexpired or have been expired for one year or less.

The number of approved student and employer IDs under SB824 continues to increase. **Exhibit 8** (Bell Aff. ¶¶ 29–33.) Under SB824's original text, a limited

number of educational institutions and government agencies had their IDs approved under fairly rigorous requirements. (*Id.* ¶ 30 & Ex. P.) On June 3, 2019, the legislature amended the law to make this approval process less stringent. N.C. Sess. Law 2019-22. Academic institutions and public employers that either did not apply before, or had their IDs rejected, may now apply for their IDs to be approved for use in voting. (*Id*. **Exhibit 8** Bell Aff. ¶¶ 32–33.)

SB824 also authorizes and funds the issuance of free voter IDs through two mechanisms. First, SB824 requires the county boards of elections to "issue without charge voter photo identification cards upon request to registered voters." SB824, sec. 1.1.(a). A voter need not present any documentation to obtain a voter ID from a county board. The voter must merely provide his or her name, date of birth, and the last four digits of the voter's social security number. *See id.* § 163A-869.1(d)(1). SB824 funds that mandate. *Id.*, sec. 4.(b).

Second, SB824 enables all eligible individuals over the age of 17 to receive a free NC non-operator ID card that can be used for voting. *Id.*, sec. 1.3.(a). The State must also provide the documents necessary to obtain a DMV ID, free of charge, if the voter does not have a copy of those documents. *Id.* § 161-10(a)(8). SB824 serves to fund the expenses related to this form of free ID as well. *Id.*, sec. 4.(a).

In addition to authorizing multiple forms of photo IDs and mandating free IDs, SB824 is designed to accommodate all registered voters. The law contains

several provisions that ameliorate any burden the law could otherwise impose on voters who lack photo IDs.

SB824 exempts eligible voters from the photo ID requirement under three circumstances. No photo ID is required when a voter:

- Is a victim of natural disaster;
- Has religious objections to being photographed; or,
- Has a reasonable impediment that prevents a voter from presenting a photo ID. Reasonable impediments include: the inability to obtain photo identification due to lack of transportation, disability or illness, lack of birth certificate or other underlying documents required, work schedule, or family responsibilities; lost or stolen photo identification; photo identification applied for but not yet received; or, any "other" reasonable impediment.

SB824, sec. 1.2.(a), § 163A-1145.1(d). The reasonable impediment provision dramatically expands the universe of available exceptions. Given the broad availability of exceptions, the National Conference of State Legislatures categorizes SB824 as a "non-strict, non-photo ID" law, which places the law in a category that is less strict than the laws of 19 other states. Wendy Underhill, Nat'l Conf. of State Legis., "Voter Identification Requirements," Jan. 17, 2019, http://www.ncsl.org/research/elections-andcampaigns/voter-id.aspx (last visited Oct. 28, 2019).

Even though the reasonable impediment exception accommodates nearly all conceivable voters who may lack a photo ID, SB824 alternatively allows a registered voter without an acceptable form of photo ID to cast a provisional ballot and later return to the county board to bring an acceptable form of ID no later than the day before the canvass, which occurs ten days after the election. SB824, sec. 1.2.(a), § 163A-1145.1(c). SBOE is required to provide a provisional ballot voter with an information sheet on the deadline to return to the county board. *Id.*

In keeping with these ameliorative provisions, the law instructs SBOE to inform voters, through education materials that are distributed to voters and on posters at early voting sites and precinct polling locations on election day, that "[a]ll registered voters will be allowed to vote with or without a photo ID card." SB824, sec. 1.5(a).(10).

SB824 further requires SBOE to conduct "an aggressive voter education program concerning the provisions" of the law. *Id.*, sec. 1.5. This program includes offering at least two public seminars in each county to educate voters of the requirements of the law; mailing a notification of the law's requirements to all voters who do not have a DMV-issued ID; mailing a notification of the voter ID requirement to all residences in NC twice before the 2020 primary, and twice again before the 2020 general election; and conducting trainings of county boards and precinct officials to ensure uniform implementation. *Id.*, sec. 1.5.(a).

C. Critical Differences from the Prior Voter ID Law

Plaintiffs spend much of their brief seeking to draw parallels between SB824 and a prior law that included a different voter ID requirement, N.C. Sess. Law 2013-381, *as amended by* N.C. Sess. Law 2015-103 ("HB589"). **Exhibit 9**. The Fourth Circuit invalided that law, finding that it intentionally discriminated against black voters. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). However, there are important distinctions between these two laws.

First, under the prior law, county boards did not issue free IDs, and before obtaining a free ID from the DMV, a voter had to fill out a form declaring that he or she was registered to vote but had no other valid ID. Moreover, the DMV had to confirm voter registration. HB589, sec. 3.1.

Second, the prior law was amended just weeks before the trial challenging its constitutionality to add a reasonable impediment exception. *McCrory*, 831 F.3d at 219; *see* **Exhibit 9 -** N.C. Sess. Laws 2015-103, sec. 8.(d). The prior law's reasonable impediment exception allowed a ballot to be counted only if the voter produced some form of ID, by either: (1) presenting photo ID by noon of the day prior to the election canvass; or (2) presenting a voter registration card, a current utility bill, bank statement, government check, paycheck, or other government document showing name and address, or providing the last four digits of the voter's social security number and date of birth. N.C. Sess. Law 2015-103, sec. 8.(e). The law also permitted any county voter to challenge another voter's reasonable

impediment. *Id.* § 163-182.1B(b). It further permitted a county board to reject a reasonable impediment ballot if there existed grounds to believe the person's reasonable impediment affidavit was false, but also for such undefined and vague reasons as the affidavit was "nonsensical" or "merely denigrated" the voter ID requirement. *Id.* § 163-182.1B(a)(1), **Exhibit 10**, Strach T pp. 50-51, 55. The board could reject such a ballot on a simple majority (*i.e.*, party-line) vote. (**Exhibit 8,** Bell Aff. Ex. B at 29.)[3]

In contrast, from its inception, SB824 contained a much broader reasonable exception provision. **Exhibit 11**. After the voter submits a reasonable impediment form at the polls, no additional documentation is required. A reasonable impediment ballot "shall" be counted "unless the county board has grounds to believe the [reasonable impediment form] is false," and for no other reason. SB824, sec. 1.2.(a), § 163A-1145.1(e). To reject a ballot on these grounds, the five-member, bipartisan county board must vote unanimously. 08 N.C. Admin. Code 17.0101(b); **Exhibit 8** Bell Aff. ¶ 9 & Ex. A at 21. Further, no voter challenges are permitted for reasonable impediment ballots.

Third, the new law expands the types of IDs that are acceptable for voting. The prior law, for example,

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[3] Even under that more stringent reasonable impediment requirement, only a small number of submitted ballots were not counted in the one election conducted under the prior law. Additionally, the record does not show that the ballots that were not counted were cast by eligible voters. **Exhibit 10**, Strach T pp 52-55.

did not permit the use of student or government employee IDs. *See* HB589, sec. 2.1. It also did not provide the one-year grace period for expired IDs. *See id.*

Fourth, and perhaps most importantly, unlike the prior law, SB824 is not an "omnibus" election law that may be condemned as discriminatory due to a "panoply" of tools used to target African Americans' preferred voting practices with "surgical precision." *McCrory*, 831 F.3d at 215, 231. Instead, SB824 is focused on implementing the voter ID requirement of the state constitution. Unlike the prior law, SB824 does not curtail early voting, or eliminate same-day registration, out-of-precinct voting, and preregistration, which are disproportionately used by minority voters. *See id.* at 219.

Fifth, there is no evidence that the General Assembly requested and used racial data in SB824's enactment process. Before enacting the prior law, "the legislature requested and received racial data as to usage of the practices changed by the proposed law." *Id.* at 216. With respect to the prior law, "with race data in hand, the legislature amended the bill to exclude many of the alternative photo IDs used by African Americans." *Id.*

Sixth, SB824's photo ID requirement extends to absentee voters. The Fourth Circuit found that the racial data considered by the legislature in 2013 "revealed that African Americans did not disproportionately use absentee voting; whites did. [The prior law] drastically restricted all of these other forms of access to the franchise, but exempted absentee

voting from the photo ID requirement." *Id.* at 230. In contrast, SB824 requires absentee voters to present similar types of photo IDs or to execute the same reasonable impediment declaration as in-person voters. SB824, secs. 1.2.(d), (e); 08 N.C. Admin. Code 17.0109.

In sum, the differences between SB824 and the prior law are considerable.

LEGAL STANDARD

"A preliminary injunction is 'an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief' and may never be awarded 'as of right.'" *Mt. Valley Pipeline, LLC v. W. Pocahontas Props. Ltd. P'ship*, 918 F.3d 353, 366 (4th Cir. 2019) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7 at 22, 24 (2008)). The test for the issuance of a preliminary injunction turns on the balance of the four *Winter* factors: likelihood of success on the merits; irreparable harm in the absence of an injunction; equities to the parties; and, the public interest.

Plaintiffs have the burden of proof on each factor. *Winter*, 555 U.S. at 20. Additionally, a plaintiff must show that success on the merits is likely "regardless of whether the balance of hardships weighs in his favor." *The Real Truth About Obama, Inc.* v. *F.E.C.,* 575 F.3d 342, 346 (4th Cir. 2010), *vacated on other grounds*, 559 U.S. 1089 (2010). This burden requires more than simply showing that "grave or serious questions are presented." *Id*. at 347.

ARGUMENT

This lawsuit does not challenge NC's photo ID constitutional amendment; and the State has a legitimate interest in implementing that constitutional mandate under *Crawford*. This Court must determine whether, in carrying out the will of the voters, the General Assembly crafted a law that discriminates against black and Hispanic voters in violation of the Voting Rights Act (VRA) or the Constitution of the United States. More specifically, this Court must evaluate whether the substance of SB824, including its exceptions, and the circumstances surrounding its enactment likely prove discriminatory intent. Further, the Court must determine whether the law likely denies or abridges the right to vote on the basis of race. On both measures, the answer is no.

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs' Discriminatory Intent Claim Likely Fails.

Discriminatory intent must be apparent from all "circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). This analysis ordinarily involves a review of a nonexhaustive list of factors, including "[t]he historical background" of the law; "[t]he specific sequence of events leading up to" the law's enactment; "[d]epartures from normal procedural sequence"; the legislative history of the decision; and, the racially disproportionate "impact of the official action." *Id.* at 266–67.

"Whenever a challenger claims that a state law was enacted with discriminatory intent, the burden of proof lies with the challenger, not the State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). Only when "racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

1. Historical Background

"Unquestionably, North Carolina has a long history of race discrimination generally and race-based vote suppression in particular." *McCrory*, 831 F.3d at 223. That history contains "shameful" chapters related to race. *Id.* Additionally, courts in the past decade have concluded that considerations of race have predominated in North Carolina's redistricting process. *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 1455 (2017); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017).

Defendants do not dispute the Fourth Circuit's recounting in *McCrory* of North Carolina's history of race-based discrimination. But importantly, here, Plaintiffs fail to show that this history of past discrimination infects the enactment of SB824. The composition of the General Assembly that enacted the law was different from the body that enacted HB589, the legislature expressed its commitment to passing the kind of photo ID law that survives judicial scrutiny, SB824 garnered bipartisan support, and the law now contains provisions for free IDs and accommodations

for voters without IDs that it did not contain in the past. *See infra* pp. 14–15; **Exhibit 12** Lichtman T pp 60-63. Even taking the State's history of discrimination into account, the remaining factors of the *Arlington Heights* analysis suggest that SB824 does not carry forward that troubling history.

2. Sequence of Events

The Supreme Court in *Arlington Heights* described how a specific sequence of events may shed a light on a discriminatory purpose. The plaintiffs in *Arlington Heights* challenged a village's denial of a request to rezone certain land to permit the construction of multiple-family, racially integrated housing. The Court reasoned that "if the property involved here always had been zoned [multiple-family] but suddenly was changed to [single-family] when the town learned of MHDC's plans to erect integrated housing," such change would raise suspicions of discriminatory intent. *Arlington Heights*, 429 U.S. at 267.

There are no similar suspicious changes in legislative policy preferences leading to the enactment of SB824. While photographic voter ID is the subject of national debate, see **Exhibit 13** pp ii-iii, the trend throughout the United States has been towards adoption of photo ID requirements for voting. **Exhibit 14** pp 1, 3 (as of January 2019, a total of 35 states had laws requiring voters to show some form of ID, and 17 of those states had a photographic ID requirement); *see also Crawford*, 553 U.S. at 197.

In 2011, Democratic Governor Bev Perdue vetoed House Bill 351, NC's first bill passed by the legislature

that required a government-issued photo ID in order to vote in person.[4] The General Assembly failed to override that veto, but it has since sought to implement a photo ID law. While the previous efforts failed—one due to the State's internal political processes, and the other because the General Assembly requested and used racial data to effectuate its preferred policy—the legislative preference to implement a voter ID law has been consistent for a number of years leading up to SB824.

Moreover, neither the VRA nor the Constitution requires states to wait for the specific type of fraud the law seeks to address to impact an election before enacting voter ID legislation. States are justified in preventing voter fraud and preserving voter confidence in elections, even when "there was limited evidence of voter fraud." *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 606 n.* (4th Cir. 2016).[5]

In SB824, the legislature largely sought to emulate South Carolina's photographic voter ID law, which has survived judicial scrutiny and has been described as lenient. **Exhibit 15,** T(11/26/18) p 52, T(11/28/18) pp 4,

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[4] https://www.ncleg.gov/Sessions/2011/h351Veto/govsig.pdf.

[5] In *Lee*, the Fourth Circuit cited some individual examples of fraud that supported the state's justifications in addressing fraud and voter confidence. *Lee*, 843 F.3d at 606 n.*. Similarly, North Carolina was subject to "fraud, impropriety and irregularities" in the 2018 General Election for the 9th Congressional District. **Exhibit 16**. SB824's voter identification requirement for absentee voters addresses this type of fraud and should boost public confidence in the State's efforts to root out election fraud.

5. The stated purposes of both laws are similar: South Carolina seeks "to confirm the person presenting himself to vote is the elector on the poll list[,]" S.C. Code Ann. § 7-13-710(E), while SB824 seeks "to confirm the person presenting to vote is the registered voter on the voter registration records[,]" SB824, sec. 1.2.(a). Those articulated state interests are clear and undeniable after *Crawford*. However, because of its legislative history, SB824 is also intended "to implement the constitutional amendment requiring photographic identification to vote." SB824, Title. NC's express goal of enacting a constitutionally mandated voter ID statute, in a manner that meets judicial scrutiny after *McCrory*, is a legitimate state interest that is borne by the legislative record. Contrary to Plaintiffs' suggestion regarding efforts to avoid judicial intervention against the law, DE 91 at 6, 17; **Exhibit 12** Lichtman T pp 71-80), a legislature *should* strive to enact legislation that abides by legal precedent.

SB824 compares favorably to South Carolina's in substance, as well. Both states have enabled the issuance of free voter IDs at county boards of elections, and DMV offices. *See South Carolina v. United States*, 898 F. Supp. 2d 30, 32 (D.D.C. 2012); S.C. Code Ann. § 7-5-675; SB824, secs. 1.1.(a), 1.3.(a). Likewise, the reasonable impediment provision of both laws is nearly identical, and both require that reasonable impediment ballots be counted unless a county board determines that there are grounds to believe the form is false. S.C. Code Ann. § 7-13-710(D)(1)(b); SB824, sec. 1.2.(a), § 163A-1145.1(e). The National Conference of State Legislatures categorizes SB824 and South Carolina's laws as among the most lenient voter ID laws in the

country, due in large part to the similar reasonable impediment laws in those states. *See* **Exhibit 14** p. 4 n.5. In fact, SB824 is less burdensome than the South Carolina law after which it was patterned, because SB824 has a more expansive list of permissible photo IDs, including government employee IDs, tribal IDs, VA IDs, and university and community college student and employee IDs. *Compare* SB824, sec. 1.2.(a), *with* S.C. Code Ann. § 7-13-710; DE 76-3 at 6. In summary, SB824 was patterned after South Carolina's law that has withstood scrutiny following a sequence of legislative events that does not support a finding of discriminatory intent.

3. Departures from normal procedural sequence

The process of SB824's enactment complied with constitutional and parliamentary requirements. **Exhibit 17** (Goldsmith Aff. ¶ 35). In NC, in order to become law, a bill must comply with the following procedural and form requirements contained in the Constitution:

- It must pass three separate readings in each chamber. N.C. Const., Art. II, §§ (1)-(6)). The only constitutional requirement that regulates the speed with which the General Assembly may enact legislation relates to revenue bills. N.C. Const., Art. II, § 23.
- The bill must contain the following phrase "The General Assembly of North Carolina enacts:". N.C. Const., Art. II, § 21.
- The bill must be signed by the presiding officers of each chamber. N.C. Const., Art. II, § 22(1)-(6))

- Most public bills must be submitted to the Governor for approval or veto. (N.C. Const., Sec. 22(1) and (7)). If the Governor vetoes the bill, it still becomes law if three-fifth of the members in each chamber agree to pass the bill by "veto override." N.C. Const., Art. II, § 22(1).

(**Exhibit 17** Goldsmith Aff. ¶¶ 7-33).

A facial review of SB824 demonstrates that its enactment met all applicable procedural constitutional requirements. The first page contains the phrase "The General Assembly of North Carolina enacts:". The last page reflects that the bill was duly ratified on December 6, 2018, and that the bill became law over the objections of the Governor on December 19, 2018. **Exhibits 17**(Goldsmith Aff. ¶ 7); **17-A.**

Courts additionally review whether, in the totality of the circumstances, any drastic departures from the normal procedural sequence of events leading to enactment of a statute suggest racially discriminatory intent. *Arlington Heights*, 429 U.S. at 267. Although Plaintiffs complain of "numerous procedural irregularities[,]" they point only to a "rushed process" and their desire to have more hearings and speakers at those hearings. DE 91 at 26. That does not establish drastic procedural deviations.

The Fifth Circuit's analysis of this factor in a voter ID case is instructive. There, the Texas legislature "subjected [the voter ID bill] to radical departures from normal procedures[,]" which included at least 7 detailed "unprecedented" variations from the normal legislative process that included suspension of two-

thirds rule on the number of votes required, passing the law without a verified fiscal note contrary to prohibition on doing so due to a $27 million budget shortfall; and other drastic variations from normal procedure. *Veasey v. Abbott*, 830 F.3d 216, 237-38 (5th Cir. 2016).

Likewise, *McCrory* emphasized the many procedural abnormalities of the prior voter ID law's enactment process:

- That a much more modest voter ID bill just "sat" for a prolonged period of time: "[f]or the next two months, no public debates were had, no public amendments made, and no action taken on the bill" until *Shelby* was decided;
- That the prior law's size inexplicably swelled from 16 to 54 pages right after *Shelby* decision;
- That the day after *Shelby*, the Chairman of the Senate Rules Committee announced that the General Assembly would now pass an "omnibus" election bill;
- That this new "omnibus" bill was "rushed" through the legislature with "one day for a public hearing, two days in the Senate, and two hours in the House;"
- That "[t]he House voted on concurrence in the Senate's version, rather than sending the bill to a committee[;]"

- That "the House had no opportunity to offer its own amendments before the up-or-down vote on the legislation;" and,
- That the "vote proceeded on strict party lines."

831 F.3d at 227–28. Collectively, these factors constituted indicia of abnormality.

The procedural enactment of SB824 does not lead to such a conclusion. Instead, the procedure was consistent with the normal legislative process:

- On November 6, 2018, North Carolinians approved the Constitutional Amendment that requires photographic ID for in-person voting. **Exhibit 7**;
- On November 26, 2018, SB824 was debated in the Joint Legislative Oversight Committee;
- The transcript of the debate reveals that "a draft of implementing legislation[] was released to Members early last week." **Exhibit 15,** T(11/26/18) p 2; **Exhibit 5,** T p 68 ("Drafts were circulated with plenty of time ['several days, if not a week, before the legislation came before a vote on the floor '] "for legislators to review and consider them");
- On November 27, 2018, SB824 was filed in the North Carolina Senate with bipartisan sponsorship. **Exhibit 11**;
- After filing, SB824 received its first reading and was referred to the Select Committee on

Elections with a re-referral to the Rules and Operations of the Senate;

- SB824 received a favorable report from the Select Committee on Elections and the bill was re-referred to the Rules and Operations of the Senate Committee;
- On November 28, SB824 received a favorable report from the Rules and Operations of the Senate Committee. SB824 was placed on the calendar and debated. Eleven amendments were offered: six were adopted, four were tabled, and one was withdrawn. The amended bill passed second reading;
- On November 29, SB824 passed third reading in the Senate, the amendments were ordered engrossed and the bill was sent to the House;
- The House received SB824 November 29. It was read the first time and was referred to the Committee on Elections and Ethics Law;
- On December 4, two committee substitutes were submitted and referred to the Committee on Elections and Ethics Law, and then placed on the calendar for December 5, 2018;
- On December 5, the House took up SB824. Twelve amendments were offered. Seven were adopted, one was withdrawn, and five failed. The bill, as amended, passed its second and third reading, the amendments were ordered engrossed and it was sent to the Senate for concurrence; and,

- On December 6, the Senate took up SB824 for concurrence. The motion to concur passed, and the bill was ordered enrolled, and ratified by both chambers.

Exhibits 17, 17-B. Public stakeholders, both those in favor and opposing SB824, were allowed to sign up and speak during the hearings. Representatives supporting and opposing SB824 were likewise permitted to voice their opinions. **Exhibit 15**, T(11/26/18), T(11/28/18), T(12/3/18), T(12/5/18) pp 45-171, T(12/6/18).

In summary, between November 26, 2018 and December 6, 2018, SB824 received several committee referrals, was publicly debated, was amended multiple times in each legislative chamber, passed through the process of three required readings in each chamber, and was ratified. It was then presented to the Governor and was vetoed on December 2018. On December 19, the General Assembly overrode the Governor's veto. **Exhibits 17, 17-A, 17-B**.

Plaintiffs suggest that the debate was not long enough and was limited. DE 91 at 26. However, the a Democratic co-sponsor of SB824, former Senator Joel Ford, testified that the limitation on the length of the debate was due to a "Democratic senate caucus strategy" to limit debate in order to prepare for a legal challenge of SB824. **Exhibit 5**, T pp 18, 69–71. And the pace of SB824's enactment was neither a departure from any constitutional or parliamentary rules, nor "unprecedented." **Exhibit 17** (Goldsmith Aff ¶ 35); DE 76-4 at 13–14.

Plaintiffs also argue that the mere fact that SB824 was passed, and the Governor's veto was overridden, during the lame-duck session suggests discrimination. DE 91 at 26. Yet, the General Assembly's legislative action during a lame-duck session is neither prohibited by the NC Constitution, nor any NC statute. N.C. Const., Art. II. §§ 9, 11, 22(1). That activity is legitimate and common. DE 76-4 at 5–15; **Exhibit 5**, T pp 52–53. Although Plaintiffs also complain that the acting legislature was unconstitutionally gerrymandered, they point to no federal decision holding that a state legislature is barred from legislating before curative map-making periods are completed. SB824's procedural sequence reveals no discriminatory departures.

4. The legislative history of the decision

SB824's legislative history also weighs in favor of validity. As part of that history, the Fourth Circuit reviews whether a voter ID legislation had any support of the opposing party. *Lee*, 843 F.3d at 603. ("While there was a substantial party split on the vote enacting the law, two non-Republicans (one Democrat and one Independent) voted for the measure as well.") While largely opposed by Democrats, SB824 nevertheless had bipartisan support at the outset, and through each important stage of the lawmaking process. **Exhibits 11, 5, 18**.

The Bill was co-sponsored by a Democrat. **Exhibit 11**. On November 29, 2018, two Senate Democrats

voted for the Senate version of SB824.[6] **Exhibit 19**. On December 5, 2018, two House Democrats voted for the House version of SB824. **Exhibit 20**. One Democrat voted in favor of a motion to concur. **Exhibit 21**. Likewise, a veto override was achieved with some Democratic support in both legislative chambers. **Exhibits 22, 23.** Moreover, multiple amendments offered by Democratic legislators were adopted. **Exhibits 24, 17-B,** S.J. pp 384-385, H.J. pp 480-481.

The rejected amendments, likewise, evidence no discriminatory intent. One of these amendments—delaying the start date for county boards of elections to issue free voter IDs—would have increased the burden on voters without ID. Further, the intended effect of another (delaying the rollout of SB824) was later given effect by Session Law 2019-2. The rest of the rejected amendments would not have significantly changed SB824's impact on any group of voters, given the reasonable impediment provision in the law.

Plaintiffs emphasize the exclusion of public assistance IDs from the list of qualified IDs to argue discriminatory intent. DE 91 at 32; **Exhibit** 12 Lichtman T pp 134-140. However, legislative history rebuts this argument. In the debate over amendments seeking the inclusion of these IDs, concerns were raised that such IDs lack uniformity and that many lack photographs as required by the constitutional mandate.

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[6] *McCrory* cited favorably the fact that a pre-*Shelby* voter ID bill had some bipartisan support, since "[f]ive House Democrats joined all present Republicans in voting for the voter-ID bill." *McCrory*, 831 F.3d at 227.

Exhibit 15, T(11/28/18) p 19, T(12/3/18) pp 22-24, T(12/5/18) pp 100-102. Those concerns are borne out by the record. **Exhibits 25, 26**. Moreover, the inclusion of more forms of voter ID will complicate the efforts of poll workers to administer the voter ID requirement. **Exhibit 27**, Patterson T pp 80-81. Indeed, according to Plaintiff's own expert witness, the adoption of a public assistance ID amendment would have made little difference to a discriminatory intent analysis here. **Exhibit 12** Lichtman T pp 134-150.

Finally, in making its determinations that the prior law was motivated by invidious racial discrimination, the Fourth Circuit noted that "prior to and during the limited debate on the expanded omnibus bill, members of the General Assembly requested and received a breakdown by race of" data related to the various voting practices at issue, and then, relying on that data, "drastically restricted" a number of voting practices that "African Americans disproportionately used." *McCrory*, 831 F.3d at 230. The legislative record before this Court features no such evidence to support a finding of an invidious discriminatory purpose.

5. Any racially disproportionate impact

SB824 permits every voter to cast a vote, and have that vote counted. It therefore does not deny or abridge the right to vote for any protected class.

i. Any impact is minimized by the law's ameliorative provisions.

By authorizing ten different types of photo IDs, SB824 makes it relatively simple to present ID at the polls. SB824, sec. 1.2.(a), § 163A-1145.1(a). In fact, the

SBOE continues to approve new IDs from colleges, universities, and governmental employers. **Exhibit 8** (Bell Aff. ¶¶ 32–33.) Moreover, voters who lack one of these many forms of ID can obtain a voter ID card free of charge from their county board of elections. SB824, sec.1.2.(a), § 163A-1145.1(a). County boards have been issuing these free IDs since May, and over 1,700 voters have already taken advantage of this service. **Exhibit 8** (Bell Aff. ¶ 16 & Ex. J.) It is reasonable to assume that the number of free IDs issued would only continue to rise during the approach to the election, when public interest, photo ID education, and the outreach campaign are at their heights.

Plaintiffs contend that there is a racial disparity in the rate at which voters currently possess the most common forms of ID that can be used for voting—IDs issued by the NC DMV. DE 91 at 22 (citing Herron Rep. at 21, 25). Plaintiffs' analysis is flawed. First, it ignores eight different additional types of ID that can be used that could reduce the disparity. **Exhibit 28** (Neesby Aff. ¶ 11.) Second, it relies on a list the SBOE created for a photo ID notification mailing that expressly was not intended to show how many North Carolinians lacked DMV-issued ID. (*Id.* ¶ 10) By design, the list is overinclusive to inform voters of the photo ID requirement, not to answer a factual question posed by litigation. (*Id.*) Third, as Plaintiff's own expert admits, academic literature is ambiguous on whether disparities in ID possession rates lead to disparate results in voter participation, **Exhibits 29, 29-A, 29-B** (Burden T pp 39:2–18, 57:21–58:19, 64:21–65:10 & Ex. 4 at 6–7, 10, Ex.6 at 1060–62), thereby undermining

the conclusion that the ID requirement has discriminatory results.

More importantly, even assuming a disparity in the possession rate of IDs, Plaintiffs' argument on discriminatory results downplays the significance of the availability of free IDs from the DMV and county boards of elections, which reduce any significant burdens that would result from disparate rates of ID possession. In addressing the free IDs available at county boards of election, Plaintiffs contend that the distance voters would have to travel to county offices and time required to obtain the ID constitute burdens. DE 24. Yet, Plaintiffs offer to the Court no available analysis to establish whether voters identified by the SBOE who may not possess DMV-issued ID live any farther from the county board of elections than the average voter in the county. Plaintiffs' expert relies on a study produced by the plaintiffs in the state court challenge to SB824, which compares the average distance to the county board office, county-by-county. DE 91-4 at 29. However, that analysis is of limited value because it did not consider whether the distance for black or Hispanic voters in any given county, or statewide for that matter, is greater than the distance required for white voters.

Most importantly, for voters who lack photo ID, the burden imposed by a photo identification requirement is minimized by the reasonable impediment provisions of SB824. Even if a voter fails to present ID at the polls, her vote counts if she merely attests to why she was unable to present ID. *See* SB824, sec. 1.2.(a), §§ 163A-1145.1(d)(2), (d1). A reasonable impediment

ballot is presumptively valid, and may only be rejected if all five members of the bipartisan board unanimously agree that there are grounds to believe the affidavit is false. *Id.* § 163A-1145.1(e); 08 N.C. Admin. Code 17.0101(b). To quote Plaintiffs' expert, "As a result, all ballots cast using the reasonable impediment affidavit process are presumed to be counted, as the ballots are 'exceptions' to the regular provisional ballot process." DE 91-4 at 23.

ii. Controlling precedent holds that similar laws do not impose discriminatory impacts.

The Fourth Circuit has upheld an even more burdensome process of voting without a required ID. In *Lee v. Virginia State Board of Elections*, 843 F.3d 599 (4th Cir. 2016), the Court concluded that Virginia's photo ID law did not impose unlawful burdens under VRA's § 2, because voters who did not present ID at the polls could cast a provisional ballot that would be counted if the voter sent a photocopy of their ID to their county board of elections by the third day after the election. *See id.* at 594, 600. By contrast, here, a voter who submits a truthful reasonable impediment affidavit along with her ballot does not have to do anything more: her vote will count. Accordingly, the court's conclusion in *Lee* is applicable here: "Because, under [North Carolina's] election laws, every registered voter in [North Carolina] has the full ability to vote when election day arrives, [SB824] does not diminish the right of any member of the protected class to have an equal opportunity to participate in the political process and thus does not violate § 2." *Id.* at 600.

Moreover, with respect to the ease with which a voter could acquire a photo ID for voting, the Virginia law addressed in *Lee* is indistinguishable from the law here. Under Virginia's law, free photo IDs were available at local elections offices or at "mobile voter-ID stations." *Id.* at 595. The court noted, "[t]he Supreme Court has held . . . that this minor inconvenience of going to the registrar's office to obtain an ID does not impose a substantial burden." *Id.* at 600 (citing *Crawford*, 553 U.S. at 198). Similarly here, free photo IDs are available at all 100 county elections board offices in the state, and county boards can authorize staff to provide these IDs at other locations in the community. *See* 08 N.C. Admin. Code 17.0107(a); **Exhibit 8** (Bell Aff. ¶ 16). In fact, unlike Virginia's law, a NC voter does not even need to provide her address to obtain a free photo ID, and instead need only provide her name, birth date, and last four digits of her social security number. *Compare Lee*, 843 F.3d at 595, *with* SB824, sec. 1.1.(a); 08 N.C. Admin. Code 17.0107(a).

Lee also acknowledged that black and white Virginians had disparate rates of ID possession, but rejected the proposition that this evidence necessarily leads to discriminatory results in violation of the VRA. The court distinguished "disparate inconveniences" from "the denial or abridgement of the right to vote," concluding that the burdens Virginia imposes on voters to obtain a free ID are not sufficient to constitute a VRA violation. *Lee*, 843 F.3d at 600–01. This conclusion applies with even stronger force here as NC's reasonable impediment alternative makes it possible to

vote without photo ID at all—something that was not possible in Virginia.

The application of *Lee* to the instant case would be consistent with numerous other cases where challenges to similar photo ID laws, based on theories of discriminatory burdens, were rejected:

- The Fifth Circuit reversed a preliminary injunction against Texas's photo ID law where the district court failed to account for ameliorative effect of that state's reasonable impediment alternative, which unlike North Carolina's law, still required the production of some form of ID. *Veasey v. Abbott*, 888 F.3d 792, 803 (5th Cir. 2018); *see id.* at 796–97.

- The Seventh Circuit upheld Wisconsin's photo ID law against a VRA discriminatory-results claim even though that law provided no reasonable impediment alternative, and in spite of evidence showing disparate rates of ID possession. *Frank v. Walker*, 768 F.3d 744, 752–53 (7th Cir. 2014).

- A three-judge panel of the District of D.C. upheld South Carolina's law, which has a nearly identical reasonable impediment provision, against a VRA discriminatory-effects challenge. *South Carolina v. United States*, 898 F. Supp.2d at 38–43. The court held that disparate rates of ID possession and burdens associated with obtaining an ID "might have posed a problem for South Carolina's law under the strict effects test of Section 5 of the Voting Rights Act," but "the

sweeping reasonable impediment provision in [the law] eliminates any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused." *Id.* at 40.

- A district court determined that Alabama's photo ID law had no discriminatory impact under a constitutional challenge, because the law provided free IDs. *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1277 (N.D. Ala. 2018). Alabama's law includes no reasonable impediment provision.

Accordingly, given that courts have upheld stricter photo ID laws under discriminatory-results claims, Plaintiffs here are unlikely to succeed on such a claim.

iii. McCrory is distinguishable in many ways.

McCrory does not bear the weight Plaintiffs place on it to support their claims of discriminatory impact. As discussed above, what distinguished the law at issue in *McCrory* was the "panoply" of voting restrictions that "cumulatively" resulted in disenfranchisement of black voters. *McCrory*, 831 F.3d at 231. The Court explained that "the sheer number of restrictive provisions in SL 2013–381 distinguishes this case from others." *Id.* at 232.In this critical way, the analysis of the burdens or discriminatory results of the current Photo ID Law is very different from the analysis of S.L. 2013-381 in *McCrory*. If anything, *McCrory*'s reliance on the cumulative impact of the various provisions of the prior law, along with the distinction the Court drew with

cases like *Crawford* upholding photo ID on its own, suggests that SB824 is presumptively valid.

The value of the Fourth Circuit's analysis in *McCrory* regarding the burdens imposed by the photo ID requirements in the prior law is further diminished here given that the current photo ID requirements are much less stringent than those in the prior law. As noted above, the current law expanded the types of IDs that may be used for voting, *supra* pp. 4-5, 9, 24, and the list of valid IDs continues to grow as the SBOE approves new student and public employer IDs in the coming weeks, **Exhibit 8** (Bell Aff. ¶¶ 32–33).

Additionally, it is likely that SB824's approval of several of these IDs will serve to benefit minority voters. **Exhibits 30**, **Exhibit 8** (Bell Aff., Ex. O (many HBCUs had student and/or employee IDs approved)); DE 76-2 (Thornton Aff. ¶¶ 28, 31). The current reasonable impediment process is also much less stringent, and guarantees that anyone can vote without a photo ID as long as they do not submit a false affidavit when voting. Plaintiffs' declarant Quinn disclosed that he was neither asked to opine, nor did he form an opinion on how reasonable impediment process may impact any theoretical burdens caused by ID requirement. **Exhibit 32**, Quinn T pp 157-166. Yet, this provision significantly blunts any burden that might otherwise be imposed by the law.

Contrary to Plaintiffs' suggestion, DE 91 at 25, *McCrory* did not address *this* reasonable impediment provision. In fact, the discussion of the prior reasonable impediment provision in *McCrory* is off-topic here. The Court first noted that the reasonable impediment

provision was not part of the original law under challenge, but was added on the eve of trial. *McCrory*, 831 F.3d at 219. Rather than considering whether that provision altered the analysis of the burdens imposed by the prior law, as it pertained to VRA liability, the Court reviewed the reasonable impediment provision only in the context of what remedy was appropriate for the VRA violation that the Court had otherwise found. *Id.* at 240. After placing the burden *on the State defendants* to prove that the provision cured the discrimination found in the liability section of the opinion, the Court held that the reasonable impediment did not cure the intentional discrimination otherwise imposed by the law. *Id.*[7] In other words, the Court did not even treat that provision as part of the law under challenge.

Moreover, even if *McCrory* included a review of that provision as if it were part of the prior law under challenge, the reasonable impediment provision in the prior law was significantly more burdensome for four reasons:

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[7] This treatment of the reasonable impediment provision in the remedy analysis drew a partial dissent in an otherwise-unanimous decision. *McCrory*, 831 F.3d at 242–44 (Motz, J., dissenting in part). The majority decision held that the prior law should be enjoined despite the addition of the reasonable impediment provision. But Judge Motz believed that "by its terms, the exception totally excuses the discriminatory photo ID requirement." *Id.* at 243. She would have remanded for the district court to consider whether, in practice, the exception had remedied the discriminatory impact of the prior photo ID law. *Id.* at 244.

(1) The prior law granted county boards considerable discretion to reject a reasonable impediment that a board believed was "nonsensical" or "merely denigrated the photo identification requirement," as opposed to rejecting only those affidavits that were demonstrated to be false. *Compare* Sess. Law 2015-103, sec. 8.(e), § 163-182.1B(a)(1), *with* SB824, sec. 1.2.(a), § 163A-1145.1(e).

(2) The prior law permitted any voter in the county to challenge a reasonable impediment affidavit and submit evidence against a fellow voter's reasons for lacking ID before the county board, Sess. Law 2015-103, sec. 8.(e), § 163-182.1B(b), a process that does not exist under SB824.

(3) The prior law allowed a county board to reject a reasonable impediment ballot on a simple majority vote, **Exhibit 8** (Bell Aff., Ex. B at 29), whereas under SB824 all five members of a bipartisan county board must agree unanimously that there are grounds to believe an affidavit is false before rejecting it, (*Id.* ¶ 9).

(4) Finally, the prior law still required the voter to present some form of ID in addition to filling out the reasonable impediment form. *See* Sess. Law 2015-103, sec. 8.(e), § 163-182.1B(a)(2). Under current law, however, voters do not need to present any identification to have their reasonable impediment ballot counted.

In sum, SB824 features numerous forms of ID that are accepted; county elections boards are offering free IDs to all voters; and if a voter fails to bring ID to the polls but completes a truthful reasonable impediment form, her vote counts. Under these facts, it is difficult to read *Lee*—much less the various other cases cited above, *supra* pp. 28-29—and conclude that this law produces significant discriminatory results.

B. Plaintiffs' Disparate Results Claim Likely Fails.

To succeed on a discriminatory results claim under section 2 of the VRA, a plaintiff must show that the challenged voting law "results in a denial or abridgement of the right to vote on account of race or color or because the person is a member of a language minority group ("the protected class")[,] such that, in the totality of circumstances, the political process is not equally open to the protected class[,] in that its members have less opportunity than others to participate in the process and elect representatives of their choice." *Lee*, 843 F.3d at 599 (numbering omitted). A plaintiff "must make a greater showing of disproportionate impact" under a standalone discriminatory results claim than under a discriminatory intent claim. *McCrory*, 831 F.3d at 231 n.8.

At the same time, "[a] complex § 2 analysis is not necessary to resolve this issue" when "plaintiffs have simply failed to provide evidence that members of the protected class have less of an opportunity than others to participate in the political process." *Lee*, 843 F.3d at 600. For the reasons set forth in the analysis of potential discriminatory impacts above, *supra* pp.

24–32, Plaintiffs fail to make the initial showing that SB824 denies or abridges the votes of black or Hispanic voters. They are therefore unlikely to succeed on their standalone results-based claim.

C. SBOE Is Implementing SB824 in an Appropriate Manner to Inform the Public, Avoid Voter Confusion, and Ensure Even Application.

In an argument not explicitly tied to a legal claim, Plaintiffs also contend that "North Carolina cannot possibly rollout its voter ID law in four months that remain until commencement of early voting on February 12, 2020," and therefore request an injunction. DE 91 at 33-34. That argument ignores implementing activities that have heretofore taken place. Therefore Plaintiffs' argument should be rejected.

SBOE "has already undertaken a series of actions to implement this law, and intends to undertake additional actions to implement the Photo ID Law." Bell Aff ¶ 6. Among other measures, the SBOE:

- conducted a statewide conference and training for county board members and staff from all 100 county boards, and provided guidance on reasonable impediment;
- is rolling out additional training to the county boards and their staff, following the currently ongoing municipal elections;
- promulgated rules and is continuing to update the rules on issuance of free IDs and the

implementation of voter ID requirements at the polls and with absentee voting;

- conducted training for county boards on the issuance of free photo IDs authorized, and processed reimbursements for 74 counties for the printing equipment acquired pursuant to SB824;
- distributed a mass mailing to every registered voter who may not possess a DMV-issued IDs;
- will mail information about voter ID to every residential address in the State, once in early November and again in late December, and will distribute two additional statewide mailings between the primary and general election in 2020;
- created posters and informational handouts about photo IDs, in both English and Spanish, and provided them to the county boards to be posted in every precinct and one-stop early voting location during voting in 2019;
- created a web page to inform the public about Photo ID, which can be found at ncsbe.gov/voter-id;
- distributed to all colleges and universities whose IDs have been approved an informational document to be provided to all students;
- approved the initial slate of student and employee IDs on March 15, 2019, and is currently accepting additional applications from

institutions and entities whose IDs were not approved in March, now that the ID requirements have been relaxed;

- is developing additional voter ID training for county boards to be conducted prior to the times when the county boards train their pollworkers before the 2020 primary; and,

- has made and continues to make Statewide Elections Information Management System (SEIMS) adjustments related to the SB824's photo ID requirement

Id. ¶¶ 8–40.

Accordingly, Plaintiffs' "rushed implementation" argument fails to contemplate the full account of SBOE's efforts.

D. Plaintiffs Offer no Merits Argument for a Constitutional Violation.

Plaintiffs reference the Fourteenth and Fifteenth Amendments to the United States Constitution twice: in the introduction and in the conclusory paragraph of their *Arlington Heights* discriminatory-intent discussion. DE 91 at 10, 36. They offer no analysis of purported constitutional violations under the sliding-scale standard established in *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)) and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Yet the *Anderson-Burdick* framework applies to claims that the law is "unconstitutional because it places an undue burden on the constitutionally protected right to vote." *Lee*, 843 F.3d at 604-05. Under the *Anderson-Burdick* line of

cases, courts first determine whether the challenged legislation burdens a constitutional right, and then scrutinize the degree of the burden against the governmental interest offered in support of the challenged legislation. Plaintiffs waived any claim that they are likely to succeed on that basis by failing to present argument under this standard.

II. THE PUBLIC INTEREST, HARM ANALYSIS, AND EQUITIES WEIGH AGAINST AN INJUNCTION.

Plaintiffs must make a clear showing that they will likely be irreparably harmed absent preliminary relief. *The Real Truth About Obama, Inc.* v. *F.E.C.,* 575 F.3d at 347. An averment that the plaintiff's harm might simply outweigh the defendant's harm is insufficient. *Id*. The showing of irreparable injury is mandatory even if the plaintiff has already demonstrated a strong showing on the probability of success on the merits. *Id*. Moreover, the Court must give "particular regard" to the "public consequences" of any relief granted. *Id*. Plaintiffs fail to carry their burden on this irreparable harms and equities analysis.

First, "any time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. v. Orrin W. Fox Co*., 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). Here, that injury is compounded by the fact that the voters mandated a photo ID requirement directly through a referendum that resulted in an amendment to the NC Constitution.

Second, granting the preliminary injunction and returning to the *status quo ante* would result in Defendants having to halt their SB824 implementing efforts that are well under way, and while approaching a critical time for a photo ID requirement to be smoothly administered in advance of the 2020 elections cycle. If SB824 is ultimately upheld against the constitutional and statutory challenge, this halt of preparatory and educational activities directly harms the State's voters. The harms and equities therefore tilt the scales against an injunction.

Plaintiffs' own affiants Patterson and Fellman support the importance of a continued voter and pollworker outreach and education. Further, more time for education and training leads to less confusion among both election officials and voters. See **Exhibit 27**, T pp 60, 65; **Exhibit 31**, T pp 109, 111, 186-196. For example, Fellman believes that if the law is going to go into effect in March 2020, it would be best to continue voter education between now and then. See **Exhibit 31,** T pp 164, 165, 172-173. She believes that "voters really need consistency" and that "[i]t's best to give people consistent information and have consistent voting laws," because "[c]onsistency would be a really helpful thing to increase voter participation." ***Id***. at pp 111, 115, 167.

An injunction could delay the statutorily required mailings to every household in NC, halt the training of pollworkers and county boards on photo ID, interfere with the process of approving public and educational institutions' photo IDs, and curtail SBOE's voter and community outreach on the photo ID requirements.

Exhibit 8 (Bell Aff. ¶ 41). If any injunction were later lifted, "it might not be possible to complete all educational and outreach activities that were required" by SB824. (*Id.*) The public will suffer the brunt of the SBOE's inability to complete all the requisite preparation required by the law. The Court should deny Plaintiffs' request on that additional ground as well.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' motion for preliminary injunction.

Respectfully submitted, this the 30th day of October 2019.

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Dkt. 182

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: October 8, 2021]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, et al., Defendants.	**STATE BOARD DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

*[***Tables omitted for printing purposes***]*

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MATTER BEFORE THE COURT

The State Board Defendants ask that the Court enter summary judgment pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1(g).

STATEMENT OF THE FACTS

In 2018, the voters of North Carolina adopted an amendment to the state Constitution that required all voters to present photo ID when voting. In turn, the state legislature enacted the law at issue, S.B. 824, which implements the 2018 constitutional amendment, with exceptions. [D.E. 97-2].

A. Historical Background of North Carolina's Photo ID Legislation

In March 2011, the General Assembly filed House Bill 351, which would have required in-person voters to "present a valid photo identification to a local election official at a voting place before voting." H.B. 351, Gen. Assemb., Reg. Sess. (N.C. 2011). Then-Governor Beverly Perdue vetoed the legislation, and the bill never became a law. *See* Governor's Objections and Veto Message, H.B. 351 (June 31, 2011).

In 2013, the North Carolina General Assembly enacted an "omnibus" election law, H.B. 589 (D.E. 97-10), which imposed numerous new requirements for voting, including a photo ID requirement. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016). During consideration, "the legislature requested data on the use, by race, of a number of voting practices[,]" and with that data in hand, "eliminated or reduced registration and voting access tools that African Americans disproportionately used" and instituted a photo ID requirement that disproportionately burdened African Americans. *Id*. at 214, 216. The Fourth Circuit found that the legislature enacted the challenged provisions of the law with discriminatory intent and enjoined it. *Id*. at 215, 219.

B. Amendment to the North Carolina Constitution

In June 2018, the General Assembly approved the placement of six constitutional amendments on the November 2018 general election ballot, one of which required every voter to show photo identification when

voting in person. [D.E. 97-5]. The photo ID amendment passed with 55% of the electorate voting in favor. [D.E. 97-8, p. 3].

Pursuant to this referendum, the North Carolina Constitution was amended by adding two new subsections that both read:

> Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

N.C. Const. art. VI, §§ 2(4), 3(2).

The General Assembly enacted S.B. 824 to implement the constitutional amendment.

After S.B. 824's enactment, a North Carolina superior court held that the North Carolina Constitution had not been properly amended because the General Assembly that proposed the amendment had been elected from districts that had been gerrymandered in violation of the U.S. Constitution. The North Carolina Court of Appeals reversed that decision, over a dissent, concluding that the legislature possessed the proper authority "to pass bills proposing amendments for the people's consideration." *N.C. State Conf. of NAACP v. Moore*, 849 S.E.2d 87, 94, 273 N.C. App. 452, 461 (2020). That decision has been appealed to the North Carolina Supreme Court.

C. S.B. 824's Substantive Provisions

S.B. 824 identifies categories of photo IDs permitted for in-person and absentee voting, authorizes the issuance of free photo IDs, provides a number of exceptions to the photo ID requirement, mandates that the State Board engage in voter outreach and education, and funds the statutes implementation. *See* S.B. 824 found at D.E. 97-2.

Under S.B. 824, a voter may vote, in-person or by absentee ballot, if he or she presents photographic identification falling into one of the following categories:

- NC driver's license
- NC nonoperator's ID
- Passport
- NC voter ID
- Tribal ID
- Approved Student ID issued by private and public colleges, universities and community colleges
- Approved State, local government, and charter school employee ID
- Driver's license and nonoperator's ID issued by another state, for newly registered voters
- Military ID
- Veterans ID

S.B. 824, sec. 1.2(a), § 163A-1145.1(a). The law was later amended to expand the categories of IDs accepted to allow "[a]n identification card issued by a department, agency, or entity of the United States

government or this State for a government program of public assistance." N.C. Sess. Law 2020-17, sec. 10.

Military, veterans, and tribal IDs will be accepted even if the card has no expiration or issuance date. S.B. 824, sec. 1.2(a), § 163A-1145.1(a)(2). If a voter is sixty-five years old or older, an expired ID is accepted as long as it was unexpired on the voter's sixty-fifth birthday. *Id.*, sec. 1.2(a), § 163A-1145.1(a)(3). The remaining qualifying IDs will be accepted if they are unexpired or have been expired for one year or less. *Id.*

S.B. 824 was also amended to make the approval process for educational institutions and government agencies' IDs more inclusive after the State Board raised a concern about the limited number of IDs that had been approved under the bill's original application process. *See* Affidavit of Karen Brinson Bell, [D.E. 97-9, ¶¶ 30-31; Exhibit P, pp. 191-93]; *See* N.C. Sess. Law 2019-22, secs. 4, 6(b). Prior to the 2020 election cycle, the State Board approved 118 applications for the use of IDs issued by colleges, universities, and government employers. [D.E. 120, p. 26].

S.B. 824 also authorizes and funds the issuance of two different free voter IDs. First, S.B. 824 requires the county boards of elections to "issue without charge voter photo identification cards upon request to registered voters." S.B. 824, sec. 1.1(a). Voters need not present any documentation to obtain a voter ID from a county board. *See id.*, sec. 1.1(a), (d)(1). Instead, they need only provide their name, date of birth, and the last four digits of their social security number. *Id.* Second, S.B. 824 enables all eligible individuals over the age of 17 to receive a free non-operator ID card

issued by the North Carolina Division of Motor Vehicles (DMV) that can be used for voting. *Id*., sec. 1.3(a). The State must also provide, free of charge, the documents necessary to obtain an ID from the DMV, if the voter does not have a copy of those documents. *Id*., sec. 1.3(a), § 161-10(a)(8).

Furthermore, S.B. 824 allows otherwise eligible voters to cast provisional ballots without photo ID in three circumstances:

- the voter has been a victim of recent natural disaster;
- the voter has religious objections to being photographed; or
- the voter has a reasonable impediment that prevents a voter from presenting a photo ID, including the inability to obtain ID due to lack of transportation, disability, illness, lack of birth certificate or other documents, work schedule, or family responsibilities; lost or stolen photo identification; photo identification applied for but not yet received; or, any other reasonable impediment the voter lists.

Id., sec. 1.2(a), § 163A-1145.1(d). Under each of these exceptions, the voter must complete an affidavit attesting to their identity and the fact that the relevant exception applies. *Id*., sec. 1.2(a), § 163A-1145.1(d1).

If a voter casts a provisional ballot under one of the three exceptions above, S.B. 824 requires county boards to count that voter's ballot "unless the county board has grounds to believe the affidavit is false." *Id*., sec. 1.2(a), § 163A-1145.1(e). Under an administrative rule

adopted by the State Board, a determination that an affidavit is false must be *unanimous* among the five-member, bipartisan county board. 08 N.C. Admin. Code 17.0101(b), also appearing at D.E. 97-9, p 108; *see* N.C.G.S. § 163-30 (requiring bipartisan appointments to county boards).

Separately, S.B. 824 also allows a registered voter without an acceptable form of photo ID to cast a provisional ballot, and later return to the county board with an acceptable form of ID no later than the day before the canvass of votes, which occurs ten days after the election. S.B. 824, sec. 1.2(a), § 163A-1145.1(c); *see* N.C.G.S. § 163-182.5(b). The State Board is required to ensure that such a provisional ballot voter receives written information listing the deadline to return to the county board and the list of acceptable IDs. S.B. 824, sec. 1.2(a), § 163A-1145.1(c).

The law applies similarly to absentee-by-mail voters. Such voters must include a copy of one of the acceptable forms of ID in their absentee ballot return envelope. *Id*., secs. 1.2(d), (e), *as amended* by Act of Nov. 6, 2019, ch. 239, 2019 N.C. Sess. Laws, secs. 1.2(b), 1.3(a), 1.4. The return envelope also permits a voter to complete an affidavit claiming one of the three exceptions to photo ID as described above. *Id*. sec. 1.2(b), § 163-230.1(f1), (g)(2). For absentee-by-mail voters, the list of exceptions also includes lack of access to a method of attaching a copy of a photo ID to the absentee ballot envelope. *Id*., sec. 1.2(b), § 163-230.1(g)(2).

S.B. 824 further requires the State Board to conduct "an aggressive voter education program concerning the

provisions" of the law. *Id*., sec. 1.5(a). This program includes offering at least two public seminars in each county to educate voters on the requirements of the law; mailing notification of the laws requirements to all voters who do not have a DMV-issued ID; mailing multiple notifications of the voter ID requirement to all residences in the state; providing signage at early voting sites and precinct polling locations notifying voters that "**[a]ll registered voters will be allowed to vote with or without a photo ID card;**" and training county boards and precinct officials to ensure uniform implementation. *Id*., sec. 1.5(a) (emphasis added).

D. Differences from the Prior Voter ID Law

There are several differences between S.B. 824 and the photo ID provisions that were part of the omnibus law invalidated by the Fourth Circuit in *McCrory*.

First, under H.B. 589, county boards did not issue free IDs; the DMV only issued a free ID after a voter completed a form declaring that he or she was registered to vote but had no other valid ID and the DMV confirmed voter registration. [D.E. 97-10, pp. 5-6]; H.B. 589, § 3.1 (d)(5).

Second, the prior law initially had no reasonable impediment exception, but even when it was later added, it was less permissive. Under H.B. 589, a reasonable impediment ballot would be counted only if the voter produced (1) a photo ID by noon of the day prior to the election canvass; or (2) a voter registration card; a current utility bill, bank statement, government check, paycheck, or other government document

showing name and address; or providing the last four digits of the voter's social security number and date of birth. Act of June 22, 2015, *supra,* sec. 8(e).

Unlike S.B. 824, the prior law also permitted any county voter to challenge another voters reasonable impediment affidavit. *Id*. § 163-182.1B(b). It further permitted a county board to reject a reasonable impediment ballot if the board "believe[d] the declaration [was] false, merely denigrated the photo identification requirement, or made obviously nonsensical statements." *Id*. § 163-182.1B(a)(1).

Third, S.B. 824 significantly expands on the prior law's list of photo IDs acceptable for voting. *See* H.B. 589, sec. 2.1.

Fourth, S.B. 824's photo ID requirement extends to absentee-by-mail voting (a form of voting access exempted by the photo ID requirement under the prior law) which the Fourth Circuit found, according to the data considered by the legislature in passing the prior law, was disproportionately utilized by white voters. *Compare McCrory*, 831 F.3d at 230 *with* S.B. 824, secs. 1.2.(d), (e); 08 N.C. Admin. Code 17.0109.

E. Procedural Background

On December 20, 2018, Plaintiffs sued alleging that the law was enacted with discriminatory intent against African-American and Latino voters in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. [D.E. 1, Counts II and III, ¶¶ 125-146]. Plaintiffs also alleged that S.B. 824 disparately burdens African-American and Latino voters, in

violation of Section 2 of the Voting Rights Act of 1965 ("VRA"). *Id.*, Count I, ¶¶ 105-124.

Plaintiffs moved for a preliminary injunction, which the Court granted, barring the State Board from enforcing the photo ID requirement pending a trial in this matter. [D.E. 91, 97, 120]. Although the Court agreed with Defendants that Plaintiffs were not likely to succeed on the merits of their VRA claim (*Id.*, pp. 52-53), the Court found that Plaintiffs were likely to prove that S.B. 824's photo ID and ballot-challenge provisions (but not the poll observer provisions) were enacted with discriminatory intent. *Id.*, pp. 46-47.

The State Board Defendants appealed and the Fourth Circuit reversed. *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 298 (4th Cir. 2020).

Meanwhile, another group of plaintiffs challenged S.B. 824 in state court alleging that the law violates the North Carolina Constitution. *See Holmes v. Moore*, No. 18-cv-15292 (N.C. Super. Ct.). The trial court denied a motion for preliminary injunction, but the North Carolina Court of Appeals reversed. *See Holmes v. Moore*, 840 S.E.2d 244, 266, 270 N.C. App. 7, 36 (2020). That case proceeded to trial, and on September 17, 2021, the trial court issued its decision and judgment. [D.E. 174-1]. The majority of a 2-1 divided panel found that S.B. 824 was enacted in part for a discriminatory purpose, thus violating the Equal Protection Clause of the North Carolina Constitution. *Id.*, ¶¶ 1, 205-2066, 271-273. The trial court permanently enjoined S.B. 824 in its entirety. *Id.*, ¶¶ 264-270. Both State and Legislative Defendants have noticed appeals.

QUESTION PRESENTED

Whether summary judgment should be granted?

ARGUMENT

Plaintiffs' claims are a facial challenge to the statute. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). In reaching that determination, the reviewing court "must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (citing *United States v. Raines*, 362 U.S. 17, 22 (1960)). For that reason, facial challenges are disfavored because they rely on speculation raising the risk of "premature interpretation of statutes on the basis of factually barebones records." *Id.* (quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004)).

I. Plaintiffs' Claims are Suitable for Summary Judgment.

It is appropriate for this Court to grant summary judgment before this matter proceeds to trial. Recently, the Eleventh Circuit affirmed summary judgment dismissing claims alleging that Alabama's voter ID law, which is stricter, was enacted with racially discriminatory intent and violated § 2 of the VRA due to its racially disparate impact. *Greater Birmingham*

Ministries v. Sec'y of State for State of Alabama, 992 F.3d 1299, 1304 (11th Cir. 2021)[1].

Moreover, this Court and the Fourth Circuit have already analyzed the merits of Plaintiffs' case on the same record and found them unlikely to succeed. At the preliminary injunction stage, this Court concluded that Plaintiffs were unlikely to succeed on their claim under §2 of the VRA. [D.E. 120, pp. 47-53]. Then the Fourth Circuit found that the Plaintiffs were unlikely to succeed on their discriminatory-intent claims. *Raymond*, 981 F.3d at 305.

In the interim, Plaintiffs did not issue any discovery requests, did not disclose experts, and did not serve expert reports.[2] Plaintiffs failed to meet the mandatory disclosure requirements of Rules 26(a)(2) and 37(c), and are barred from use of expert witness testimony at trial. *See, e.g., Wilkins v. Montgomery*, 751 F.3d 214, 221 (4th Cir. 2014) (finding no abuse of discretion in excluding expert testimony because failure to disclose an expert by the agreed-upon deadline "violated the Pre-Trial Order and Rule 26(a)(2)").

Because Plaintiffs failed to conduct discovery, there is no additional evidence in the record beyond that which Plaintiffs presented at the preliminary

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[1] Plaintiffs' petition for en banc rehearing denied. *Greater Birmingham Ministries v. Sec'y of State for the State of Alabama*, 997 F.3d 1363, 1364 (11th Cir. 2021). Plaintiffs did not seek further review.

[2] This Court denied all three requests for extensions of time to conduct discovery. [D.E. 140, 148].

injunction phase. Accordingly, summary judgment is appropriate.

II. Plaintiffs' Evidence Does Not Show Discriminatory Intent.

Under the *Arlington Heights* framework, the Court must first determine whether a statute that is facially neutral regarding race or ethnicity was enacted with discriminatory intent. *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020). At this first stage, a defendant is not required to prove that a new law "cleanse[d] the discriminatory taint" of a different, prior law that was invalidated. *Id.* at 304. A "new voter-ID law" is not presumed "'fatally infected' by the unconstitutional discrimination of a past voter-ID law that has been struck down." *Id.* (quoting *Veasey v. Abbott*, 888 F.3d 792, 801 (5th Cir. 2018)). In fact, the Fourth Circuit explicitly acknowledged that its decision invalidating a previous voter ID law did not "freeze North Carolina election law in place," and that the North Carolina legislature has the authority under the federal constitution to modify its election laws based on legitimate, nonracial motivations. *McCrory*, 831 F.3d at 241.

Only after a plaintiff proves that a law was enacted with a discriminatory purpose does the Court proceed to the second step, where the burden shifts to the defendant to prove that "'the law would have been enacted without' racial discrimination." *Raymond*, 981 F.3d at 303 (quoting *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)). "It is only then that judicial deference to the legislature 'is no longer justified.'" *Id.* (quoting

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265-66 (1977).

A. Historical Background

There is no denying North Carolina's long history of racial discrimination, some of which was recounted by the Fourth Circuit in *McCrory*. 831 F.3d at 223. "North Carolina has a long history of race discrimination generally and race-based vote suppression in particular." *Id*. That history contains many "shameful" chapters related to race, such as North Carolina's enactment of Jim Crow laws, which remained in force into the 1960s. *Id*. *McCrory* also correctly observed that there have even been many "instances since the 1980s in which the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans." *Id*.

The State Board does not dispute this history, and recognizes and accepts that another relevant part of that history is H.B. 589, which was partially invalidated for having been enacted with the purpose of burdening African American voters. The State Board acknowledges that unconstitutional considerations of race have also recently predominated North Carolinas redistricting process. *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 1455 (2017); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017).

Yet this factor must be weighed in its proper context, including the fact that S.B. 824 was enacted pursuant to the passage of a constitutional amendment that required photo ID. Without overlooking the State's

troubled history of racial discrimination, the "ultimate question remains whether a discriminatory intent has been proved in a given case." *Abbott v. Perez*, 138 S. Ct. 2305, 2324-25 (2018) (quoting *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 74 (1980)).

The amendment to the North Carolina Constitution marks a significant intervening circumstance that breaks the link between the North Carolina's history of discrimination with a prior photo ID law and the present photo ID law. In *Raymond*, the Fourth Circuit recognized the interceding constitutional amendment alters the analysis significantly. *Raymond*, 981 F.3d at 305 ("For after the constitutional amendment, the people of North Carolina had interjected their voice into the process, mandating that the General Assembly pass a voter-ID law."). That is not to say that this history is not relevant, only that it is but one portion of the historical background factor and not dispositive on its own. *Id.*

B. Sequence of Events

An unusual sequence of events may reveal a discriminatory purpose when unprecedented procedures are used, or there is a reversal in a specific course of events in a manner that suggests invidious discrimination. *Arlington Heights*, 429 U.S. at 267. However, in this case, the Fourth Circuit found that nothing regarding the sequence of events leading to the enactment of S.B. 824 supports the conclusion that the law was enacted with discriminatory intent. *Raymond*, 981 F.3d at 305. This Court acknowledged, and the Fourth Circuit agreed, that "there were no procedural

irregularities in the sequence of events leading to the enactment of the 2018 Voter-ID Law." *Id*. The Fourth Circuit added, "the remaining evidence of the legislative process otherwise fails to 'spark suspicion' of impropriety in the 2018 Voter-ID Law's passage." *Id*. (quoting *Arlington Heights*, 429 U.S. at 269). As the record in this matter has not changed, this conclusion still stands.

C. Legislative History

Similarly, the Fourth Circuit found that nothing in this record regarding the legislative history reveals discriminatory intent: "The 2018 Voter-ID Law's legislative history is otherwise unremarkable. Nothing here suggests that the General Assembly used racial voting data to disproportionately target minority voters 'with surgical precision.' And neither party nor the district court has brought to our attention any discriminatory remarks made by legislators during or about the legislation's passage." *Raymond*, 981 F.3d at 308-09.

D. Impact of S.B. 824

Any voter ID law will have some impact when it is implemented. However, Plaintiffs cannot show that S.B. 824 will result in a substantial impact because of one simple fact: S.B. 824 allows any voter to cast a ballot, with or without a photo ID, such that any burdens imposed on voters without identification are extremely limited.

Indeed, the Fourth Circuit upheld a finding that the burdens imposed by Virginia's similar photo-ID law were not suggestive of discriminatory intent. *See Lee v.*

State Bd. of Elections, 843 F.3d 592, 603 (4th Cir. 2016). Under Virginia's law, like North Carolina's, local elections officials were required to issue free voter ID cards to registered voters with no showing of documentation required. *Compare id*. at 595 *with* S.B. 824, sec. 1.1(a). Local officials could also provide such cards at "mobile voter-ID stations." *Lee*, 843 F.3d at 595. In North Carolina, the State Board has similarly promulgated an administrative rule that permits county boards to issue voter IDs not simply at their own offices, but at other locations as well. *See* 08 N.C. Admin. Code 17.0107(a). S.B. 824 permits this.

Virginia's list of permissible IDs was admittedly larger than North Carolina's. However, S.B. 824's exceptions to the photo ID requirement exceed those of Virginia. Under the Virginia law, voters who failed to bring ID to the polls could only "cure" their provisional ballots by presenting ID to the local elections office within three days of the election. *Lee*, 843 F.3d at 594. North Carolina's similar "cure" provision provides the voter a longer time period—ten days after the election—to show their ID to the county board. S.B. 824, sec. 1.2(a), § 163A-1145.1(c); *see* N.C.G.S. § 163-182.5(b).

Most significantly, North Carolina's reasonable impediment provision has no counterpart in Virginia's law. Under this provision, a voter may cast a provisional ballot without an approved photo ID by signing an affidavit identifying their reason for lacking ID. S.B. 824, sec. 1.2(a), §§ 163A-1145.1(d), (d1). The county board of elections must count that voter's ballot unless the five-member bipartisan county board

unanimously determines that there are grounds to believe the affidavit is false. *Id.* § 163A-1145.1(e); *see* 08 N.C.A.C. 17.0101(b).

In *Lee*, the Fourth Circuit acknowledged that white Virginians possess IDs that could be used for voting at higher rates than black Virginians, and that obtaining an ID requires some amount of effort from voters. 843 F.3d at 597–98, 600. But to assess whether Virginia's law was enacted with discriminatory intent, the Fourth Circuit focused on the provisions of the law that minimized the burden imposed on voters *without an ID*. *Id.* at 600–01, 03. In light of these provisions, the *Lee* Court concluded that "the Virginia legislature went out of its way to make its impact as burden-free as possible." *Id.* at 603. Thus, direct comparison with *Lee* suggests that the relative burden S.B. 824 imposes on North Carolina voters without an ID does not support a finding of discriminatory intent.

First, registered voters can receive free voter-ID cards without any corroborating documents. *Raymond*, 981 F.3d at 309. If a registered voter arrives without an ID, they may vote provisionally, and their vote will count if they return later with their qualifying ID. *Id.* Voters with religious objections, victims of recent natural disasters, and those with a reasonable impediment may cast a provisional ballot after affirming their identity and reason for not producing ID. *Id.*

Second, any voter may choose to vote at one-stop early voting, a time during which the county boards are required to issue free photo-ID cards, thus making it

possible in most instances to make a single trip to obtain an ID and vote. *Id.* at 309.

Finally, S.B. 824 requires no additional identification documentation once a voter fills out the reasonable impediment form, does not allow any voter to challenge another voter's reasonable impediment, and requires the voter's ballot to be counted unless the county board unanimously believes there are "grounds to believe" the voter's affidavit is false. S.B. 824, sec. 1.2(a), §§ 163A-1145.1(d)(2), (e). These distinctions demonstrate that S.B. 824 presents a minimal burden irrespective of the impact.

E. Nonracial Justifications

At the second step of the discriminatory-intent analysis, the court "must 'scrutinize the legislature's *actual* nonracial motivations to determine whether they *alone* can justify the legislature's choices.'" *Raymond*, 981 F.3d at 303 (quoting *McCrory*, 831 F.3d at 221).

Here, the record contains evidence of non-racial motivations for the enactment of S.B. 824. Most obviously, legislators from both parties recognized S.B. 824 was required to implement the state constitution's new mandate that voters present a photographic ID to vote. [D.E. 97-16, pp. 5-6, 170, 345].

Likewise, the record contains evidence that proponents of S.B. 824 believed that the legislation would promote voter confidence in elections. *Id.*, pp. 313, 334-38, 342-44, 354-56, 492-93, 522-23, 527, 532. The Fourth Circuit, and other courts, including the Supreme Court in *Crawford*, have held that

safeguarding voter confidence is a valid justification for a voter ID requirement. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197, 204 (2008) (op. of Stevens, J.); *see also Lee*, 843 F.3d at 602, 606–07; *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014); *Greater Birmingham*, 992 F.3d at 1326-27.

Thus, there is sufficient evidence of the legislature's non-racial motivations for enacting S.B. 824.

F. Observer Provision

Plaintiffs cannot forecast evidence sufficient to prove that S.B. 824's expansion of the eligibility criteria for poll observers will somehow burden any particular group of voters, much less that this expansion was enacted for the purpose of burdening any particular group of voters.

The law *does not* increase the number of poll observers that can appear at any particular voting location. Before S.B. 824 was enacted, the law limited each voting location to "[n]ot more than two observers from the same political party," except "one of the at-large observers from each party may also be in the voting enclosure." N.C.G.S. § 163A-821(a). Before S.B. 824 was enacted, each political party was permitted to designate 10 additional "at-large" poll observers for each county, as long as they were residents of the county. *Id.* S.B. 824 added a provision allowing political parties to designate 100 additional "at-large" poll observers throughout the state who could observe voting in any location in the state, regardless of their county of residence. S.B. 824, sec. 3.3. Accordingly, this

change did not alter the preexisting limits on poll observers at each voting location.

The expansion of poll observer eligibility in S.B. 824 also *does not* change the preexisting restrictions on what poll observers are allowed (and not allowed) to do. All observers "must have good moral character," must have their names submitted to the county board in advance of serving, and are subject to rejection "for good cause" by the county board or precinct officials. N.C.G.S. § 163-45(a)-(b). Poll observers are forbidden from engaging in any electioneering, impeding the voting process, or interfering, communicating with, or observing a voter casting a ballot. *Id.*, -45(c); see also 08 N.C.A.C. 20.0101(d) (listing several additional specific prohibited actions).

Because the expansion of the geographic eligibility for a party's appointment of poll observers will have no disparate impact on any group of voters, this claim should be rejected.

G. Challenge Provision

Likewise, Plaintiffs offer no reason to conclude that the voter challenge provision of S.B. 824 target any particular group of voters.

Under North Carolina law, as it has existed before S.B. 824 was enacted, voters could challenge another voter's ballot based on that voter's lack of residency, being underage, not having completed a felony sentence, not being a U.S. citizen, and not being "who he or she represents himself or herself to be." *See* N.C.G.S. § 163A-911(c) (2017). S.B. 824 adds to these grounds that the "voter does not present photo

identification in accordance with G.S. 163A-1145.1." S.B. 824, sec. 3.1(c). Section 163A-1145.1 (now recodified at section 163-166.16) includes the basic photo identification requirements, *and* it includes the exceptions for presenting photo ID: reasonable impediments, natural disaster displacement, religious objection to photographs, and the opportunity to cast a provisional ballot and return to the county board later with an ID. *See* N.C.G.S. § 163-166.16(c), (d), (e).

By its text, the additional challenge provision regarding photo ID merely allows a voter to object if poll workers are not following the law requiring voters to "present photo identification" according to section 163-166.16. S.B. 824, sec. 3.1(c). It does not apply to *exceptions* to presenting photo identification, also found in §163-166.16, contrary to Plaintiffs' suggestions in earlier phases of this litigation. In other words, this challenge provision does not apply to reasonable impediment affidavits or the provisional ballot cure process.

Apart from the lack of any evidence proving any disparate impact from the poll observer or challenge provisions, Plaintiffs have nothing to point to regarding the legislative history or sequence of events regarding these provisions that demonstrate they were targeted at any particular racial group. Inclusion of these provisions therefore has no impact on the broader analysis and summary judgment is appropriate.

III. S.B. 824 Does Not Violate the VRA.

This Court previously concluded that S.B. 824's "anticipated impact, on its own, is not enough to

invalidate S.B. 824 [under the VRA] – at least not according to the evidence currently in the record." [D.E. 120, pp. 52-53]. The record has not changed since the Court's prior ruling; neither, then, should the Court's ruling.

Moreover, Plaintiffs' VRA §2 claims do not meet the requirements set forth in the Supreme Courts recent decision in *Brnovich v. Democratic Nat'l Comm.*, 141 S.Ct. 2321 (2021), which heightens the standard Plaintiffs must meet. *Brnovich* determined that when analyzing rules pertaining to time, place, and manner of voting like S.B. 824, a court must consider "several important circumstances" when determining "whether voting is 'equally open' and affords equal 'opportunity.'" *Id*. at 2338. Once each of these factors is considered in turn, it is clear that Plaintiffs' VRA claim cannot succeed.

First, reviewing courts must consider the size of the burden imposed by the challenged voting rule. *Id*. In undertaking this consideration, the Court acknowledged that "every voting rule imposes a burden of some sort." *Id*. For instance, "[v]oting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules." *Id*. The mere inconvenience of the usual burdens of voting is not enough to demonstrate a violation of §2. *Id*. (citing *Crawford*, 553 U. S. at 198). It is telling that the Supreme Court cited *Crawford* to refer to the usual burdens of voting, a case that examined and upheld a

photo ID law from Indiana that was stricter than S.B. 824.

Here, State Board Defendants incorporate by reference the arguments contained in Part II-D, which establishes that the impact imposed upon voters by S.B. 824 will be small, especially considering the reasonable impediment provisions allow any voter to vote without a qualifying photo ID and without having to take any further action.

Second, "the degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account." *Brnovich*, 141 S.Ct. at 2338-9.

As of 2019, 35 states have laws requesting or requiring voters to show some form of identification at the polls, 17 of which require photo ID while another 17 require some other form of identification. [D.E. 97-15, p. 2]. North Carolina is considered a "non-strict," "non-photo ID" voter identification law because it allows voters without a photo ID the option to cast a ballot that will be counted without further action on the part of the voter through the reasonable impediment process. *Id*., pp. 4-5, n.5. The implementation of voter identification laws in 35 States patently constitutes "widespread use in the United States." *Brnovich*, 141 S.Ct. at 2339.

Third, "[t]he size of any disparities in a rules impact on members of different racial or ethnic groups is also an important factor to consider." *Id*. at 2339. However, intrinsic societal differences in employment, wealth, and education can mean that "even neutral regulations,

no matter how crafted, may well result in some predictable disparities in rates of voting and noncompliance with voting rules." *Id.* "[T]he mere fact that there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote." *Id.*

Regarding any disparity, State Board Defendants incorporate the arguments in Part II-D above. As the Fourth Circuit found in *Raymond*, even if Plaintiffs can demonstrate that minority voters disproportionately lack qualifying IDs, the ameliorative provisions within S.B. 824 that lessen the impact overcome this disparity. *Raymond*, 981 F.3d 295, 309-11.

Fourth, "courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision." *Brnovich*, 141 S.Ct. at 2339. The Court found Arizona's opportunities to vote by mail and early vote for nearly a month before the election to be especially persuasive in showing that the burdens imposed on Election Day voters by the laws in question were modest. *Id.* at 2344.

By comparison, North Carolina's entire voting system provides numerous opportunities and ample time for the public to vote. For example, the early voting period lasts two–and-a-half weeks, includes expansive weekday hours, and guarantees voting on the Saturday before Election Day, with allowance for counties to offer additional weekend hours. N.C.G.S. §§ 163-227.2(b), -227.6(c). A voter may vote at any early voting location in their county. *Id.* § 163-227.2. During

the early voting period, voters without an ID can also obtain a free voter ID from the county board of elections. *Raymond*, 981 F.3d at 300 (citing H.B. 824, sec. 1.1; and N.C.G.S. §§ 163-227.2(b), 163-227.6(a)). In contrast to the prior voter ID law rejected in *McCrory*, nothing in S.B. 824 reduces early voting opportunities in any way.

North Carolina also makes available no-excuse absentee vote by mail to all voters. N.C.G.S. § 163-226(a). Absentee ballots, which may be requested online, are available 60 days prior to Election Day in federal election years and 50 days prior to the date of primaries and special elections. *Id.* §§ 163-227.10(a); -230.3. Completed absentee ballots are accepted when delivered to the county board as long as they are received by 5:00 p.m. on Election Day, or three day after Election Day when bearing a postmark showing the ballot was mailed by Election Day. *Id.* § 163-231(b).

In addition, Parts C and D of the Statement of Facts above set forth the numerous provisions, exceptions, and other ameliorative elements that establish that S.B. 824, in totality, imposes a minimal burden on voters.

Fifth, "the strength of the state interests served by a challenged voting rule is also an important factor that must be taken into account," which can include maintaining public confidence in elections. *Brnovich*, 141 S.Ct. at 2339-40.

Here, State Board Defendants incorporate the arguments made in Part II-E above establishing that there is evidence of an interest in maintaining public

confidence in elections, and evidence of their intention to implement the newly ratified constitutional amendment adopted requiring photo ID.

The *Brnovich* Court defined these considerations above as guideposts for reviewing courts to follow when analyzing claims such as the one before this Court. *Id.* at 2336. As Plaintiffs cannot present sufficient evidence to support a §2 claim under the *Brnovich* factors, this Court should grant summary judgment in favor of the defense.

CONCLUSION

For the foregoing reasons, State Board Defendants respectfully request that the Court grant summary judgment for the defense in this case.

Respectfully submitted this 8th day of October 2021.

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Dkt. 189

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

[Filed: November 22, 2021]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, et al., Defendants.	**STATE BOARD DEFENDANTS' REPLY IN SUPPORT OF SUMMARY JUDGMENT**

MATTER BEFORE THE COURT

The State Board Defendants submit this Reply to Plaintiffs' Opposition [D.E. 187] to Defendants' Motion for Summary Judgment [D.E. 177, 182].

ARGUMENT

I. PLAINTIFFS' FAILED TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH PROBATIVE EVIDENCE TO OVERCOME SUMMARY JUDGMENT, SUCH THAT THIS MATTER IS RIPE FOR A RULING.

The premise of State Board Defendants' motion for summary judgment is that the record presented to this Court at the preliminary injunction stage, and made part of the record on appeal to the Fourth Circuit, remains unchanged. Because Plaintiffs' claims on that record have already been reviewed and found to be lacking, summary judgment is appropriate. [D.E. 182, pp. 10-11]. Plaintiffs' opposition does nothing to rebut this premise. [D.E. 187].

In fact, Plaintiffs opposition attaches no exhibits or affidavits, and cites no new evidence. *Id*. Instead, despite claiming that they are not limited to the record established at preliminary injunction, Plaintiffs' opposition cites only to the preliminary injunction record[1], which is more than two years old, and makes unsubstantiated promises that they intend to present more at trial. *Id*., pp. 4, 15-18. Plaintiffs claim that they notified Defendants of their intention to call expert and fact witnesses at trial, and will utilize supplemental expert reports; and yet this evidence was

[1] The only other information cited that was more recently placed on the record are a joint protective order, and Defendant's memorandum of law in support of summary judgment—neither of which were cited as evidence in Plaintiffs' submission.

not presented in opposition to summary judgment. *Id*. Plaintiffs cannot survive a well-supported motion for summary judgment on the promise of uncited evidence that will be presented at trial. *Id*.

Moreover, Plaintiffs failed to properly designate and serve expert discovery during the discovery period. Therefore, Plaintiffs are neither entitled to rely on the expert reports from the preliminary injunction stage nor new reports served last month, more than a year after the close of discovery. To be clear, Plaintiffs did present expert reports at the preliminary injunction stage, but that is not the same as designating experts for trial. *See* Fed. R. Civ. P. 26(a)(2)(A) ("[A] party must disclose to the other parties the identity of any witness it may use *at trial* to present evidence under Federal Rule of Evidence 702, 703, or 705.") (emphasis added); *see also Stinnie v. Holcomb* , No. 3:16-CV-00044, 2019 U.S. Dist. LEXIS 238350, at *10 (W.D. Va. May 23, 2019) ("Rule 26 cannot be read to include documents submitted at a preliminary injunction hearing five months prior to the time of the purported disclosures. Furthermore, it is not the [Defendant]'s duty to assume the presentation of a witness at a prior hearing is intended to be a Rule 26 disclosure.")

While Defendants intend to present this argument more comprehensively at the appropriate time, this Court need not determine now whether those reports should be stricken because this Court (considering the Voting Rights Act claim) and the Fourth Circuit (consider the Intentional Discrimination claim) have already found these reports unpersuasive. Instead, summary judgment should be granted because even

with the improper reliance on preliminary injunction reports, Plaintiffs have failed to demonstrate that their case should proceed.

In these circumstances, the Court's consideration of this motion before trial will not impose the same burden to judicial economy as it would under normal circumstances, for several reasons.

First, this Court will not need to review any new evidence, reports or exhibits that were not already reviewed in order to consider this motion before trial. The facts have not changed, which allows for a more expeditious review of the record.

Second, the application of those facts to the law has only become more favorable to the Defendants since this record was produced two years ago. In order to prevail on summary judgment, a defendant needs only show that the plaintiff cannot succeed on an element essential to their case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). This Court reviewed Plaintiffs' claim under § 2 of the Voting Rights Act and found that the evidence presented for preliminary injunction, "that the bill's anticipated impact, on its own, is not enough to invalidate S.B. 824 – at least not according to the evidence currently in the record." [D.E. 120, pp. 52-53].

Likewise, the Fourth Circuit reviewed Plaintiffs' claim of discriminatory intent under the *Arlington Heights* factors and found the record evidence to be lacking. First, the totality of the historical background, including the passage of the voter ID amendment, did not show that the General Assembly acted with

discriminatory intent. *N.C. State Conference of the NAACP NAACP v. Raymond*, 981 F.3d 295, 305 (4th Cir. 2020. As to legislative process, "the remaining evidence of the legislative process otherwise fails to 'spark suspicion' of impropriety in the 2018 Voter-ID Law's passage." *Id*. The evidence presented of legislative history was found to be unremarkable, with nothing to suggest the General Assembly used racial data to disproportionately target minority voters. *Id*. at 308-09. And after reviewing the impact evidence, and prior judicial review of Virginia's and South Carolina's similar voter ID laws, the Fourth Circuit found "it is hard to say that the 2018 Voter-ID Law does not sufficiently go 'out of its way to make its impact as burden-free as possible.'" *Id*. at 309-10 (quoting *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 603 (4th Cir. 2016)).

This Court can rely on its own prior rulings and the rulings of the Fourth Circuit to expeditiously consider the missing essential elements in Plaintiffs' claims. Apart from these decisions, the law has further developed to undermine Plaintiffs' claims under the federal constitution and the Voting Rights Act. *See Brnovich v. Democratic Nat'l Comm*., 141 S.Ct. 2321 (2021); *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299 (11th Cir. 2021).

Third, with this backdrop, engaging in a trial on the merits when the matter can be resolved via dispositive motion presents a greater burden to judicial resources. *Bland v. Norfolk & S. R. Co.*, 406 F.2d 863, 866 (4th Cir. 1969) ("[T]he function of a motion for summary judgment is to smoke out if there is any case, i.e., any

genuine dispute as to any material fact, and, if there is no case, to conserve judicial time and energy by avoiding an unnecessary trial and by providing a speedy and efficient summary disposition.") At minimum, taking up consideration of the motion for summary judgment before trial has the potential to significantly narrow the issues to be tried, shortening the presentation of evidence, and leading to a more productive trial. This is especially true with respect to Plaintiffs' Voting Rights Act claims and challenges to the poll observer provisions and challenge provisions.

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CONCLUSION

For the foregoing reasons, State Board Defendants respectfully request that the Court grant summary judgment for the defense in this case.

Respectfully submitted this 22nd day of November, 2021.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1092

[Filed: March 9, 2020]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; CHAPEL HILL – CARRBORO NAACP; GREENSBORO NAACP; HIGH POINT NAACP; MOORE COUNTY NAACP; STOKES COUNTY BRANCH OF THE NAACP; WINSTON SALEM – FORSYTH COUNTY NAACP,	)
Plaintiffs-Appellees,	)
v.	)
KEN RAYMOND, in his official capacity as a member of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections; JEFFERSON CARMON, in his official capacity as a member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as a member of the North Carolina State Board of Elections,	)
*Defendants-Appellant*s.	)

JA 352

On Appeal from the United States District Court for the Middle District of North Carolina

BRIEF OF DEFENDANTS-APPELLANTS

Dated: March 9, 2020 (Counsel listed on reverse)

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CORPORATE DISCLOSURE STATEMENT

I certify, pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, that defendants-appellants Damon Circosta, Stella E. Anderson, David C. Black, Ken Raymond, and Jefferson Carmon III are not in any part a publicly held corporation, a publicly held entity, or a trade association, and that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

/s/ Olga E. Vysotskaya de Brito
Olga E. Vysotskaya de Brito
Special Deputy Attorney General

[*** Tables omitted in this appendix ***]

JURISDICTIONAL STATEMENT

Plaintiffs allege violations of the U.S. Constitution and the federal Voting Rights Act of 1965. J.A. 66-73. The district court therefore has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983.

This Court has jurisdiction to hear this appeal from an interlocutory order granting an injunction under 28 U.S.C. § 1292(a)(1).

Defendants-Appellants, the members of the North Carolina State Board of Elections ("State Board"), timely appealed within thirty days of the entry of the injunction. *See* Fed. R. App. P. 4(a)(1)(A). The district court's order is dated December 31, 2019, J.A. 2621-80, and the notice of appeal was filed on January 24, 2020, J.A. 2681-83.

ISSUE PRESENTED

Did the district court err when it preliminarily enjoined North Carolina's photo ID law?

STATEMENT OF THE CASE

In 2016, this Court invalidated a prior North Carolina law that imposed numerous regulations on voting, one of which was a photo ID requirement. Based on an amendment to the state Constitution that required all voters to present photo ID when voting, the state legislature then enacted the law at issue, S.B.

824. J.A. 637-54.[1] Plaintiffs sued to enjoin S.B. 824, and the Middle District of North Carolina granted a preliminary injunction. Defendants appeal that injunction.

A. Historical Background of North Carolina's Photo ID Legislation.

The first attempt in North Carolina to enact a photographic identification requirement for voters occurred nearly a decade ago. In March 2011, the General Assembly filed House Bill 351, which would have required in-person voters to "present a valid photo identification to a local election official at a voting place before voting." H.B. 351, Gen. Assemb., Reg. Sess. (N.C. 2011).[2] Then-Governor Beverly Perdue vetoed the legislation, and the bill never became a law. *See* Governor's Objections and Veto Message, H.B. 351 (June 31, 2011).[3]

In 2013, the North Carolina General Assembly enacted an "omnibus" election law, H.B. 589, *see* J.A.

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[1] *See* Act of Dec. 19, 2018, ch. 144, 2018 N.C. Sess. Laws. This brief refers to this law as "S.B. 824" for the sake of brevity and clarity. Citations to the law include the relevant sections of the session law.

[2] *Available at* https://www.ncleg.gov/Sessions/2011/Bills/House/PDF/H351v0.pdf.

[3] *Available at* https://www.ncleg.gov/Sessions/2011/h351Veto/letter.pdf.

990-1041,[4] which imposed numerous new restrictions on voting, including a photo ID requirement. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016). During the consideration of H.B. 589, "the legislature requested data on the use, by race, of a number of voting practices[,]" *id.*, and with that data in hand, "eliminated or reduced registration and voting access tools that African Americans disproportionately used" and instituted a photo ID requirement that disproportionately burdened African Americans, *id.* at 216. This Court found that the legislature enacted the challenged provisions of the law with discriminatory intent. *Id.* at 215. Accordingly, this Court enjoined the following provisions of H.B. 589: "the photo ID requirement, the reduction in days of early voting, and the elimination of same-day registration, out-of-precinct voting, and preregistration[.]" *Id.* at 219.

B. Amendment to the North Carolina Constitution.

In June 2018, the General Assembly approved the placement of six constitutional amendments on the November 2018 general election ballot, one of which called for imposing a requirement to show photo identification when voting in person. Act of June 29,

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[4] *See* Act of Aug. 12, 2013, ch. 381, 2013 N.C. Sess. Laws 1505. This brief refers to this law as "H.B. 589." Citations to the law include the relevant sections of the session law.

2018, ch. 128, 2018 N.C. Sess. Laws (appearing at J.A. 665-67).[5]

On November 8, 2018, two constitutional amendments were defeated at the polls, and four were approved by the voters. J.A. 785-91. The photo ID constitutional amendment passed with 55% of the electorate voting in favor of the measure. J.A. 794.

Pursuant to this referendum, the North Carolina Constitution was amended by adding two new subsections that both read:

> Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

N.C. Const. art. VI, §§ 2(4), 3(2). Later that year, the General Assembly enacted S.B. 824, which implements the amendment.

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[5] A North Carolina superior court initially enjoined the North Carolina State Board of Elections from placing two of the six amendments onto the ballot because the ballot descriptions that the General Assembly had drafted for those amendments were materially misleading. *See* Order on Injunctive Relief, *Cooper v. Berger*, No. 18-CVS-9805 (Wake Cty. Super. Ct. Aug. 21, 2018). The court's injunction did not affect the photo ID amendment. After the legislature drafted new descriptions for the two amendments with misleading descriptions, the court allowed all six amendments to appear on the ballot. *See* Order Denying Request for Temporary Restraining Order, *Cooper v. Berger*, No. 18-CVS-9805 (Wake Cty. Super. Ct. Aug. 31, 2018)

After S.B. 824's enactment, a North Carolina superior court held that the North Carolina Constitution had not been properly amended because the General Assembly that proposed the amendment had been elected from districts that had been racially gerrymandered in violation of the U.S. Constitution. *See* N.C. Const. art. XIII, § 4 (requiring that all amendments placed before the people must first be approved by a supermajority of both houses of the legislature). That decision has been appealed to the North Carolina Court of Appeals, which has stayed the decision pending resolution of the appeal. *See N.C. State Conference of the NAACP v. Moore*, No. 19-384 (N.C. Ct. App.).

C. S.B. 824's Substantive Provisions.

Broadly, S.B. 824 identifies categories of photo IDs permitted for in-person and absentee voting, authorizes the issuance of free photo IDs, provides a number of exceptions to the photo ID requirement, mandates that the State Board engage in a variety of voter outreach and other implementation activities, and funds the statute's implementation. *See* S.B. 824.

Under S.B. 824, a voter may vote, in-person or by absentee ballot, if he or she presents photographic identification falling into one of the following categories:

- NC driver's license
- NC nonoperator's ID
- Passport

- NC voter ID
- Tribal ID
- Approved Student ID issued by private and public colleges, universities and community colleges
- Approved State, local government, and charter school employee ID
- Driver's license and nonoperator's ID issued by another state, for newly registered voters
- Military ID
- Veterans ID

S.B. 824, sec. 1.2(a), § 163A-1145.1(a). However, as the district court noted, while federal military IDs are accepted, S.B. 824 does not authorize the use of other federal employee IDs or public assistance IDs for in-person and absentee voting. J.A. 2642, 2649 n. 17.

Military, veterans, and tribal IDs may be presented even if the card has no expiration or issuance date. S.B. 824, sec. 1.2(a), § 163A-1145.1(a)(2). If a voter is sixty-five years old or older, an expired ID is accepted as long as it was unexpired on the voter's sixty-fifth birthday. *Id.*, sec. 1.2(a), § 163A-1145.1(a)(3). The remaining IDs may be presented if they are unexpired or have been expired for one year or less.

The State Board has approved 118 applications for the use of forms of ID issued by colleges, universities, and government employers. J.A. 2646. Under rigorous requirements of S.B. 824's original text, a limited

number of educational institutions and government agencies had their IDs approved. J.A. 805 ¶ 30, 985-87. On June 3, 2019, the legislature amended the law to make this approval process less stringent. *See* Act of June 3, 2019, ch. 22, 2019 N.C. Sess. Laws, secs. 4, 6(b) (appearing at J.A. 659-64). Academic institutions and public employers that either did not apply before, or had their IDs rejected, were able to apply in late 2019 to have their IDs approved for use in voting under the more relaxed rules. J.A. 805-06 ¶¶ 32–33.

S.B. 824 also authorizes and funds the issuance of two different free voter IDs. First, S.B. 824 requires the county boards of elections to "issue without charge voter photo identification cards upon request to registered voters." S.B. 824, sec. 1.1(a). A voter need not present any documentation to obtain a voter ID from a county board. The voter must merely provide his or her name, date of birth, and the last four digits of the voter's social security number. *See id.*, sec. 1.1(a), § 163A-869.1(d)(1). Second, S.B. 824 enables all eligible individuals over the age of 17 to receive a free nonoperator ID card issued by the North Carolina Division of Motor Vehicles (DMV) that can be used for voting. *Id.*, sec. 1.3(a). The State must also provide, free of charge, the documents necessary to obtain an ID from the DMV, if the voter does not have a copy of those documents. *Id.,* sec. 1.3(a), § 161-10(a)(8).

S.B. 824 allows otherwise eligible voters to cast provisional ballots without photo ID in three circumstances:

- If the voter has been a victim of natural disaster;

- If the voter has religious objections to being photographed; or
- If the voter has a reasonable impediment that prevents a voter from presenting a photo ID, including the inability to obtain ID due to lack of transportation, disability, illness, lack of birth certificate or other documents, work schedule, or family responsibilities; lost or stolen photo identification; photo identification applied for but not yet received; or, any "other" reasonable impediment the voter lists.

Id., sec. 1.2(a), § 163A-1145.1(d).

Under each of these exceptions, the voter must complete an affidavit attesting to their identity and the fact that the relevant exception applies (*i.e.*, that the voter either has a religious exception to being photographed, is a victim of a recent natural disaster, or suffers from a reasonable impediment that prevents the voter from presenting photo ID). *Id.* On the reasonable impediment affidavit, the voter must select one of the aforementioned impediments or list the voter's other impediment. *Id.*, sec. 1.2(a), § 163A-1145.1(d1).

If a voter casts a provisional ballot under one of the three exceptions above, S.B. 824 requires county boards to count that voter's ballot "unless the county board has grounds to believe the affidavit is false." *Id.*, sec. 1.2(a), § 163A-1145.1(e). Under an administrative rule adopted by the State Board, a determination that an

affidavit is false must be unanimous among the five-member, bipartisan county board. 08 N.C. Admin. Code 17.0101(b) (appearing at J.A. 902); *see* N.C. Gen. Stat. § 163-30 (requiring bipartisan appointments to county boards).[6]

S.B. 824 further allows a registered voter without an acceptable form of photo ID to cast a provisional ballot, and later return to the county board with an acceptable form of ID no later than the day before the canvass of votes, which occurs ten days after the election. S.B. 824, sec. 1.2(a), § 163A-1145.1(c); *see* N.C. Gen. Stat. § 163-182.5(b). The State Board is required to ensure that such a provisional ballot voter receives written information listing the deadline to return to the county board and the list of acceptable IDs. S.B. 824, sec. 1.2(a), § 163A-1145.1(c).

The law applies similarly to absentee-by-mail voters. Such voters must include a copy of one of the acceptable forms of ID in their absentee ballot return envelope. *Id.*, secs. 1.2(d), (e), *as amended by* Act of Nov. 6, 2019, ch. 239, 2019 N.C. Sess. Laws, secs. 1.2(b), 1.3(a), 1.4. The return envelope also permits a voter to complete an affidavit claiming one of the three exceptions to photo ID as described above. Act of Nov. 6, 2019, *supra*, sec. 1.2(b), § 163-230.1(f1), (g)(2). For absentee-by-mail voters, the list of exceptions also includes lack of access to a method of attaching a copy

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[6] The State Board promulgated this rule pursuant to rulemaking procedures set forth in Article 2A of Chapter 150B of the North Carolina General Statutes, which is the State's Administrative Procedure Act. The State Board can revise these rules pursuant to the same authority.

of a photo ID to the absentee ballot envelope. *Id.,* sec. 1.2(b), § 163-230.1(g)(2).

Because voters without acceptable photo ID would have the option of casting a provisional ballot without further action under the reasonable impediment exception, and to have that ballot counted absent a finding that the reasonable impediment affidavit is false, the National Conference of State Legislatures categorizes S.B. 824 as a "non-strict" voter ID law. J.A. 1217-18 & n.5.

In keeping with its ameliorative provisions, the law instructs the State Board to inform voters, through education materials that are distributed to voters and on posters at early voting sites and precinct polling locations on election day, that "[a]ll registered voters will be allowed to vote with or without a photo ID card." S.B. 824, sec. 1.5(a)(10).

S.B. 824 further requires the State Board to conduct "an aggressive voter education program concerning the provisions" of the law. *Id.*, sec. 1.5(a). This program includes offering at least two public seminars in each county to educate voters of the requirements of the law; mailing a notification of the law's requirements to all voters who do not have a DMV-issued ID; mailing multiple notifications of the voter ID requirement to all residences in the state; and training county boards and precinct officials to ensure uniform implementation. *Id.*, sec. 1.5(a).

D. Differences from the Prior Voter ID Law

There are several differences between S.B. 824 and the prior law's photo ID provisions that were invalidated by this Court in *McCrory*.

First, under the prior law, H.B. 589, *see* J.A. 991-1031, county boards did not issue free IDs; and before obtaining a free ID from the DMV, a voter had to fill out a form declaring that he or she was registered to vote but had no other valid ID. Moreover, the DMV had to confirm voter registration before issuing such IDs. H.B. 589, sec. 3.1.

Second, the prior law's reasonable impediment exception was less permissive. H.B. 589 did not originally have a reasonable impediment exception; one was added to the law just weeks before the trial challenging the law's constitutionality. *McCrory*, 831 F.3d at 219; *see* Act of June 22, 2015, ch. 103, 2015 N.C. Sess. Laws 225, 232–33, sec. 8(d) (appearing at J.A. 1032-41). Under that provision, a reasonable impediment ballot would be counted only if the voter produced some form of identification, by either: (1) presenting photo ID by noon of the day prior to the election canvass; or (2) presenting a voter registration card, a current utility bill, bank statement, government check, paycheck, or other government document showing name and address, or providing the last four digits of the voter's social security number and date of birth. Act of June 22, 2015, *supra*, sec. 8(e).

Unlike S.B. 824, the prior law also permitted any county voter to challenge another voter's reasonable

impediment affidavit. *Id.* § 163- 182.1B(b).[7] It further permitted a county board to reject a reasonable impediment ballot for any of three reasons: if the board "believe[d] the declaration [was] false, merely denigrated the photo identification requirement, or made obviously nonsensical statements." *Id.* § 163-182.1B(a)(1).

Third, S.B. 824 expands on the prior law's list of IDs that are acceptable for voting. The prior law, for example, did not permit the use of student or government employee IDs. *See* H.B. 589, sec. 2.1. And, as mentioned, there were no voter ID cards issued by county boards.

Fourth, S.B. 824's photo ID requirement extends to absentee-by-mail voting. This Court held that the data available to the legislature when it enacted the prior law "revealed that African Americans did not disproportionately use absentee voting; whites did.

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[7] S.B. 824 does, however, allow county voters to challenge another voter based on the voter's failure to "present photo identification in accordance with" the statute. S.B. 824, sec. 3.1(c), § 163A-913(4a). S.B. 824 also separately allows political parties to designate an additional one hundred poll observers to monitor voting across the state. *Id.*, sec. 3.3, § 163A-821. Below, the district court suggested that "it is unclear whether a voter who is successfully challenged for not presenting an acceptable form of photo ID may then proceed to cast a ballot by way of a reasonable impediment declaration." J.A. 2649 n.16. Despite the district court's concerns, the State Board interprets S.B. 824 to allow any challenged voter to cast a provisional ballot if the voter completes a reasonable impediment affidavit or later cures their failure to present a proper ID. The State Board also does not interpret S.B. 824 to permit challenges to a reasonable impediment affidavit.

[The prior law] drastically restricted all of these other forms of access to the franchise, but exempted absentee voting from the photo ID requirement." *McCrory*, 831 F.3d at 230. In contrast, S.B. 824 now requires absentee voters to present the same types of photo ID or to execute a similar reasonable impediment declaration as in-person voters. S.B. 824, secs. 1.2.(d), (e); 08 N.C. Admin. Code 17.0109.

Fifth, unlike the prior law, S.B. 824 is not an "omnibus" election law. *McCrory*, 831 F.3d at 215, 231. Instead, S.B. 824 is focused on implementing a photo ID requirement. S.B. 824 does not curtail early voting, or eliminate same-day registration, out-of-precinct voting, and preregistration, as the prior law did. *See id.* at 219.

E. Procedural Background.

On December 20, 2018, Plaintiffs sued the North Carolina Governor and members of the State Board in the Middle District of North Carolina, alleging that the law was enacted with discriminatory intent against African- American and Latino voters, in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. J.A. 70-73. They also alleged that S.B. 824 disparately burdens African-American and Latino voters, in violation of Section 2 of the Voting Rights Act of 1965. J.A. 66-70. The Governor was dismissed as an improper defendant.

On September 17, 2019, Plaintiffs moved for a preliminary injunction, which the State Board Defendants opposed. J.A. 93-138, 2461-62, 2536-97. The parties fully briefed the motion and provided

written documentary support for their arguments. The district court also heard arguments from attorneys for Plaintiffs and Defendants on the motion. *See* Tr. of Proceedings on Dec. 3, 2019, No. 18-cv-01034, Doc. 119 (Dec. 9, 2019).

On December 31, 2019, the court entered a preliminary injunction, barring the State Board from enforcing the photo ID requirement pending a trial in this matter. J.A. 2621-80. Although the court agreed with Defendants that Plaintiffs were not likely to succeed on the merits of their Voting Rights Act claim, J.A. 2672-73, the court found that Plaintiffs were likely to prove that S.B. 824 was enacted with discriminatory intent, J.A. 2666-67.[8] This appeal seeks reversal of that decision. A bench trial is set for January 4, 2021.

While this case has proceeded, another group of plaintiffs has challenged S.B. 824 in the Superior Court of Wake County, North Carolina, alleging that the law violates the North Carolina Constitution. *See Holmes v. Moore*, No. 18-cv-15292 (N.C. Super. Ct.). The trial court denied a motion for preliminary injunction, but the North Carolina Court of Appeals has reversed that decision and directed the trial court to issue an injunction. *See Holmes v. Moore*, No. COA19-762, 2020 WL 768854 (N.C. Ct. App. Feb. 18, 2020). Thus, as of the date of the filing of this brief, S.B. 824 has been preliminarily enjoined by a state court, under state

[8] The State Board Defendants did not seek to stay the district court's preliminary injunction due to the disruptive effect such relief would have had on the primary election scheduled for March 3, 2020.

law. A motion for en banc rehearing by the North Carolina Court of Appeals is pending in that case.

F. Implementation of S.B. 824 Prior to the Injunction, and Upcoming Elections.

By the time the district court entered its preliminary injunction on December 31, 2019, the State Board had undertaken a series of actions to implement S.B. 824, and was set to finalize its preparations to enforce the law in the March 2020 primary. J.A. 797-807 ¶¶ 6, 8-37.

According to the terms of the preliminary injunction order, the State Board ceased all implementation activities, took steps to inform voters that no photo ID was required in the March primary, and informed county boards to follow suit. *See* Karen Brinson Bell, Numbered Memo 2020-01 re. Preliminary Injunction of Photo ID (Jan. 3, 2020).[9] No photo ID was required during North Carolina's March 3, 2020 primary.[10]

The 2020 general election will take place on November 3, 2020. *See* N.C. Gen. Stat. § 163-1(c). North Carolina begins distributing absentee, military, and overseas ballots for the general election on

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[9] *Available at* https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-01 Preliminary%20Injunction%20of%20Photo%20ID.pdf.

[10] North Carolina is scheduled to hold a runoff primary for Congressional District 11, where no Republican candidate received the required plurality of the votes during the March 2020 primary. *See* N.C. Gen. Stat. § 163-111. That runoff primary will take place on May 12, 2020. *See id.* § 163-111(e).

September 4, 2020. *See id.* §§ 163-227.10(a), 163-258.9(a). To implement S.B. 824 in time for the general election, the State and county boards would need to restart preparations for implementing the law well in advance of the start of voting.

SUMMARY OF THE ARGUMENT

On the basis of the limited record before the district court, Plaintiffs have failed to show that they are likely to succeed on the merits of their intentional discrimination claim.

S.B. 824 contains a number of provisions that minimize the burden that a photo ID requirement may impose on voters. Specifically, S.B. 824:

- allows a variety of IDs to be used for voting;
- provides two ways to obtain free IDs, from various locations throughout the state, to those who did not have a qualifying ID;
- allows voters to cast provisional ballots without ID and later return to the county elections board to "cure" their ballot;
- allows voters without qualifying photo IDs to cast provisional ballots if those voters fill out affidavits at the polls attesting to a reasonable impediment to showing ID, and requires those ballots to count unless there are grounds to believe a voter's affidavit is false; and
- requires a voter education campaign about the ID requirement.

This Court has already rejected a similar challenge to Virginia's photo ID legislation that featured some, but not all, of the above features aimed at lessening burdens on voters. *Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 603 (4th Cir. 2016). This Court held that because the Virginia law minimized any burden on voters, the district court in that case properly found that Virginia's photo ID law was not enacted with discriminatory intent. Other courts, addressing similar photo ID laws, are in accord with *Lee*.

Additionally, the evidence before the district court on S.B. 824's enactment process was not sufficient to support an inference of discriminatory intent. The legislative process featured multiple amendments from representatives of both major political parties, and with the opportunity for public participation. Indeed, many representatives of the minority party spoke favorably of the process that led to the passage of S.B. 824. Unlike the evidentiary record of North Carolina's prior law featuring voter ID, which was invalidated by this Court, the evidence before the district court concerning the enactment of S.B. 824 here failed to support an inference of discriminatory intent.

Finally, the State's interest in implementing a state constitutional amendment and in ensuring voter confidence are nondiscriminatory reasons for enacting S.B. 824. They provide independent grounds that support the validity of the law under the federal Constitution.

At this preliminary stage, in the totality of all circumstances, the current evidence does not support

the district court's finding that S.B. 824 was motivated by discriminatory intent.

ARGUMENT

Standard of Review

This Court reviews a district court's decision to grant a preliminary injunction under an abuse of discretion standard. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). The Court reviews the district court's factual findings for clear error and its legal conclusions de novo. *Id.*

Discussion

S.B. 824 is a facially neutral law that contains no overt classification based on race. Accordingly, to prevail on a discriminatory intent claim, Plaintiffs must prove that the circumstances surrounding the enactment of the law and the law's impacts demonstrate that the law was motivated by an intent to burden minority voters. *See McCrory*, 831 F.3d at 220.

Discriminatory intent may be "inferred from the totality of the relevant facts." *Id.* (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). The "non-exhaustive list of factors" that are relevant to determining discriminatory intent include a law's historical background, the sequence of events that led to its enactment, its legislative history, and any racially disproportionate impact of the law. *Id.* at 220–21 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–67 (1977)).

For a discriminatory intent claim, "the burden of proof lies with the challenger, not the State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (citing *Reno v. Bossier Parish School Bd.*, 520 U. S. 471, 481 (1997)). Plaintiffs must establish that "a discriminatory purpose was a motivating factor" for the challenged legislation. *Arlington Heights*, 429 U.S. at 265–66.

"Although race-based decisionmaking is inherently suspect, until a claimant makes a showing sufficient to support that allegation the good faith of a state legislature must be presumed." *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (citations omitted). A finding of discrimination by a State in the past does not change "[t]he allocation of the burden of proof and the presumption of legislative good faith." *Abbott*, 138 S. Ct. at 2324.

As discussed in detail below, the current evidence before the district court falls short of showing that Plaintiffs are likely to prove that S.B. 824 was motivated by discriminatory intent.

I. BASED ON THIS RECORD, PLAINTIFFS ARE UNLIKELY TO PROVE THAT S.B. 824 WAS MOTIVATED BY DISCRIMINATORY INTENT.

A. The Evidence on S.B. 824's Burdens Does Not Show Discriminatory Intent.

An "important starting point" of the discriminatory-intent analysis is whether the law bears more heavily on a racial minority. *Arlington Heights*, 429 U.S. at 266.

Because S.B. 824 makes it possible for voters who do not have approved photo ID to cast a provisional ballot, the burdens that the law imposes on voters without identification are limited. Indeed, in *Lee*, this Court upheld a finding, after a bench trial, that the burdens imposed by Virginia's similar photo-ID law were not suggestive of discriminatory intent. *See Lee*, 843 F.3d at 603. Here, the district court overlooked the significance of *Lee* and other decisions in agreement with it. In finding that S.B. 824 has a disparate impact on voters sufficient to support a finding of discriminatory intent, the court relied on underdeveloped evidence.

i. The effects analysis in *Lee v. Virginia State Board of Elections* suggests that S.B. 824 was not enacted with discriminatory intent.

In *Lee*, this Court analyzed a similar photo ID law enacted by Virginia's legislature and held that the district court had not clearly erred when it found, after a bench trial, that any burden imposed by that law did not support a finding of discriminatory intent. *Id.* at 600.

Under Virginia's law, like North Carolina's, local elections officials were required to issue free voter ID cards to registered voters with no showing of documentation required. *Compare id.* at 595 *with* S.B. 824, sec. 1.1(a). Local officials could also provide such cards at "mobile voter-ID stations." *Lee*, 843 F.3d at 595. In North Carolina, this State Board has similarly promulgated an administrative rule that permits county boards to issue voter IDs not simply at their

own offices, but at other locations as well. *See* 08 N.C. Admin. Code 17.0107(a). Virginia's list of permissible IDs was admittedly larger than North Carolina's. All government-issued photo IDs were automatically permitted, as were all photo IDs issued by a university or employer in Virginia. *See* Va. Code § 24.2-643(B). North Carolina, by contrast, approves of DMV-issued IDs, passports, tribal enrollment cards, and military and veterans ID cards. S.B. 824, sec. 1.2(a). Some university and government employee IDs are also accepted, if those institutions obtain approval from the State Board. *Id.*, sec. 1.2(a), §§ 163A-1145.1(a)(1)g, h.

Although North Carolina's law does not encompass as many forms of ID as Virginia's, S.B. 824's exceptions to the photo ID requirement exceed those of Virginia.

For voters who failed to bring ID to the polls, Virginia law offered only one option: voters could "cure" their provisional ballots by presenting ID to the local elections office in person or by fax or email, within three days of the election. *Lee*, 843 F.3d at 594. North Carolina has a similar "cure" provision that requires provisional voters to present ID to county officials in person only, but the deadline to do so is later—by the county board's "canvass" of votes, which occurs ten days after the election. S.B. 824, sec. 1.2(a), § 163A-1145.1(c); *see* N.C. Gen. Stat. § 163-182.5(b).

The most significant difference in the laws' ameliorative provisions is North Carolina's reasonable impediment provision, which has no counterpart in Virginia's law. Under this provision, a voter may cast a provisional ballot without an approved photo ID by signing an affidavit describing the impediment. S.B.

824, sec. 1.2(a), §§ 163A-1145.1(d), (d1). The county board of elections that receives a reasonable impediment ballot must count that ballot, "unless the county board has grounds to believe the affidavit is false." *Id.* § 163A-1145.1(e). Under an administrative rule adopted by the current State Board, a determination that there are grounds to believe the reasonable impediment affidavit is false must be unanimous among the five-member bipartisan county board. *See* 08 N.C. Admin. Code 17.0101(b).[11]

North Carolina's ameliorative provisions are relevant for the application of the *Lee* decision. In *Lee*, this Court first acknowledged that white Virginians possess IDs that could be used for voting at higher rates than black Virginians. 843 F.3d at 597–98 (reciting district court findings that this Court accepted). This Court also acknowledged that obtaining an ID requires some amount of effort from voters. *Id.* at 600. But to assess whether Virginia's law was enacted with discriminatory intent, this Court focused on the Virginia law's provisions that minimized the burdens that the law imposed on voters *without an ID*. *Id.* at 600–01, 03. In light of these provisions and the evidence presented at trial, this Court concluded that "the Virginia legislature went out of its way to make its impact as burden-free as possible." *Id.* at 603.

Lee's analysis suggests that the burdens that S.B. 824 imposes on voters do not support a finding of discriminatory intent.

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[11] As already noted, a future State Board could abrogate this rule.

ii. Other courts that have examined similar laws accord with *Lee*.

This Court's conclusions in *Lee* are echoed by other courts that have addressed cases involving similar state voter ID laws with comparable ameliorative provisions. These cases further suggest that a law like S.B. 824 was not enacted with discriminatory intent.

In *Veasey v. Abbott*, the Fifth Circuit reversed a preliminary injunction against a Texas voter ID law where the district court, in finding discriminatory purpose, had failed to account for that law's reasonable impediment provision. 888 F.3d 792, 804 (5th Cir. 2018). The court held that this provision minimized any disparate impact that a strict photo ID requirement could impose on minority voters. *Id.* at 803. As here, the Texas legislature enacted its law after an earlier, stricter voter ID law had been declared invalid by a federal court, and the new law sought to address problems that the court had identified in the earlier law. *Id.* at 796–97.

Specifically, the Texas legislature enacted a reasonable impediment exception that is similar to, but less permissive than North Carolina's. Unlike S.B. 824, Texas's law does not allow voters to offer an "other" reasonable impediment to bringing ID to the polls, sanctioning only seven specific reasons; and the law still requires a voter to present some form of identification, such as a utility bill in the voter's name, when declaring a reasonable impediment. *Id.* at 802; *id.* at 818 n.15 (Graves, J. dissenting) (explaining the practical burden of presenting the additional form of

identification).[12] Accordingly, S.B. 824's provisions are more permissive than the Texas law's under the *Veasey* analysis of disparate impact.

Similarly, in *South Carolina v. United States*, a three-judge panel of federal judges upheld South Carolina's law, which has a nearly identical reasonable impediment provision, against an intentional discrimination claim under Section 5 of the Voting Rights Act. 898 F. Supp. 2d 30, 46 (D.D.C. 2012).[13] As in *Lee* and *Veasey*, the panel focused on the features of the law that reduced the law's burden on voters. *Id.* at 39. These included a list of acceptable IDs that is shorter than North Carolina's, the availability of free voter IDs from county elections boards and the DMV just like in North Carolina, and a reasonable impediment provision that is substantially the same as North Carolina's. *Id.* Like in this case, the court also recognized that there was a racial disparity in the possession rate of photo IDs among South Carolina voters. *Id.* at 40. But despite this disparity, and despite the burdens associated with obtaining a free ID, the court found that these burdens did not suggest that South Carolina's legislature enacted the law with discriminatory intent. *Id.* at 44.

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[12] *See* 2017 Tex. Gen. Laws 1110, 1110–12.

[13] As the *South Carolina* court recognized, the discriminatory effects analysis under Section 5 of the Voting Rights Act mirrors the burdens analysis under *Arlington Heights*, in that it asks whether a law "disproportionately and materially burden[s] racial minorities." *Id.* at 38; *see id.* at 43.

In all relevant aspects, S.B. 824 is either identical to or more permissive than the laws upheld by the panels in *Lee*, *Veazey*, and *South Carolina*. North Carolina's law allows multiple categories of ID for voting, provides opportunity for those without ID to obtain one without charge, allows voters to "cure" their provisional ballot if they forget their ID when they vote, and allows voters to cast a provisional ballot that will be counted if they fill out a reasonable impediment form with their ballot and that form is not found to be false. Accordingly, the precedents of this Court and others suggest that burdens imposed by S.B. 824 do not support a finding of discriminatory intent.

iii. The district court's effects analysis was premised on underdeveloped evidence.

The district court did not give sufficient weight to *Lee* and the persuasive authorities cited above. Furthermore, the court's disparate-impact analysis was based on an underdeveloped record.

Lee suggests that, even where there is evidence of a racial disparity in the possession of photo IDs, if a state's law provides means for voters to obtain ID and offers a way for voters to "cure" provisional ballots cast when they fail to bring ID to the polls, any disparate impact caused by that law does not, by itself, support a finding of discriminatory intent. But the district court failed to take into sufficient account the existence of the ameliorative provisions in S.B. 824 that mirror the Virginia law in *Lee*. J.A. 2649-51.

On the disparity issue, the court relied on the State Board's analysis of DMV records and voter registration records to determine which voters may lack DMV-issued ID, finding that 10.6% of African American voters lack such IDs. J.A. 2649-50. But the court failed to note that the State Board's chief information officer, who conducted this analysis, specifically cautioned against drawing definitive conclusions from his results about the rate of nonpossession of IDs by voters. J.A. 2122-36. This is because the analysis left out eight additional categories of ID that can be used that would reduce the disparity. J.A. 2124 ¶ 8.

The court then relied on plaintiffs' experts' synopsis of the results of an MIT researcher's survey purporting to conclude that 15% of black North Carolina voters lack *any* of the IDs acceptable under S.B. 824. J.A. 2650 (citing ECF No. 91-1 at 26). That survey was based on an online poll of 200 people in each state and is designed to ascertain the recent voting *experience* of Americans following the most recent federal election. *See* Charles Stewart III, *2016 Survey of the Performance of American Elections – Final Report* 1, available at https://dataverse.harvard.edu/dataverse/SPAE. The court further found that the availability of free voter IDs from local elections offices or the DMV does not alleviate the burden that voters without acceptable ID would otherwise confront. J.A. 2651-52. This finding is in tension with this Court's reasoning in *Lee*, where it rejected the same argument presented by the Virginia plaintiffs in reviewing the district court's factual findings after a bench trial in that case. 843 F.3d at 600.

Having found that the provisions of S.B. 824 disproportionately burden minority voters, the district court proceeded to determine whether North Carolina's reasonable impediment provision eliminates the disproportionate burden. J.A. 2653. In analyzing this issue, however, the district court relied on underdeveloped evidence.

First, the district court inferred intent from experience with the prior photo-ID law's reasonable impediment provision. But there are differences between S.B. 824 and the prior law. Unlike the prior law, S.B. 824 requires no additional identification documentation once a voter fills out the reasonable impediment form. *Compare* S.B. 824, sec. 1.2(a), §§ 163A-1145.1(d)(2), (e), *with* Act of June 22, 2015, *supra*, sec. 8(e). In addition, unlike the prior law, S.B. 824 does not allow any voter to challenge another voter's reasonable impediment form. *Compare* S.B. 824, sec. 1.2(a), *with* Act of June 22, 2015, *supra*, sec. 8(e), § 163-182.1B(b). And S.B. 824 requires a reasonable impediment ballot to be counted unless the county elections board concludes that there are "grounds to believe" the voter's affidavit is "false." S.B. 824, sec. 1.2(a), § 163A-1145.1(e). By contrast, the prior law permitted the elections board to discount such a ballot if it believed the affidavit was false, if the affidavit was "nonsensical" or "merely denigrated" the voter ID requirement. Act of June 22, 2015, *supra*, sec. 8(e), § 163-182.1B(a)(1). Experiences with the prior law are therefore unreliable for predicting how the reasonable impediment provision in S.B. 824 will be implemented.

In addition to drawing inferences from a different law, the court also suggested that county boards may implement the reasonable impediment provision arbitrarily, because the law does not spell out how a board is to determine when it has "grounds to believe the affidavit is false." J.A. 2654. But county boards are routinely tasked with determining whether statements or affidavits are false. For example, county boards are tasked with investigating election irregularities and adjudicating candidate challenges and election protests—both of which require county boards to make credibility determinations. *See* N.C. Gen. Stat. §§ 163-33(3), 163-85, 163-182.10. Nonetheless, the court found it was "doubtful that [reasonable impediment declarations] are the panaceas that Defendants make them out to be." J.A. 2654.

Finally, the district court predicted that the law would depress turnout, although it did not quantify how much. J.A. 2656-57. Here, too, the evidence the court relied on did not provide a solid basis for its findings. The court relied on second-hand, unspecific, and unattributed anecdotes about depressed turnout resulting from North Carolina's prior voter ID law. J.A. 2657 (quoting J.A. 635 ¶ 43). It also relied on a paper written by Stanford University researchers that concluded that a small drop in turnout in the 2016 general election in North Carolina among those who lacked ID was attributable to the prior voter ID law that had been invalidated in the summer of that year. *Id.* (citing Justin Grimmer and Jesse Yoder, *The Durable Deterrent Effects of Strict Photo Identification Laws* (July 1, 2019)). This paper is neither peer reviewed nor published, according to its author. *See*

Justin Grimmer-Research, https://www.justingrimmer.org/research.html (listing this paper as a "Working Paper[]" that is "Under Review"). Thus, the evidence that the court relied on did not provide a solid basis for its finding that S.B. 824 will have a deterrent effect.

In sum, the district court's finding that the impact of S.B. 824 on voters provides evidence of intentional discrimination did not give proper weight to this Court's *Lee* decision or other decisions that have upheld similar voter ID laws. The court also erred in relying on underdeveloped evidence that likely exaggerates the burdens that S.B. 824 imposes on voters.

B. The Sequence of Events Leading to the Enactment of S.B. 824 Was Consistent with Proper Legislative Process.

Another factor relevant to the court's determination of intent is the sequence of events that led to the challenged law. An unusual sequence of events may reveal a discriminatory purpose when unprecedented procedures are used, or there is a reversal in a specific course of events in a manner that suggests invidious discrimination. *E.g. Arlington Heights*, 429 U.S. at 267 ("[I]f the property involved here always had been zoned [multiple-family] but suddenly was changed to [single-family] when the town learned of MHDC's plans to erect integrated housing," such a change in the sequence of events could raise a suspicion of discriminatory intent.).

Here, the district court suggested that evidence concerning "the 'sequence of events' is mixed[,]" and then found that "sequential facts constitute evidence

that S.B. 824 was motivated by discriminatory intent, despite the apparent lack of procedural irregularity." J.A. 2638-39. This reasoning was erroneous, because the district court correctly found that, in enacting S.B. 824, "[t]he General Assembly appears to have met all parliamentary requirements." J.A. 2638. As a result, the evidence of the events surrounding the enactment of S.B. 824 shows that the General Assembly followed proper legislative process.

Drastic and unprecedented changes in the legislative procedure may, under some circumstances, signal the intent to discriminate. *Arlington Heights*, 429 U.S. at 267. For example, the Fifth Circuit found a number of "unprecedented" and "drastic" procedural departures on the part of the Texas legislature, when it enacted its initial photo ID law. *Veasey v. Abbott*, 830 F.3d 216, 238-38 (5th Cir. 2016). Those included suspension of the two-thirds rule on the number of votes required and the absence of a required fiscal note to the bill. *Id.* at 238. And in *McCrory*, this Court held that the legislative sequence leading up to the enactment of H.B. 589 raised red flags. Specifically, a much more modest voter ID bill had "sat" in the legislature for months until *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) was decided, which freed the legislature from the preclearance requirement of the Voting Rights Act; then the law's size swelled from 16 to 54 pages and became an "omnibus" elections bill. *McCrory*, 831 F.3d at 227. That bill was "rushed" through the legislature—the House did not even send the bill to a committee and offered no opportunity for amendments before a vote. Finally, that the "vote proceeded on strict party lines." *Id.* at 228.

S.B. 824's enactment was different. S.B. 824's enactment complied with constitutional and parliamentary rules. J.A. 2005-11 ¶¶ 7-35. The legislation passed the required number of readings in each chamber, complied with the form requirements and the adoption timeframe for such bills, was signed by the presiding legislative officers, and ultimately became law after a lawful veto override. J.A. 2005-11 ¶¶ 7-33, 2013-35, 2037-66; *see* N.C. Const. art. II, §§ 22(1)–(7), 23.

Additionally, the record features no evidence of severe departures from the ordinary legislative procedure or any unparalleled legislative maneuvering. Weeks after the voters approved the constitutional amendment requiring photo ID for voting in November 2018, J.A. 792-94, S.B. 824 was introduced in the North Carolina Senate and debated. It was sponsored by two Republicans and one Democrat. J.A. 1051-67. A draft of the legislation was released to the members a week before any debate. J.A. 736, 1247.

After consideration by Senate committees, the full Senate debated the bill for two days. J.A. 2008. Eleven amendments were offered—six were adopted, four were tabled, and one was withdrawn. J.A. 2008 ¶ 20. Democratic senators proposed several successful amendments, including amendments that required the State Board to adopt rules to ensure that free voter photo ID cards would be issued over an extended period of time, that extended the validity of the free voter ID cards from 8 to 10 years, imposed a requirement that county boards of elections seasonably notify voters about impending expiration of any voter photo ID card,

and expanded the natural disaster exception to include victims of disasters occurring 100 days before elections, not just 60 days. J.A. 2096-97. After these amendments were accepted, the Senate passed the bill and sent it to the House. J.A. 2008 ¶¶ 21- 22.

Five days later, two House committees considered the bill. J.A. 2009 ¶¶ 23-24. The legislation was then considered by the full House on December 5, 2018, when twelve amendments were offered—seven were adopted, one was withdrawn, and five failed. J.A. 2009 ¶ 26. Democratic representatives proposed several amendments that were adopted with bipartisan support. These amendments approved a wider variety of tribal enrollment cards as acceptable photo IDs, created an absentee photo ID requirement, and clarified that the expiration of a voter photo identification card does not create a presumption of invalidity for a voter's registration. J.A. 2092-93.

After these amendments were adopted, the House passed the bill, and the Senate concurred in the House's version the next day. J.A. 2010. The Governor vetoed the bill on December 14, 2018; the Senate voted to override the veto on December 18; and the House followed suit on December 19. J.A. 2061-66.

In keeping with these procedures, the record shows that the legislative leadership specifically instructed the members to follow a regular timeframe in passage of S.B. 824:

> The instructions that we've received from Speaker Moore and Senator Berger is that this process not be rushed in any way. The chair

> would, therefore, estimate that this will be a normal procedure type thing[.]

J.A. 1363; *see also* J.A. 1480.

Additionally, public stakeholders, both those in favor and opposing S.B. 824, were allowed to speak during committee hearings. J.A. 1244-1954.

The district court recognized these facts, and even disagreed with Plaintiffs' contention that this process mirrored that of the law invalidated in *McCrory*. J.A. 2635-38. It nonetheless found that this sequence of events supported a finding of discriminatory intent. J.A. 2638-39. It reasoned that "Plaintiffs' more potent sequence-related argument is less about 'how' than 'who.'" J.A. 2636. The court emphasized that S.B. 824 was enacted by many of "the same individual legislators" who "sought to protect partisan gains by disadvantaging Black and Latino voters" when it enacted the prior law, H.B. 589. J.A. 2636-37.

The district court placed too much weight on the fact that some members of the current General Assembly also voted for North Carolina's previous voter ID legislation. Such an approach improperly merges *Arlington Height*'s historical-background factor with the analysis of the sequence of events, elevating history over the procedural events surrounding the actual enactment of S.B. 824. Indeed, *McCrory* itself recognized that the North Carolina General Assembly was not prohibited from implementing a Photo ID law in the future, as long as it did so without intent to discriminate against minorities. *McCrory*, 831 F.3d at 241.

In sum, the evidence concerning the legislative process that led to S.B. 824's enactment does not support an inference of discrimination.

C. The Evidence on S.B. 824's Legislative History Does Not Suggest Discriminatory Intent.

The evidence concerning the legislative history of S.B. 824 also weighs against the district court's finding of discriminatory intent.

The district court's discussion of S.B. 824's legislative history is based on "three main sentiments" that the court found motivated legislators: a disagreement with the Fourth Circuit's analysis in *McCrory*; a commitment to passing a voter ID law that would survive judicial scrutiny; and the fact that the positions of many of voter ID's opponents and proponents had remained "virtually unchanged" since "the time *McCrory* was issued." J.A. 2639-40.

These sentiments do not support the district court's finding of invidious discrimination. The district court's finding is contradicted by legislative history that shows that the General Assembly made different choices when it enacted S.B. 824 than it did when it enacted the law invalidated in *McCrory*.

The district court acknowledged that, in contrast with the legislative history of H.B. 589, the current record features no "smoking gun" that shows the use of race data to exclude the photo IDs predominantly used by minority voters. J.A. 2642-43. That finding is key, because a large focus of this Court's conclusion that the 2013 General Assembly targeted minority voters "with

almost surgical precision" was the legislature's review of data showing the voting regulations at issue would impact minority voters disproportionately. *McCrory*, 831 F.3d at 214, 216-18.

Here, by contrast, the General Assembly largely drafted S.B. 824 to emulate South Carolina's voter ID law, which had survived judicial scrutiny. J.A. 1296, 1368. And the law's provisions compare favorably to South Carolina's, by including a more expansive list of photo IDs—public employee IDs, tribal IDs, veterans' IDs, and university and community college IDs. *Compare* S.B. 824, sec. 1.2.(a), *with* S.C. Code Ann. § 7-13-710. Also unlike South Carolina's law, S.B. 824's photo ID requirement applies to absentee ballots. S.B. 824, sec. 1.2(e). *McCrory* noted that the prior law did not apply to absentee ballots, which have historically been disproportionately used by white voters. 831 F.3d at 230.

In evaluating legislative history, this Court also assesses whether the challenged legislation had any support from the party that predominantly opposed the law. *Lee*, 843 F.3d at 603. Here, S.B. 824's legislative process earned some praise from those who ultimately voted against it. For example, one Democratic senator stated that:

> I'd just like to say thank you to Senator Daniel and Senator Krawiec for their work on the bill and for being open and inclusive in listening to us on the other side of the aisle in trying to come up with something that is reasonable in terms of its approach.

J.A. 1431; *see also* J.A. 1413-14. A second Democratic senator likewise acknowledged the bill proponents' work with Democratic members on amendments. J.A. 1419-20.

Similarly, one Democratic member of the House of Representatives said that "a lot of people agree that this bill is less restrictive than the original one in 2013," and "applaud[ed] the majority for the work they've done to allow more IDs." J.A. 1459. Another Democratic member praised the bill's chief proponent for "working with us to help improve the bill," and noted that the S.B. 824 was "a much better bill than the bill that left this chamber in 2013." J.A. 1776-77.

The district court improperly diminished the importance of this open legislative process when the court found that it is "doubtful that the minimal aisle-crossing that took place during S.B. 824's passage should carry any significant weight." J.A. 2636.

Also relevant to the consideration of legislative history are any amendments offered and incorporated into the challenged law. *McCrory*, 831 F.3d at 228. Here, the district court found that "in contrast to the bulldozer-like process described in *McCrory*, a total of twenty-three amendments to S.B. 824 were offered, thirteen of which were adopted before final passage." J.A. 2636. As already noted above, many of the adopted amendments came from the representatives of the party that opposed a voter ID requirement.

The court found that the history of two amendments provided evidence of discriminatory intent: the extension of photo ID to absentee voting, and the

rejection of the use of public assistance IDs for voting. J.A. 2641-42. The court's analysis misunderstands the significance of both amendments.

A public assistance ID amendment was offered on the floor of the House and was opposed by a bill sponsor, Representative David Lewis. He stated that he opposed the amendment because of the lack of uniformity among public assistance IDs, and the lack of photographs on some of those IDs. J.A. 1761-63; *see* J.A. 2103-09. Proponents of S.B. 824 also posited that the reasonable impediment process would allow any individuals who possessed these IDs, and no other forms of valid ID, to vote. J.A. 1762.

Regarding absentee voting, the district court criticized the sponsors of the first draft of S.B. 824 for not including the absentee photo ID provision in the original bill and found that "the legislative history suggests that its drafters only did so under intensifying public pressure." J.A. 2642. The criticism is misplaced. As noted above, S.B. 824's original draft was patterned after South Carolina's photo ID law that contained no photo ID requirement for absentee voters. When a Democratic representative proposed the absentee photo ID amendment, that amendment was approved and incorporated into the text of S.B. 824. J.A. 1495-97. The legislative leadership spoke in support of the absentee photo ID requirement. J.A. 1496. A bill proponent even referred to the *McCrory* decision—and its criticism of the prior law for not applying to absentee voters—as a reason to pass the amendment. J.A. 1496-97. The district court's analysis of the significance of these two amendments is therefore flawed.

D. The Historical Background of S.B. 824 Should Be Weighed Along with the Other *Arlington Heights* Factors.

In assessing whether a law was enacted with discriminatory intent, courts also consider the law's historical background.

There is no denying North Carolina's long history of racial discrimination, some of which was recounted by this Court in *McCrory*. 831 F.3d at 223. In *McCrory*, this Court correctly observed that "North Carolina has a long history of race discrimination generally and race-based vote suppression in particular." *Id*. That history contains many "shameful" chapters related to race, such as North Carolina's enactment of Jim Crow laws, which remained in force well into the 1960s. *Id.* The *McCrory* Court also correctly observed that there have even been many "instances since the 1980s in which the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans." *Id*.

Defendants do not dispute this history, and recognize and accept that another relevant part of that history is H.B. 589, which was partially invalidated by *McCrory* for having been enacted with the purpose of burdening African American voters. Furthermore, the Defendants acknowledge that unconstitutional considerations of race have also recently predominated in North Carolina's redistricting process. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 1455 (2017); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017).

Numerous precedents require that this troubling history be viewed in light of a variety of other factors, however. *Abbott*, 138 S. Ct. at 2324 (quoting *Arlington Heights*, 429 U.S. at 267). Here, as shown above, and when viewed together, other *Arlington Heights* factors weigh against a finding that S.B. 824 was enacted with discriminatory intent.

Without overlooking the State's troubled history of racial discrimination, the "ultimate question remains whether a discriminatory intent has been proved in a given case." *Id*. at 2324–25 (quoting *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 74 (1980) (plurality opinion)). At this stage of proceedings, Plaintiffs have not proffered evidence that shows that they are likely to succeed in proving that discriminatory intent infected the enactment of S.B. 824.

II. THE STATE'S NONDISCRIMINATORY MOTIVATIONS UNDERCUT A FINDING OF A LIKELY CONSTITUTIONAL VIOLATION.

Even assuming Plaintiffs had shown a likelihood of success in showing discriminatory purpose was a motivating factor for S.B. 824, the district court did not sufficiently weigh the nondiscriminatory motives for the law that support its validity under the federal Constitution. J.A. 2659-66.

If "racial discrimination is shown to have been a 'substantial' or [a] 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985). Courts "scrutinize the legislature's

actual non-racial motivations to determine whether they alone can justify the legislature's choices." *McCrory*, 831 F.3d at 221.

Here, the record contains evidence of non-racial motivations for the enactment of S.B. 824. For instance, the record shows that legislators recognized that S.B. 824 was needed to implement the constitution's new mandate that voters present a photographic ID to vote. *E.g.* J.A. 1248-49, 1413, 1588. Likewise, the proponents of S.B. 824 believed that the legislation was needed to ensure voter confidence in elections. *See* J.A. 1556, 1577-79, 1580-81, 1585-87, 1597-98, 1735-36, 1765-66, 1770, 1775. This Court, among others, has previously held that safeguarding voter confidence is a valid justification for a voter ID requirement. *See Lee*, 843 F.3d at 602, 606–07; *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (op. of Stevens, J.); *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014).

In sum, the record contains sufficient evidence of the State's non-racial motivations to "justify the legislature's choices" in enacting S.B. 824. *McCrory*, 831 F.3d at 221.

CONCLUSION

For the foregoing reasons, Defendants respectfully ask this Court to reverse the district court's order enjoining implementation of S.B. 824 prior to trial.

Respectfully submitted,

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March 9, 2020

[*** Certificates omitted in this appendix ***]

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Addendum Page

CHAPTER 17 – PHOTO IDENTIFICATION

08 NCAC 17.0101 VERIFICATION OF PHOTO IDENTIFICATION AT CHECK-IN

(a) An election official shall check the registration status of all persons presenting to vote in-person on election day or during one-stop early voting pursuant to G.S. 163-166.7, and shall require that all persons presenting to vote provide one of the forms of photo identification listed in G.S. 163A-1145.1(a), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the person presenting to vote of applicable options specified in G.S. 163A-1145.1(c). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

(b) The election official shall not require photo identification of a person who:

(1) has a sincerely held religious objection to being photographed and meets the requirements of G.S. 163A-1145.1(d)(1);

(2) suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification and meets the requirements of G.S. 163A-1145.1(d)(2); or

(3) is the victim of a natural disaster and meets the requirements of G.S. 163A-1145.1(d)(3).

Persons falling within any exception listed in this Paragraph who complete the affidavit required by G.S. 163A-1145.1(d) shall be allowed to proceed pursuant to G.S. 163-166.7 and shall cast a provisional ballot. The county board of elections shall find that a provisional ballot cast by a person who meets the qualifications of this Paragraph is valid unless the county board unanimously decides that the affidavit is false, pursuant to 08 NCAC 17.0109(f).

(c) The election official shall inspect any photo identification provided by the person presenting to vote and shall determine the following:

(1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. 163A-1145.1(a). A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. 163A-1145.1(a)(1)c.;

(2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163A- 1145.1(a);

(3) That the photograph appearing on the photo identification bears any reasonable resemblance to the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification does not bear any reasonable resemblance to the person presenting to vote:

(A) weight;

(B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;

(C) facial hair;

(D) complexion or skin tone;

(E) cosmetics or tattooing;

(F) apparel, including the presence or absence of eyeglasses or contact lenses;

(G) characteristics arising from a perceptible medical condition,

disability, gender transition, or aging;

(H) photographic lighting conditions or printing quality; and

(4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation or one or more of the following reasons:

(A) Omission of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);

(B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);

(C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Sanchez versus Aaron B. Sanchez);

(D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), names changed during the gender transition process (such as, for illustrative purposes only, Catherine Smith versus Dan Smith), or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. Jacobson);

(E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia);

(F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

(d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not require that any person remove apparel for the purposes of rendering a determination under Paragraph (c). If the face of the person presenting to vote is covered such

that the election official cannot render a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove the covering but shall not require that removal. If the person declines to remove the covering, the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163A-1145.1.

(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any other provision of Paragraph (c).

(f) The election official shall construe all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. After an examination performed in the manner set out in Paragraphs (a) through (d) of this Rule, the election official shall proceed as follows:

(1) If the election official determines that the photo identification meets all the requirements of Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163- 166.7 and 163A-1145.1; or

(2) If the election official determines that the photo identification does not meet all of the requirements of

Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote of the reasons for such determination (such as, for illustrative purposes only, that the photo identification is expired) and shall invite the person to provide any other acceptable photo identification that he or she may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election official shall inform the person presenting to vote of applicable options specified in G.S. 163A-1145.1(c) and (d). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

(3) If the election official determines that the photo identification does not meet all the requirements of Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of election that the person presenting to vote does not bear any reasonable resemblance to the photo identification.

History Note: *Authority G.S. 163-82.6A; 163-82.15; 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019.*

08 NCAC 17.0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION

(a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. 163A-1145.1(b) only if the person presenting to vote is referred to them by an election official as set out in 08 NCAC 17.0101(f)(3).

(b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in 08 NCAC 17.0101(c)(3) and (4). The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election shall consider the following, if presented:

(1) Any information contained in the photo identification meeting the requirements of 08 NCAC 17.0101(c)(1) and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);

(2) Any explanation proffered by the person presenting to vote or by other persons; and

(3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow 08 NCAC 17.0101(e) with regard to addresses appearing on the photo identification.

(d) After considering the evidence, the judges of election shall vote to determine whether the photo identification bears any reasonable resemblance to the person presenting to vote. All judges of election must vote either yea or nay, and the result shall be governed by the following:

(1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (e)(2), the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and 163A- 1145.1.

(2) If the judges of election unanimously find that the photo identification does not meet all the requirements of 08 NCAC 17.0101(c)(3) and (4), the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner

set out in Paragraph (e) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163A-1145.1(c).

(e) The judges of election shall record their determination as to reasonable resemblance on a form provided by the State Board of Elections that provides the date and time, the voting site, the names of the judges of election, the name of the person presenting to vote, the determination of each individual judge of election, and if the judges of election unanimously determine that the photo identification does not bear any reasonable resemblance to the person presenting to vote, a brief explanation as to why that determination was made.

History Note: *Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019.*

08 NCAC 17.0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS

History Note: *Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1(d); Eff. January 1, 2016; Temporary Repeal Eff. August 23, 2019.*

08 NCAC 17.0104 OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE RESEMBLANCE IS DETERMINED

A person able to vote a regular ballot but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and 163-82.16(d) to reflect the person's current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and 163A-1145.1, so long as the person remains eligible to vote based on residence within the county of the voting place.

History Note: *Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019.*

08 NCAC 17.0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

History Note: *Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e), (h); Eff. January 1, 2016; Temporary Repeal Eff. August 23, 2019.*

08 NCAC 17.0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST AN ABSENTEE BALLOT

History Note: *Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(j); Eff. March 1, 2016; Temporary Repeal Eff. August 23, 2019.*

08 NCAC 17.0107 VOTER PHOTO IDENTIFICATION CARD

(a) Request. A voter may request a voter photo identification card free of charge in person at the county board of elections office, or at another location in the county prior to the start of the one-stop early voting period if approved by a majority of the county board of elections, in the county where the voter is registered to vote. The request shall be made on a form prescribed by the State Board of Elections Office and available on the State Board website and in the county board of elections office or another location designated by the county board of elections. The form shall include prompts for the voter's full name, voter's date of birth, the last four digits of the voter's Social Security number, the voter's signature or mark, and the date of request. If the required information provided by the voter matches the information on the voter registration on file with the county board of elections, the county board of elections shall issue the card. The county board of elections shall not refuse to issue a card because the voter registration does not contain the last four digits of the voter's Social Security number or

complete date of birth. If the voter registration does not contain the last four digits of the voter's Social Security number or complete date of birth, the form shall serve as an update to the voter's voter registration record.

(b) Issuance. Once the county board of elections determines it shall issue the voter photo identification card, it shall take a photograph of the voter. If the face of the voter is covered, the county board of elections shall give the voter the opportunity to remove the covering but shall not require removal. If the voter declines to remove the covering, the county board of elections shall inform the voter that a voter photo identification card cannot be produced while the voter's face is covered and shall inform the voter of the ability to vote provisionally due to religious objection to being photographed pursuant to G.S. 163A-1145.1(d)(1).

(c) Simultaneous registration and request. A voter may register to vote and request a voter photo identification card simultaneously in person at the county board of elections office. The county board of elections shall process the voter registration form as soon as it is received and, if the voter appears eligible to vote based on the voter registration form, the county board of elections shall process the voter registration, assign a voter registration number to the voter, and issue a voter photo identification card to the voter. A voter who is not registered to vote in the county may apply to register to vote and request a voter photo identification card at another location in the county. The registration shall be processed at the county board of elections office, which shall mail the voter photo identification card to the voter if it makes a tentative determination that the applicant is qualified to vote pursuant to G.S. 163A-867.

(d) Timing of issuance. Voter photo identification cards shall be issued at any time, except during the time period between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and the end of Election Day for each primary and election. A county board of election shall process a request for voter photo identification at the time it is received and shall issue the card to the voter. If, due to the photo identification card being requested a location other than the county board of elections office or equipment, software, or other issues, the county board of elections cannot produce the photo identification card at the time the request is received, the county board of elections shall mail the photo identification card to the voter as soon as the issue is resolved.

(e) Replacement card. If a registered voter loses or defaces the voter's photo identification card, the registered voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, by telephone, or by mail. Cards may not be requested by any other method, including e-mail. A request in person or by mail shall be made on a form required in Paragraph (a) of this Rule. In making the request, the voter shall provide the voter's name and the voter's date of birth or last four digits of the voter's Social Security number. If the information provided by the voter matches the information on file with the county board of elections, the county board of elections shall issue the replacement card. If the request is by telephone or mail, the county board of elections shall mail the card to the mailing address in the voter's voter registration file. A voter may request

a new photo identification card in accordance with Paragraph (a) if the voter believes the photo does not reflect a change in the voter's appearance.

(f) Name change. If a registered voter has a change of name and has updated his or her voter registration to reflect the new name, the registered voter may request and obtain a replacement card from the registered voter's county board of elections by providing the registered voter's current name, date of birth, and the last four digits of the registered voter's Social Security number in person, by telephone, or by mail. Cards may not be requested by any other method, including e-mail. A request in person or by mail shall be made on a form required in Paragraph (a) of this Rule. If the information provided by the voter matches the information on file with the county board of elections, the county board of elections shall issue the replacement card. If the request is by telephone or mail, the county board of elections shall mail the card to the mailing address on the voter's voter registration file. The voter may use the form required in Paragraph (a) of this Rule to update the name on his or her voter registration record and shall include the voter's former name and current name, date of birth, the last four digits of the voter's Social Security number, and the voter's signature or mark.

(g) Content and design of card. The Executive Director of the State Board shall design the card. A voter photo identification card shall contain only the following information unique to the voter:

(1) A photograph of the voter;

(2) The voter's full name;

(3) The voter's voter registration number; and

(4) Expiration date.

The card may also contain a barcode including any of the information listed in this Paragraph. Voter photo identification cards shall contain the following disclaimer: "Expiration of this voter photo identification card does not automatically result in the voter's voter registration becoming inactive."

(h) Validity. A voter photo identification card shall be valid statewide for voting purposes. The photo identification card shall serve as proof of the voter's identity, not proof that the person is a registered voter.

(i) Assistance. A voter may receive assistance in completing the form required in this Rule but the voter shall sign or place his or her mark on the request form.

(j) Form retention. The county board of elections shall upload the form required by this Rule into the statewide computerized voter registration system, and the uploaded document shall serve as the official record of the form for records retention purposes.

History Note: *Authority G.S. 163A-741; 163A-869.1(d); S.L. 2018-144, s. 1.1.(b). Temporary Adoption Eff. April 29, 2019.*

08 NCAC 17.0108 REQUESTS FOR APPROVAL OF STUDENT IDENTIFICATION CARDS AND EMPLOYEE IDENTIFICATION CARDS

(a) Request for Approval. An institution requesting the State Board of Elections' approval of an identification card for voting purposes pursuant to G.S. 163A-1145.2 or 163A-1145.3 shall submit to the State Board the

form that certifies statutory compliance posted on the State Board's website. The request shall be submitted at least five business days prior to the deadline for State Board approval of identification cards as specified in S.L. 2019-22 s. 2, G.S. 163A-1145.2(b), and G.S. 163A-1145.3(b), and every two years thereafter.

(b) Image of Sample Identification. An institution submitting a request under Paragraph (a) of this Rule shall provide the State Board a digital image representative of the layout, coloring, and insignia appearing on the front and back of the identification card(s). The images shall be submitted with the request for approval required under Paragraph (a).

(c) Notice of Altered Procedures or Images. The institution requesting approval under Paragraph (a) and submitting images under Paragraph (b) shall notify the Executive Director of the State Board in writing if it alters its procedures in a manner that violates the requirements in G.S. 163A-1145.2(a) or 163A-1145.3(a) or if it alters its identification cards from the images previously submitted. Timing of the notification shall occur as follows:

(1) If the alteration is made fewer than 90 days before the date of an election in the State, the institution shall provide notice within five business days after implementation of the alteration; and

(2) If the alteration is made more than 90 days before the date of an election in the State, the institution shall provide notice within 30 calendar days after implementation of the alteration.

(d) Approval Process. The Executive Director shall approve the use of identification cards from an

institution that meets the requirements of this Rule and of G.S. 163A-1145.2 or 163A-1145.3. The Executive Director shall produce a list of approved institution and shall cause the list to be published on the State Board's website and to the county boards of elections.

History Note: *Authority G.S. 163A-741; 163A-1145.2; 163A-1145.3; S.L. 2018-144 s. 1.2.(f); S.L. 2018-146 s. 3.2.(e); S.L. 2019-22 s. 2; Temporary Adoption Eff. July 26, 2019.*

08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE BALLOTS

(a) Definitions. The following definitions apply to this Rule:

(1) "Readable" means that the name on the identification can be read and that the photograph is not blurry and depicts a person who is distinct and distinguishable from another person.

(2) "Copy" means a duplicate of an original document, including a photographic copy of the original document. It does not include displaying an image on an electronic device.

(3) "Verifiable legal guardian" has the same meaning as in G.S. 163-226(e).

(4) "Near relative" has the same meaning as in G.S. 163-226(f).

(b) Identification Requirement for Absentee by Mail Ballots. Each container-return envelope returned to the county board of elections with application and voted

ballots shall include a copy of the identification required by G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3). The copy of identification must be readable and must display a name that is the same or substantially equivalent to the name contained in the registration record as provided in 08 NCAC 17.0101(c)(4). It is not required that the address on the identification match the residential address provided on the request form or the address on the registration record.

(c) Incomplete Application for a Photo Identification-Related Reason. If the county board of elections receives an absentee application and voted ballots prior to the deadline provided in G.S. 163-231(b), its staff shall make an initial assessment of whether the voter provided a copy of photo identification and if not, whether the voter completed an alternative affidavit. If, after this initial assessment, the copy of the photo identification is not readable, the voter did not provide a copy of photo identification or an alternative affidavit, or the alternative affidavit is not signed or is otherwise not complete, the county board of elections staff shall notify the voter in writing that the voter, the voter's verifiable legal guardian, or the voter's near relative may mail or bring in person the voter's acceptable photo identification under G.S. 163-166.16(a), a readable copy of the voter's acceptable photo identification, or a completed alternative affidavit, to the county board of elections by the deadline specified in G.S. 163-82.4(f).

(d) Exceptions. The exceptions provided in G.S. 163-166.16(d) for voters voting in person shall apply to absentee by mail voters. The reasonable impediment exception under G.S. 163-166.16(d)(2) shall include

lack of access to a method to attach a physical copy of the identification card to the request. A covered voter who is casting a ballot pursuant to G.S. 163, Article 21A, Part 1 is not required to submit a copy of acceptable photo identification under Paragraph (b) of this Rule or claim an exception under G.S. 163-166.16(d).

(e) Counting of Absentee Ballots. The county board of elections shall, at the first meeting held after the ballot is received pursuant to G.S. 163-230.1(f) to pass upon applications for absentee ballots, consider whether the voter has complied with the photo identification requirements as follows:

(1) Review of photo identification. The county board of elections shall review the photo identification submitted and shall determine the following:

(A) That the photo identification is readable as defined in Subparagraph (a)(1);

(B) That the photo identification meets the expiration date requirements provided in G.S. 163-166.16(a); and

(C) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record pursuant to 08 NCAC 17.0101(c)(4). If the name on the identification is substantially equivalent to the name listed on the registration

record, the county board of elections shall presume that the person depicted in the photograph on the identification provided is the voter.

In making its determination under this Subparagraph, the county board of elections shall not require any additional evidence outside the four corners of the photo identification and shall make the determination based on the totality of the circumstances, construing all evidence in the light most favorable to the voter. A decision that the absentee ballot is not approved because the name listed on the photo identification is not the same as or substantially equivalent to the name on the registration record shall require a unanimous vote by the county board of elections.

(2) Review of alternative affidavit. Absent any other reason provided by law for disapproving absentee ballots, if the voter has completed the required affidavit in G.S. 163-166.16(d), the county board of elections shall find that the absentee ballot is valid unless the county board has grounds to believe the affidavit is false. A decision that the absentee ballot is not approved because the affidavit provided under G.S. 163-166.16(d) is false shall require a unanimous vote by the county board of elections.

If the voter fails to submit in the container-return envelope a copy of acceptable photo identification pursuant to G.S. 163-166.16(a) or an alternative affidavit under G.S. 163-166.16(d), the copy of the photo identification is not readable, or the alternative affidavit is not signed or is otherwise not complete, the mailed ballot shall be treated in the same manner as a mail-in absentee ballot under G.S. 163-166.12(e). The voter, the voter's verifiable legal guardian, or the voter's near relative may mail or bring in person the voter's acceptable photo identification under G.S. 163-166.16(a), a readable copy of the voter's acceptable photo identification, or a completed alternative affidavit, to the county board of elections by the deadline specified in G.S. 163-82.4(f).

(f) Photocopy Requirement. The county board of elections shall allow any person seeking to vote by absentee ballot the use of a photocopying device to make one photocopy of the voter's form of photo identification.

(g) Return of Original Form of Identification. If a voter sends his or her original form of photo identification in the container-return envelope, the county board of elections shall make a photocopy of the identification and mail the identification back to the voter.

(h) Retention of Copies of Photo Identification and Alternative Affidavits. Copies of photo identification and alternative affidavits shall be retained according to the same schedule for absentee ballot applications under G.S. 163-233. Copies of photo identification associated with the absentee ballot are not public record. The alternative affidavit is a public record, but

the voter's signature may only be viewed in the county board of elections office and cannot be copied or traced.

History Note: *Authority G.S. 163-166.16; 163-230.1; 163-233; S.L. 2018-144, s. 1.2.(e), (i); S.L. 2019-239; Temporary Adoption Eff. January 1, 2020; August 23, 2019.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-381
HOUSE BILL 589

AN ACT TO RESTORE CONFIDENCE IN GOVERNMENT BY ESTABLISHING THE VOTER INFORMATION VERIFICATION ACT TO PROMOTE THE ELECTORAL PROCESS THROUGH EDUCATION AND INCREASED REGISTRATION OF VOTERS AND BY REQUIRING VOTERS TO PROVIDE PHOTO IDENTIFICATION BEFORE VOTING TO PROTECT THE RIGHT OF EACH REGISTERED VOTER TO CAST A SECURE VOTE WITH REASONABLE SECURITY MEASURES THAT CONFIRM VOTER IDENTITY AS ACCURATELY AS POSSIBLE WITHOUT RESTRICTION, AND TO FURTHER REFORM THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

PART 1. SHORT TITLE

SECTION 1.1. Parts 1 through 6 of this act shall be known and cited as the Voter Information Verification Act.

PART 2. PHOTO IDENTIFICATION

SECTION 2.1. Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.13. Photo identification requirement for voting in person.**

(a) Every qualified voter voting in person in accordance with this Article, G.S. 163-227.2, or G.S. 163-182.1A shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting, except as follows:

(1) For a registered voter voting curbside, that voter shall present identification under G.S. 163-166.9.

(2) For a registered voter who has a sincerely held religious objection to being photographed and has filed a declaration in accordance with G.S. 163-82.7A at least 25 days before the election in which that voter is voting in person, that voter shall not be required to provide photo identification.

(3) For a registered voter who is a victim of a natural disaster occurring within 60 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State who

declares the lack of photo identification due to the natural disaster on a form provided by the State Board, that voter shall not be required to provide photo identification in any county subject to such declaration. The form shall be available from the State Board of Elections, from each county board of elections in a county subject to the disaster declaration, and at each polling place and one-stop early voting site in that county. The voter shall submit the completed form at the time of voting.

(b) Any voter who complies with subsection (a) of this section shall be permitted to vote.

(c) Any voter who does not comply with subsection (a) of this section shall be permitted to vote a provisional official ballot which shall be counted in accordance with G.S. 163-182.1A.

(d) The local election official to whom the photo identification is presented shall determine if the photo identification bears any reasonable resemblance to the voter presenting the photo identification. If it is determined that the photo identification does not bear any reasonable resemblance to the voter, the local election official shall comply with G.S. 163-166.14.

(e) As used in this section, "photo identification" means any one of the following that contains a photograph of the registered voter. In addition, the photo identification shall have a printed expiration date and shall be unexpired, provided that any voter having attained the age of 70 years at the time of

presentation at the voting place shall be permitted to present an expired form of any of the following that was unexpired on the voter's 70th birthday. Notwithstanding the previous sentence, in the case of identification under subdivisions (4) through (6) of this subsection, if it does not contain a printed expiration date, it shall be acceptable if it has a printed issuance date that is not more than eight years before it is presented for voting:

(1) A North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

(2) A special identification card for nonoperators issued under G.S. 20-37.7.

(3) A United States passport.

(4) A United States military identification card, except there is no requirement that it have a printed expiration or issuance date.

(5) A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities facilities, except there is no requirement that it have a printed expiration or issuance date.

(6) A tribal enrollment card issued by a federally recognized tribe.

(7) A tribal enrollment card issued by a tribe recognized by this State under Chapter 71A of the General Statutes,

provided that card meets all of the following criteria:

a. Is issued in accordance with a process approved by the State Board of Elections that requires an application and proof of identity equivalent to the requirements for issuance of a special identification card by the Division of Motor Vehicles under G.S. 20-7 and G.S. 20-37.7.

b. Is signed by an elected official of the tribe.

(8) A drivers license or nonoperators identification card issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election."

SECTION 2.2. Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.14. Evaluation of determination of nonreasonable resemblance of photo identification.**

(a) Any local election official that determines the photo identification presented by a voter in accordance with G.S. 163-166.13 does not bear any reasonable resemblance to that voter shall notify the judges of election of the determination.

(b) When notified under subsection (a) of this section, the judges of election present shall review the photo identification presented and the voter to

determine if the photo identification bears any reasonable resemblance to that voter. The judges of election present may consider information presented by the voter in addition to the photo identification and shall construe all evidence presented in a light most favorable to the voter.

(c) A voter subject to subsections (a) and (b) of this section shall be permitted to vote unless the judges of election present unanimously agree that the photo identification presented does not bear any reasonable resemblance to that voter. The failure of the judges of election present to unanimously agree that photo identification presented by a voter does not bear any reasonable resemblance to that voter shall be dispositive of any challenges that may otherwise be made under G.S. 163-85(c)(10).

(d) A voter subject to subsections (a) and (b) of this section shall be permitted to vote a provisional ballot in accordance with G.S. 163-88.1 if the judges of election present unanimously agree that the photo identification presented does not bear any reasonable resemblance to that voter.

(e) At any time a voter presents photo identification to a local election official other than on election day, the county board of elections shall have available to the local election official judges of election for the review required under subsection (b) of this section, appointed with the same qualifications as is in Article 5 of this Chapter, except that the individuals (i) may reside anywhere in the county or (ii) be an employee of the county or the State. Neither the local election official nor the judges of election may be a county board member. The county board is not required to have the same judges of election available throughout the time

period a voter may present photo identification other than on election day but shall have at least two judges, who are not of the same political party affiliation, available at all times during that period.

(f) Any local or State employee appointed to serve as a judge of election may hold that office in addition to the number permitted by G.S. 128-1.1.

(g) The county board of elections shall cause to be made a record of all voters subject to subsection (c) of this section. The record shall include all of the following:

(1) The name and address of the voter.

(2) The name of the local election official under subsection (a) of this section.

(3) The names and a record of how each judge of election voted under subsection (b) of this section.

(4) The date of the determinations under subsections (a) and (b) of this section.

(5) A brief description of the photo identification presented by the voter.

(h) For purposes of this section, the term "judges of election" shall have the following meanings:

(1) On election day, the chief judge and judges of election as appointed under Article 5 of this Chapter.

(2) Any time other than on election day, the individuals appointed under subsection (e) of this section.

(i) The State Board shall adopt rules for the administration of this section."

SECTION 2.3. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.7A. Declaration of religious objection to photograph.**

(a) At the time of approval of the application to register to vote, a voter with a sincerely held religious objection to being photographed may execute a declaration before an election official to that effect to be incorporated as part of the official record of voter registration.

(b) At any time after the voter has registered to vote that the voter has determined the voter has a sincerely held religious objection to being photographed, that voter may execute a declaration before an election official to be incorporated as part of the official record of that voter's voter registration.

(c) At any time after a voter has executed a declaration before an election official under this section and that voter no longer has a sincerely held religious objection to being photographed, that voter may request the cancellation of the declaration in writing to the county board.

(d) All declarations under subsections (a) and (b) of this section shall include a statement by the voter that the voter has a sincerely held religious objection to being photographed and a requirement for the signature of the voter, which includes a notice that a false or fraudulent declaration is a Class I felony pursuant to G.S. 163-275(13).

(e) The State Board shall adopt rules to establish a standard form for the administration of this section."

SECTION 2.5. G.S. 163-166.7(a) reads as rewritten:

"(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to

check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence ~~address~~. address and presenting photo identification in accordance with G.S. 163-166.13. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting."

SECTION 2.6. G.S. 163-166.9 reads as rewritten:

"**§ 163-166.9. Curbside voting.**

(a) In any election or referendum, if any qualified voter is able to travel to the voting place, but because of age or physical disability and physical barriers encountered at the voting place is unable to enter the voting enclosure to vote in person without physical assistance, that voter shall be allowed to vote either in the vehicle conveying that voter or in the immediate proximity of the voting place.

(b) Any qualified voter voting under this section shall comply with G.S. 163-166.13(a) by one of the following means:

(1) Presenting photo identification in accordance with G.S. 163-166.13.

(2) Presenting a copy of a document listed in G.S. 163-166.12(a)(2).

(c) The State Board of Elections shall ~~promulgate~~ adopt rules for the administration of this section."

SECTION 2.7. G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the ~~board~~. board and present photo identification in accordance with G.S. 163-166.13. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be

registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 2.8. Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.1A. Counting of provisional official ballots cast due to failure to provide photo identification when voting in person.**

(a) Unless disqualified for some other reason provided by law, the county board of elections shall find that a voter's provisional official ballot cast as a result of failing to present photo identification when voting in person in accordance with G.S. 163-166.13 is valid and direct that the provisional ballot be opened and counted in accordance with this Chapter if the voter complies with this section.

(b) A voter who casts a provisional official ballot wholly or partly as a result of failing to present photo identification when voting in person in accordance with G.S. 163-166.13 may comply with this section by appearing in person at the county board of elections and doing one of the following:

(1) Presenting photo identification as defined in G.S. 163-166.13(e) that bears any reasonable resemblance to the voter. The local election official to whom the photo identification is presented shall determine if the photo identification bears any reasonable resemblance to that voter. If not, that

local election official shall comply with G.S. 163-166.14.

(2) Presenting any of the documents listed in G.S. 163-166.12(a)(2) and declaring that the voter has a sincerely held religious objection to being photographed. That voter shall also be offered an opportunity to execute a declaration under G.S. 163-82.7A for future elections.

(c) All identification under subsection (b) of this section shall be presented to the county board of elections not later than 12:00 noon the day prior to the time set for the convening of the election canvass pursuant to G.S. 163-182.5.

(d) If the county board of elections determines that a voter has also cast a provisional official ballot for a cause other than the voter's failure to provide photo identification in accordance with G.S. 163-166.13, the county board shall do all of the following:

(1) Note on the envelope containing the provisional official ballot that the voter has complied with the proof of identification requirement.

(2) Proceed to determine any other reasons for which the provisional official ballot was cast provisionally before ruling on the validity of the voter's provisional official ballot."

SECTION 2.9. G.S. 163-87 reads as rewritten:
"**§ 163-87. Challenges allowed on day of primary or election.**

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when ~~he~~ the voter does so may enter the voting enclosure to make the challenge, but ~~he~~ the voter shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).

(2) That the person has already voted in that primary or election.

(3) Repealed by Session Laws 2009-541, s. 16.1(b), effective August 28, 2009.

(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

(5) Except as provided in G.S. 163-166.13(d) and G.S. 163-166.14, the voter does not present photo identification in accordance with G.S. 163-166.13.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer ~~his~~ that voter's registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred ~~his~~ that voter's registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

PART 3. IMPLEMENTATION

SECTION 3.1. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State as follows:

(1) ~~who~~ The applicant is legally ~~blind~~,blind.

(2) The applicant is at least 70 years ~~old~~,old.

(3) The applicant ~~is homeless~~, has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease.

(4) The applicant is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(5) The applicant is registered to vote in this State and does not have photo identification acceptable under G.S. 163-166.13. To obtain a special identification card without paying a fee, a registered voter shall sign a declaration stating the registered voter is registered and does not have other photo identification acceptable under G.S. 163-166.13. The Division shall verify that voter registration prior to issuing the special identification card. Any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely making the declaration.

(6) The applicant is appearing before the Division for the purpose of registering to vote in accordance with G.S. 163-82.19 and does not have other photo identification acceptable under G.S. 163-166.13. To obtain a special identification card without paying a fee, that applicant shall sign a declaration stating that applicant is registering to vote and does not have other photo identification acceptable

under G.S. 163-166.13. Any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely making the declaration."

SECTION 3.2. G.S. 130A-93.1 is amended by adding a new subsection to read:

"(c) Upon verification of voter registration, the State Registrar shall not charge any fee under subsection (a) of this section to a registered voter who signs a declaration stating the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13. Any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration."

SECTION 3.3. G.S. 161-10(a)(8) reads as rewritten:

"(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. – For furnishing a certified copy of a death or birth certificate or marriage license ten dollars ($10.00). Provided however, a ~~Register of Deeds~~ register of deeds, in accordance with G.S. 130A-93, may issue without charge a certified ~~Birth Certificate~~birth certificate to any person over the age of 62 years. Provided, however, upon verification of voter registration, a register of deeds, in accordance with G.S. 130A-93, shall issue without charge a certified copy of a birth

certificate or a certified copy of a marriage license to any registered voter who declares the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13. Any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration."

SECTION 3.4. G.S. 163-275(13) reads as rewritten:

"(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of ~~voting~~; voting, including declarations made under this Chapter, G.S. 20-37.7(d)(5), 20-37.7(d)(6), 130A-93.1(c), and 161-10(a)(8);"

PART 4. ABSENTEE VOTING

SECTION 4.1. G.S. 163-229(b) reads as rewritten:

"(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board

of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, providing for all of the following:

(1) ~~the~~The voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this ~~Article~~,Article.

(2) ~~a~~A space for identification of the envelope with the ~~voter~~,voter and the voter's signature.

(3) ~~and a~~ A space for the identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163-231, those persons' signatures, and those persons' addresses.

(4) A space for the name and address of any person who, as permitted under G.S. 163-226.3(a), assisted the voter if the voter is unable to complete and sign the certification and that individual's signature.

(5) A space for approval by the county board of elections.

(6) ~~The envelope shall~~A space to allow reporting of a change of name as provided by G.S. 163-82.16.

(7) A prominent display of the unlawful acts under G.S. 163-226.3 and G.S. 163-275, except if there is not room on

the envelope, the State Board of Elections may provide for that disclosure to be made on a separate piece of paper to be included along with the container-return envelope.

The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections."

SECTION 4.2. G.S. 163-230.1 reads as rewritten:

"**§ 163-230.1. Simultaneous issuance of absentee ballots with application.**

(a) A qualified voter who ~~is eligible to vote by absentee ballot under G.S. 163-226(a)~~ desires to vote by absentee ballot, or that voter's near relative or verifiable legal guardian, shall complete a request form for ~~in writing an application for absentee ballots,~~an absentee application and absentee ballots so that the county board of elections receives ~~the~~ that completed request form not later than 5:00 P.M. on the Tuesday before the election. That completed written request form shall be ~~signed by the voter, the voter's near relative, or the voter's verifiable legal guardian.~~ in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the ~~application~~,completed request form, the county board of elections shall cause to be mailed to that voter ~~in~~ a single ~~package~~:package that includes all of the following:

(1) The official ballots ~~the~~ that voter is entitled to ~~vote;~~vote.

(2) A container-return envelope for the ballots, printed in accordance with ~~G.S. 163-229; and~~ G.S. 163-229.

(3) Repealed by Session Laws 1999-455, s. 10.

(4) An instruction sheet.

The ballots, envelope, and instructions shall be mailed to the voter by the county board's chairman, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a1) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make ~~written~~ the request under subsection (a) of this section in person ~~for absentee ballots~~ to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal guardian.~~enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county~~

~~board of elections shall personally deliver to the requester in a single package~~:

~~(1) The official ballots the voter is entitled to vote~~;

~~(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and~~

~~(3) An instruction sheet~~.

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this

section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written ~~requests~~request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(c) At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. – During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) Repealed by Session Laws 1999-455, s. 10.

(e) The State Board of Elections, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild."

SECTION 4.3. G.S. 163-230.2 reads as rewritten:

"**§ 163-230.2. Method of requesting absentee ballots.**

(a) Valid Types of Written Requests. – A completed written request form for an absentee ballot as required by G.S. 163-230.1 is valid only if it ~~is written entirely by the requester personally, or~~ is on a form ~~generated~~ created by the ~~county board of elections~~ State Board and signed by the ~~requester~~. voter requesting absentee ballots or that voter's near relative or verifiable legal guardian. ~~The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163-230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.~~ The State Board shall make the form available at its offices, online, and in each county board of elections office, and that form may be reproduced. A voter may make a request in person or by writing to the county board for the form to request an absentee ballot. The request form for an absentee ballot shall require at least the following information:

(1) The name and address of the residence of the voter.

(2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.

(3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.

(4) One or more of the following in the order of preference:

a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.

c. The last four digits of the applicant's social security number.

(5) The voter's date of birth.

(6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.

(a1) A completed request form for an absentee ballot shall be deemed a request to update the official record of voter registration for that voter and shall be confirmed in writing in accordance with G.S. 163-82.14(d).

(a2) The completed request form for an absentee ballot shall be delivered to the county board of elections. If the voter does not include the information requested in subdivision (a)(4) of this section, a copy of a document listed in G.S. 163-166.12(a)(2) shall accompany the completed request form.

(a3) Upon receiving a completed request form for an absentee ballot, the county board shall confirm that voter's registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163-230.1(a1). If the voter's official record of voter registration conflicts with the completed request form for an absentee ballot or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

(b) Invalid Types of Written Requests. – A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163-230.1.

(c) Rules by State Board. – The State Board of Elections shall adopt rules for the enforcement of this section."

SECTION 4.4. G.S. 163-231 reads as rewritten:

"**§ 163-231. Voting absentee ballots and transmitting them to the county board of elections.**

(a) Procedure for Voting Absentee Ballots. – In the presence of ~~a person~~ two persons who ~~is~~ are at least 18 years of age, and who ~~is~~are not disqualified by G.S.

163-226.3(a)(4) or G.S. 163-237(b1), the voter ~~shall~~:shall do all of the following:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's ~~instruction~~;instruction.

(2) Fold each ballot separately, or cause each of them to be folded in the voter's ~~presence~~;presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's ~~presence~~;presence.

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

(5) Require those two persons in whose presence the voter marked that voter's ballots to sign the application and certificate as witnesses and to indicate those persons' addresses.

Alternatively to the prior paragraph of this subsection, any requirement for two witnesses shall be satisfied if witnessed by one notary public, who shall comply with all the other requirements of that paragraph. The notary shall affix a valid notarial seal to the envelope, and include the word "Notary Public" below his or her signature.

The ~~person~~ persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the

voter requests ~~the person's~~ assistance and ~~the~~ that person is otherwise authorized by law to give assistance. ~~The person in whose presence the ballot was marked shall sign the application and certificate as a witness and shall indicate that person's address~~. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued ~~them~~ those ballots as follows:

(1) All ballots issued under the provisions of ~~Articles 20~~ this Article and Article 21A of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian and received by the county board not later than 5:00 p.m. on the day ~~before~~ of the statewide primary or general election or county bond election. Ballots issued under the provisions of Article 21A of this Chapter may also be electronically transmitted.

(2) If ballots are received later than ~~that hour~~, the hour stated in subdivision (1) of this subsection, ~~they~~ those ballots shall not be accepted unless one of the following applies:

a.~~(i)~~ ~~federal~~ Federal law so ~~requires~~,requires.

b.~~(ii)~~ ~~if~~ The ballots issued under this Article ~~20 of this Chapter~~ are postmarked and that postmark is dated on or before ~~by~~ the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by ~~5:00 p.m., or~~ 5:00 p.m.

c.~~(iii)~~ ~~if~~ The ballots issued under Article 21A of this Chapter are received by the county board of elections not later than the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5. ~~Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections~~.

(c) For purposes of this section, "Delivered in person" includes delivering the ballot to an election official at a one-stop voting site under G.S. 163-227.2

during any time that site is open for voting. The ballots shall be kept securely and delivered by election officials at that site to the county board of elections office for processing."

SECTION 4.5. G.S. 163-226 is amended by adding a new subsection to read:

"(d) The Term "Verifiable Legal Guardian." – An individual appointed guardian under Chapter 35A of the General Statutes. For a corporation appointed as a guardian under that Chapter, the corporation may submit a list of 10 named individuals to the State Board of Elections who may act for that corporation under this Article."

SECTION 4.6.(a) G.S. 163-226.3(a)(4) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

…

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to (i) make a written request pursuant to G.S. 163-230.1 or (ii) sign an application or certificate as a witness, on behalf of a registered ~~voter~~ voter, who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to

mark the voter's absentee ballot or assist such a voter in marking an absentee ballot. This subdivision does not apply to members, employees, or volunteers of the county board of elections, if those members, employees, or volunteers are working as part of a multipartisan team trained and authorized by the county board of elections to assist voters with absentee ballots. Each county board of elections shall train and authorize such teams, pursuant to procedures which shall be adopted by the State Board of Elections. If neither the voter's near relative nor a verifiable legal guardian is available to assist the voter, and a multipartisan team is not available to assist the voter within seven calendar days of a telephonic request to the county board of elections, the voter may obtain such assistance from any person other than (i) an owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident; (ii) an individual who holds any elective office under the United States, this State, or any political subdivision of this State; (iii) an individual who is a candidate for nomination or election to such office; or (iv) 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 office. None of the persons listed in (i) through (iv) of this subdivision may sign the application or certificate as a witness for the patient.

…."

SECTION 4.6.(b) The State Board of Elections shall adopt rules prior to October 1, 2013, concerning the multipartisan teams authorized by G.S. 163-226.3(a)(4), as amended by subsection (a) of this section, to ensure that each county has, no later than the day absentee voting begins for each primary and election, trained teams to promptly assist patients and residents of any hospital, clinic, nursing home, or rest home in that county in casting absentee ballots as provided by law. Such rules shall be initially established as temporary rules in accordance with Chapter 150B of the General Statutes.

SECTION 4.7. G.S. 10B-30 is amended by adding a new subsection to read:

"(d) A notary may not charge any fee for witnessing and affixing a notarial seal to an absentee ballot application or certificate under G.S. 163-231."

PART 5. REGISTRATION AND EDUCATION

SECTION 5.1. G.S. 163-82.22 reads as rewritten:

"**§ 163-82.22. Voter registration at ~~public libraries.~~public libraries and public agencies.**

(a) Every library covered by G.S. 153A-272 shall make available to the public the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. Every library covered by G.S. 153A-272 shall designate at least one employee to assist voter registration applicants in completing the form during all times that the library is open.

(b) If approved by the State Board of Elections, the county board of elections, and the county board of commissioners, a county may offer voter registration in accordance with this section through the following additional public offices:

(1) Senior centers or facilities operated by the county.

(2) Parks and recreation services operated by the county."

SECTION 5.2. The State Board of Elections shall disseminate information about photo identification requirements for voting, provide information on how to obtain photo identification appropriate for voting, and assist any registered voter without photo identification appropriate for voting with obtaining such photo identification. Information may be distributed through public service announcements, print, radio, television, online, and social media. The State Board shall work with public agencies, private partners, and nonprofits to identify voters without photo identification appropriate for voting and assist

those voters in securing the photo identification appropriate for voting. All outreach efforts to notify voters of the photo identification requirements shall be accessible to the elderly and persons with disabilities. The State Board of Elections shall work with county boards of elections in those counties where there is no Division of Motor Vehicles drivers license office open five days a week to (i) widely communicate information about the availability and schedules of Division of Motor Vehicles mobile units and (ii) provide volunteers to assist voters with obtaining photo identification through mobile units.

SECTION 5.3. Education and Publicity Requirements. – The public shall be educated about the photo identification to vote requirements of this act as follows:

(1) As counties use their regular processes to notify voters of assignments and reassignments to districts for election to the United States House of Representatives, State Senate, State House of Representatives, or local office, by including information about the provisions of this act.

(2) As counties send new voter registration cards to voters as a result of new registration, changes of address, or other reasons, by including information about the provisions of this act.

(3) Counties that maintain a board of elections Web site shall include

information about the provisions of this act.

(4) Notices of elections published by county boards of elections under G.S. 163-22(8) for the 2014 primary and 2014 general election shall include a brief statement that photo identification will be required to vote in person beginning in 2016.

(5) The State Board of Elections shall include on its Web site information about the provisions of this act.

(6) Counties shall post at the polls and at early voting sites beginning with the 2014 primary elections information about the provisions of this act.

(7) The State Board of Elections shall distribute information about the photo identification requirements to groups and organizations serving persons with disabilities or the elderly.

(8) The State Board of Elections, the Division of Motor Vehicles, and county boards of elections in counties where there is no Division of Motor Vehicles drivers license office open five days a week shall include information about mobile unit schedules on existing Web sites, shall distribute information about these schedules to registered voters identified without photo identification, and shall publicize information about the mobile unit

schedules through other available means.

(9) The State Board of Elections and county boards of elections shall direct volunteers to assist registered voters in counties where there is no Division of Motor Vehicles drivers license office open five days a week.

SECTION 5.4. The State Board of Elections shall include in all forms prepared by the Board a prominent statement that submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes.

SECTION 5.5. By April 1, 2014, the State Board of Elections shall review and make recommendations to the Joint Legislative Elections Oversight Committee on the steps recommended by the Board to implement the use of electronic and digital information in all polling places statewide. The review shall address all of the following:

(1) Obtaining digital photographs of registered voters and verifying identity of those voters.

(2) Maintaining information stored electronically in a secure fashion.

(3) Utilizing electronically stored information, including digital photographs and electronic signatures, to create electronic pollbooks.

(4) Using electronic pollbooks to assist in identifying individuals attempting to vote more than once in an election.

(5) A proposed plan for a pilot project to implement electronic pollbooks,

including the taking of digital photographs at the polling place to supplement the electronic pollbooks.

(6) Any other related matter identified by the State Board impacting the use of digital and electronic information in the voting place.

PART 6. EFFECTIVE DATE

SECTION 6.2. Parts 1 through 6 of this act become effective as follows:

(1) Parts 1 and 6 of this act are effective when this act becomes law.

(2) Part 2 of this act becomes effective January 1, 2016, and applies to primaries and elections conducted on or after that date.

(3) Part 3 of this act becomes effective January 1, 2014.

(4) Part 4 of this act becomes effective January 1, 2014, and applies to primaries and elections held on or after that date, except that Section 4.6(b) is effective when it becomes law.

(5) Part 5 of this act becomes effective October 1, 2013.

(6) At any primary and election between May 1, 2014, and January 1, 2016, any registered voter may present that voter's photo identification to the elections officials at the voting place but may not be required to do so. At each primary and election between May 1, 2014, and January 1, 2016, each voter presenting in person shall

be notified that photo identification will be needed to vote beginning in 2016 and be asked if that voter has one of the forms of photo identification appropriate for voting. If that voter indicates he or she does not have one or more of the types of photo identification appropriate for voting, that voter shall be asked to sign an acknowledgment of the photo identification requirement and be given a list of types of photo identification appropriate for voting and information on how to obtain those types of photo identification. The list of names of those voters who signed an acknowledgment is a public record.

PART 7. STUDY FILLING OF VACANCIES IN THE GENERAL ASSEMBLY

SECTION 7.1 The Joint Legislative Elections Oversight Committee shall study the method of filling vacancies in the General Assembly, and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 8. FILLING OF VACANCIES IN THE UNITED STATES SENATE

SECTION 8.1. G.S. 163-12 reads as rewritten:

"**§ 163-12. Filling vacancy in United States Senate.**

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. If the Senator was elected as the nominee of a political party, the person appointed by the Governor shall be a person affiliated with that same political party. The Governor shall issue ~~his~~ a writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns."

PART 9. FILLING OF VACANCIES IN UNITED STATES HOUSE OF REPRESENTATIVES

SECTION 9.1. The Joint Legislative Elections Oversight Committee shall study the method of filling vacancies in the United States House of Representatives by special election, and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 10. SPECIAL ELECTION DATES

SECTION 10.1. G.S. 163-287 reads as rewritten:

"**§ 163-287. Special elections; procedure for calling.**

(a) Any ~~municipality~~ county, municipality, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the ~~city council or the~~ governing body of the county, municipality, or special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the ~~appropriate~~ local board of elections. The resolution shall call on the local board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held only at the same time as any other State, county or municipal ~~primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.~~ general election or at the same time as the primary election in any even-numbered year.

(b) Legal notice of the special election shall be published no less than 45 days prior to the special election. The local board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This ~~paragraph~~ subsection shall not apply to bond elections.

(c) The last sentence of subsection (a) of this section shall not apply to any special election related to the public health or safety, including a vacancy in the office of sheriff or a bond referendum for financing of health and sanitation systems, if the governing body adopts a resolution stating the need for the special election at a

time different from any other State, county, or municipal general election or the primary in any even-numbered year.

(d) The last sentence of subsection (a) of this section shall not apply to municipal incorporation or recall elections pursuant to local act of the General Assembly.

(e) The last sentence of subsection (a) of this section shall not apply to municipal elections to fill vacancies in office pursuant to local act of the General Assembly where more than six months remain in the term of office, and if less than six months remain in the office, the governing board may fill the vacancy for the remainder of the unexpired term notwithstanding any provision of a local act of the General Assembly.

(f) This section shall not impact the authority of the courts or the State Board to order a new election at a time set by the courts or State Board under this Chapter."

SECTION 10.2. Article 1 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-3. Special elections.**

Special elections shall be called as permitted by law and conducted in accordance with G.S. 163-287."

SECTION 10.3. G.S. 18B-601(f) reads as rewritten:

"(f) Election Date. – The board of elections shall conduct and set the date for the alcoholic beverage ~~election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board~~. election in accordance with G.S. 163-287. ~~No alcoholic beverage election may be held on the Tuesday next after the first Monday in November~~

~~of an even-numbered year~~."

SECTION 10.4. G.S. 63-80(c) reads as rewritten:

"(c) Following the joint public hearing but prior to the adoption by a unit of local government of any resolution creating a special airport district, the governing body of such unit may submit the question of the unit's participation in a special airport district to the qualified voters of such unit. The form of the question as stated on the ballot shall be in substantially the following words:

"Shall the governing body of _____ approve _____'s participation in the proposed _____ special airport district?

[ ] YES [ ] NO"

If a majority of the qualified voters of the unit who vote thereon approve such participation, the governing body of such unit may adopt a resolution creating the particular special airport district. The election shall be conducted in accordance with G.S. 163-287 and the results thereof certified, declared and published in the same manner as bond elections within the unit."

SECTION 10.5. G.S. 63-87 reads as rewritten:

"**§ 63-87. Bond elections.**

Elections for the purpose of authorizing the levy of taxes for the issuance of bonds shall be called by the district board and shall be conducted in accordance with G.S. 163-287 and the results canvassed by the boards of elections having jurisdiction within the participating units. Such results shall be certified to the district board and such board shall certify and declare the result of the election and publish a

statement of the result once as provided in the Local Government Bond Act."

SECTION 10.6. G.S. 69-25.1 reads as rewritten:

"**§ 69-25.1. Election to be held upon petition of voters.**

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as "_____ Fire District," the board of
(Here insert name)
county commissioners of the county shall call ~~an~~ a special election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property, for the purpose of providing fire protection in said district. The county tax office shall be responsible for checking the freeholder status of those individuals signing the petition and confirming the location of the property owned by those individuals. Unless specifically excluded by other law, the provisions of Chapter 163 of the General Statutes concerning petitions for referenda and special elections shall apply. If the voters reject the special tax under the first paragraph of this section, then no new election may be held under the first paragraph of this section within two years on the question of levying and collecting a special tax under the first paragraph of this section in that district, or in any proposed district which includes a majority of the land within the district in which the tax was rejected.

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area which has previously been established as a fire protection district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars ($100.00) valuation of property within the area, the board of county commissioners shall call ~~an~~ a special election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for fire protection within said district from ten cents (10¢) on the one hundred dollars ($100.00) valuation to fifteen cents (15¢) on the one hundred dollars ($100.00) valuation on all taxable property within such district. ~~Elections~~ Special elections on the question of increasing the allowable tax rate for fire protection shall not be held within the same district at intervals less than two years."

SECTION 10.7. G.S. 69-25.2 reads as rewritten:

"**§ 69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding.**

The board of county commissioners, after consulting with the county board of elections, shall set a date for the special election in accordance with G.S. 163-287 by resolution adopted. The county board of elections shall hold and conduct the election in the district. The county board of elections shall advertise and conduct said election, in accordance with the provisions of this Article and with the procedures prescribed in Chapter 163 governing the conduct of special and general elections. ~~No new registration of voters shall be required, but the deadline by which unregistered voters must register shall be contained in the legal~~

~~advertisement to be published by the county board of elections.~~ The cost of holding the election to establish a district shall be paid by the county, provided that if the district is established, then the county shall be reimbursed the cost of the election from the taxes levied within the district, but the cost of an election to increase the allowable tax under G.S. 69-25.1 or to abolish a fire district under G.S. 69-25.10 shall be paid from the funds of the district."

SECTION 10.8. G.S. 105-465 reads as rewritten:

"**§ 105-465. County election as to adoption of local sales and use tax.**

The board of elections of any county, upon the written request of the board of county commissioners, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax will be levied.

The special election shall be held under the same rules applicable to the election of members of the General Assembly. ~~No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at the election~~.

The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election. The county board of elections shall prepare ballots for the special

election. The question presented on the ballot shall be "FOR one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food" or "AGAINST one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food".

The county board of elections shall fix the date of the special ~~election~~, election on a date permitted by G.S. 163-287, except that the special election shall not be held ~~on the date or within 60 days of any biennial election for county officers, nor~~ within one year from the date of the last preceding special election under this section."

SECTION 10.9. G.S. 105-473(a) reads as rewritten:

"(a) The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether the levy of a one percent (1%) sales and use tax theretofore levied should be repealed.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. ~~No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration~~

~~books for the special election~~.

The county board of elections shall prepare ballots for the special election which shall contain the words "FOR repeal of the one percent (1%) local sales and use tax levy," and the words "AGAINST repeal of the one percent (1%) local sales and use tax levy," with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special ~~election~~; election on a date permitted by G.S. 163-287; provided, however, that the special election shall not be held ~~on the day of any biennial election for county officers, nor~~ within 60 days thereof, nor within one year from the date of the last preceding special election held under this section."

SECTION 10.10. G.S. 105-507.1(a) reads as rewritten:

"(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Part. The election shall be held ~~on a date jointly agreed upon by the boards and shall be held~~ in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held."

SECTION 10.11. G.S. 105-509(b) reads as rewritten:

"(b) Resolution. – The board of trustees of the regional public transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections

to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. ~~An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date~~. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:

a. A majority vote of each of the county boards of commissioners within the special district, if it is a multicounty special district.

b. A majority of the county board of commissioners within the special district, if it is a single-county special district.

(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held."

SECTION 10.12. G.S. 105-510(b) reads as rewritten:

"(b) Resolution. – The board of trustees of the regional transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. ~~An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date~~. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:

a. A majority vote of both of the county boards of commissioners within the special district, if it is a multicounty special district.

b. A majority of the county board of commissioners within the special district, if it is a single-county special district.

(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held."

SECTION 10.13. G.S. 105-511.2(a) reads as rewritten:

"(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-quarter percent (1/4%) may be levied in accordance with this Part. The election shall be held on a date jointly agreed upon by the boards and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. ~~An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as~~

~~listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date.~~ The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held."

SECTION 10.14. G.S. 105-537(b) reads as rewritten:

"(b) Vote. – The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in this Article. The election shall be held ~~on a date jointly agreed upon by the board of county commissioners and the board of elections and shall be held~~ in accordance with the procedures of G.S. 163-287."

SECTION 10.15. G.S. 106-343 reads as rewritten:

"**§ 106-343. Appropriations by counties; elections.**

The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in 10 days after said appropriation is voted, one fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under ~~the rules and regulations provided for~~

~~holding stock-law elections in G.S. 68-16, 68-20 and 68-21~~.G.S. 163-287. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation."

SECTION 10.16. G.S. 115C-501(h) reads as rewritten:

"(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts. – An election may be called in any districts or other school areas, from contiguous counties, as to whether the districts in one county shall be enlarged by annexing or consolidating therewith any adjoining districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the districts in the other county. If such election carries, the said special or supplemental tax shall be collected pursuant to G.S. 115C-511 and remitted to the local school administrative unit on whose behalf such special and supplemental tax is already ~~levied. Provided, that notwithstanding the provisions of G.S. 115C-508, if the notice of election~~

~~clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such elections.~~levied."

SECTION 10.17. G.S. 115C-501 is amended by adding a new subsection to read:

"(j) All elections called under this section shall be conducted in accordance with G.S. 163-287."

SECTION 10.18. G.S. 115D-33(d) reads as rewritten:

"(d) All elections shall be held in the same manner as elections held under Article 4, Chapter 159, of the General Statutes, the Local Government Bond Act, and ~~may be held at any time fixed by the tax-levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.~~shall be held on a date permitted by G.S. 163-287."

SECTION 10.19. G.S. 115D-35(a) reads as rewritten:

"(a) Formal requests for elections on the question of authority to appropriate nontax revenues or levy special taxes, or both, and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

(1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the

proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who ~~may~~ shall fix the time for such election by joint resolution on a date permitted by G.S. 163-287, which shall be entered in the minutes of each board.

(2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who ~~may~~ shall fix the time for such election by resolution on a date permitted by G.S. 163-287, which shall be entered in the minutes of the board."

SECTION 10.20. G.S. 130A-69 reads as rewritten:

"(a) If after a sanitary district has been created or the provisions of this Part have been made applicable to a sanitary district, a petition signed by not less than fifteen percent (15%) of the resident freeholders within any territory contiguous to and adjoining the sanitary district may be presented to the sanitary district board requesting annexation of territory described in the petition. The sanitary district board shall send a copy

of the petition to the board of commissioners of the county or counties in which the district is located and to the Department. The sanitary district board shall request that the Department hold a joint public hearing with the sanitary district board on the question of annexation. The Secretary and the chairperson of the sanitary district board shall name a time and place for the public hearing. The chairperson of the sanitary district board shall publish a notice of public hearing once in a newspaper or newspapers published or circulating in the sanitary district and the territory proposed to be annexed. The notice shall be published not less than 15 days prior to the hearing. If after the hearing, the Commission approves the annexation of the territory described in the petition, the Department shall advise the board or boards of commissioners of the approval. The board or boards of commissioners shall order and provide for the holding of a special election in accordance with G.S. 163-287 upon the question of annexation within the territory proposed to be annexed.

(b) If at or prior to the public hearing, a petition is filed with the sanitary district board signed by not less than fifteen percent (15%) of the freeholders residing in the sanitary district requesting an election be held on the annexation question, the sanitary district board shall send a copy of the petition to the board or boards of commissioners who shall order and provide for the submission of the question to the voters within the sanitary district. This election may be held on the same day as the election in the territory proposed to be annexed, and both elections and registrations may be held pursuant to a single notice. A majority of the votes cast is necessary for a territory to be annexed to a

sanitary district.

(c) The election shall be held by the county board or boards of elections ~~as soon as possible~~ in accordance with G.S. 163-287 after the board or boards of commissioners orders the election. The cost of the election shall be paid by the sanitary district. Registration in the area proposed for annexation shall be under the same procedure as G.S. 163-288.2.

…."

SECTION 10.21. G.S. 139-39 reads as rewritten:

"**§ 139-39. Alternative method of financing watershed improvement programs by special county tax.**

The board of county commissioners in any county is authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of flood water and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources. Any special election shall be conducted in accordance with G.S. 163-287."

SECTION 10.22. G.S. 147-69.6(f) reads as rewritten:

"(f) The Board of Commissioners of Swain County may direct the Swain County Board of Elections to conduct an advisory referendum on the question of whether any portion of the principal of the Fund should be disbursed to and expended by the county for a particular purpose. The election shall be held ~~on a date jointly agreed upon by the two boards, which may be the same day as any other referendum or election in the county, but may not otherwise be during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board of elections and already validly called or scheduled by law. The election shall be held~~ in accordance with the procedures of G.S. 163-287. The question to be presented on the ballot shall disclose the specific purpose proposed for expenditure of the principal investment of the Trust Fund and the amount proposed for expenditure."

SECTION 10.23. G.S. 153A-60 reads as rewritten:

"**§ 153A-60. Initiation of alterations by resolution.**

The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

(1) Briefly but completely describe the proposed alterations;

(2) Prescribe the manner of transition from the existing structure to the altered structure;

(3) Define the electoral districts, if any, and apportion the members among the districts;

(4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held only on a date permitted by G.S. 163-287. ~~at the same time as any other state, county or municipal primary, election, special election or referendum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county~~.

Upon its adoption, the resolution shall be published in full."

SECTION 10.24. G.S. 153A-405(a) reads as rewritten:

"(a) If authorized to do so by the concurrent resolutions that established it, a commission may call a referendum on its proposed plan of governmental consolidation. If authorized or directed in the concurrent resolutions, the ballot question may include the assumption of debt secured by a pledge of faith and credit language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided in subsection (b) of this section. The referendum ~~may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 30 days before and ending~~

~~30 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law~~. shall be held in accordance with G.S. 163-287."

SECTION 10.25. G.S. 158-16 reads as rewritten:

"**§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.**

The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. Any special election shall be conducted in accordance with G.S. 163-287."

SECTION 10.26. G.S. 159-61(b) reads as rewritten:

"(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond ~~order~~. order, only on a date permitted by G.S. 163-287. ~~The governing board may call a special referendum for the purpose of voting on a bond issue on any day, including the day of any regular or special election held for another purpose (unless the law under which the bond referendum or other election is held specifically prohibits submission of other questions at the same time). A special bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum, or within 30 days before or 10 days after any other primary, election, or referendum to be held in the same unit holding the bond referendum and already validly called or scheduled by law at the time the bond referendum is called~~. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. ~~In fixing the date of a bond referendum, the governing board shall consult the board of elections in order that the referendum shall not unduly interfere with other elections already scheduled or in process~~. Several bond orders or other matters may be voted upon at the same referendum."

SECTION 10.27. G.S. 160A-103 reads as rewritten:

"**§ 160A-103. Referendum on charter amendments by ordinance.**

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed ~~at~~ on a date permitted by G.S. 163-287. ~~not more than 120 nor fewer than 60 days after receipt of the petition~~. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance."

SECTION 10.28. G.S. 160A-104 reads as rewritten:

"**§ 160A-104. Initiative petitions for charter amendments.**

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but

completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed ~~at~~ on a date permitted by G.S. 163-287. ~~not more than 120 nor fewer than 60 days after receipt of the petition~~. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceeding under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an

initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot."

SECTION 10.29. G.S. 160A-583 reads as rewritten:

"**§ 160A-583. Funds.**

The establishment and operation of a transportation authority as herein authorized are governmental functions and constitute a public purpose, and the municipality is hereby authorized to appropriate funds to support the establishment and operation of the transit authority. The municipality may also dedicate, sell, convey, donate or lease any of its interest in any property to the authority. Further, the authority is hereby authorized to establish such license and regulatory fees and charges as it may deem appropriate, subject to the approval of the governing body of the municipality. If the governing body finds that the funds otherwise available are insufficient, it may call a special election without a petition and submit to the qualified voters of the municipality the question of whether or not a special tax shall be levied and/or bonds issued, specifying the maximum amount thereof, for the purpose of acquiring lands, buildings, equipment and facilities and for the operations of the transit authority. Any special election shall be conducted in accordance with G.S. 163-287."

SECTION 10.30. G.S. 162A-68(d) reads as rewritten:

"(d) If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the qualified voters residing in the district, requesting an election to be held therein on the question of including the political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with G.S. 163-287 and the other applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election."

SECTION 10.31. G.S. 162A-77.1 reads as rewritten:

"**§ 162A-77.1. Special election upon the question of the merger of metropolitan sewerage districts into cities or towns.**

Any district lying entirely within the corporate limits of a city or town may be merged into such city or town in accordance with the provisions of this section.

The governing body of a city or town, with the approval of the district board, shall call and conduct a special election within such city or town on the question of the merger of the district into the city or town. A vote in favor of such merger shall constitute a vote for such city or town to assume the obligations of the district. Such special election may be called and conducted by the governing body of a city or town upon its own motion after passage of a resolution of the district board requesting or approving the special election. Any special election shall be conducted in accordance with G.S. 163-287.

A new registration of voters shall not be required for the special election. The special election shall be conducted in accordance with the provisions of law applicable to regular elections in the city or town.

If a majority of the votes are in favor of the merger, then:

(1) All property, real and personal and mixed, including accounts receivable, belonging to such district shall vest in, belong to, and be the property of, such city or town. All district boards are hereby authorized to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.

(2) All judgments, liens, rights of liens, and causes of action of any nature in favor of such district shall vest in and remain and inure to the benefit of such city or town.

(3) All taxes, assessments, sewer charges, and any other debts, charges or fees,

owing to such district shall be owed to and collected by such city or town.

(4) All actions, suits and proceedings pending against, or having been instituted by, such district shall not be abated by this section or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and such city or town shall be a party to all such actions, suits, and proceedings in the place and stead of the district and shall pay or cause to be paid any judgments rendered against the district in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(5) All obligations of the district, including outstanding indebtedness, shall be assumed by such city or town, and all such obligations and outstanding indebtedness shall constitute obligations and indebtedness of such city or town, and the full faith and credit of such city or town shall be deemed to be pledged for the punctual payment of the principal of and the interest on any general obligation bonds or bond anticipation notes of such district, and all the taxable property within such city or town, as well as that formerly located

within the district, shall be and remain subject to taxation for such payment.

(6) All ordinances, rules, regulations, and policies of such district shall continue in full force and effect until repealed or amended by the governing body of such city or town.

(7) Such district shall be abolished, and shall no longer be constituted a public body or a body politic and corporate, except for the purposes of carrying into effect the provisions and the intent of this section.

If a majority of the votes are against the merger, then such merger shall not be effective unless approved by a majority of the qualified voters who vote thereon in a subsequent special election conducted under authority of this section.

Any action or proceeding in any court to set aside a special election held under authority of this section or the result thereof, or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election is invalid, must be commenced within 30 days after the day of such special election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election or the result thereof shall be asserted, nor shall the validity of the election or of the result thereof be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period."

SECTION 10.32. This Part becomes effective January 1, 2014, and applies to special elections held on or after that date.

PART 11. POLL OBSERVERS

SECTION 11.1. G.S. 163-45 reads as rewritten:

"**§ 163-45. Observers; appointment.**

(a) The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The list submitted by the chair of the political party may be amended between the one-stop period under G.S. 163-227.2 and general election day to substitute one or all at-large observers for election day. Not more than two observers from the same political party shall be permitted in the voting enclosure at any ~~time~~. time, except that in addition one of the at-large observers from each party may also be in the voting enclosure. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be

registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

(b) Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that ~~precinct~~. precinct, except that the list of at-large observers authorized in subsection (a) of this section shall be submitted to the county director of elections. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct or at-large status for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected ~~precinct~~. precinct, except that the list of at-large observers shall be provided by the county director of elections to the chief judge. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163-227.2, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe. At-large observers may serve at any one-stop site.

(c) An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit the observer to make such observation and take such notes as the observer may desire.

(d) Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart.

Instead of having an observer receive the voting list, the county party chair may send a runner to do so, even if an observer has not been appointed for that precinct. The runner may be the precinct party chair or any person named by the county party chair. Each county

party chair using runners in an election shall provide to the county board of elections before 10:00 A.M. on the fifth day before election day a list of the runners to be used. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence and to receive the list. The runner must leave immediately after being provided with the list."

SECTION 11.2. The Joint Legislative Elections Oversight Committee shall study a bill of rights for election observers to guarantee their right to help assist proper voting while ensuring proper protection for voters and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014 and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 12. ELIMINATION OF PREREGISTRATION

SECTION 12.1.(a) G.S. 163-82.1(d) is repealed.

SECTION 12.1.(b) G.S. 163-82.3(a)(5) is repealed.

SECTION 12.1.(c) G.S. 163-82.4(d) reads as rewritten:

"(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the

following:

(1) The following question and statement:

a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. "If you checked 'no' in response to this question, do not submit this form."

(2) The following ~~questions~~ question and statement:

a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

~~b.~~ ~~"Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?" and boxes for the applicant to check to indicate whether the applicant is at least 16 years of age and understands that the applicant must be at least 18 years of age or older by election day to vote~~.

c. "If you checked 'no' in response to ~~both of these questions~~, this question, do not submit this form."

SECTION 12.1.(d) G.S. 163-82.23 reads as rewritten:

"**§ 163-82.23. Voter registration at public high schools.**

Every public high school shall make available to its students and others who are eligible to register ~~and preregister~~ to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education."

SECTION 12.1.(e) G.S. 163-82.19(a) reads as rewritten:

"(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote, or to update the voter's registration if the voter has changed his or her address or moved from one precinct to another or from one county to ~~another, or to preregister to vote~~. another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application

shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate board of elections. ~~Applications for preregistration to vote shall be forwarded to the State Board of Elections~~."

SECTION 12.1.(f) G.S. 163-82.20 reads as rewritten:

"**§ 163-82.20. Voter registration at other public agencies.**

(a) Voter Registration Agencies. – Every office in this State which accepts:

(1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

(2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or

(3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law, is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. – A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register ~~or preregister~~ to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163-82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has

been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to ~~register or preregister~~. register.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register ~~or preregister~~ to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled. – If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions. – Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;

(2) Display any such political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering ~~or preregistering~~ to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register ~~or preregister~~ or not to register ~~or preregister~~ has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register. – No information relating to a declination to register ~~or preregister~~ to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections. – Any voter registration ~~or preregistration~~ application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the

appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) Twenty-Five-Day Deadline for an Election. – Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) Ineligible Applications Prohibited. – No person shall make application to register ~~or preregister~~ to vote under this section if that person is ineligible on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony."

SECTION 12.1.(g) G.S. 115C-81(g1)(1) reads as rewritten:

"(1) The State Board of Education shall modify the high school social studies curriculum to include instruction in civic and citizenship education. The State Board of Education is strongly encouraged to include, at a minimum, the following components in the high school civic and citizenship education curriculum:

a. That students write to a local, State, or federal elected official about an issue that is important to them;

b. Instruction on the importance of voting and otherwise participating in the democratic process, including instruction on voter ~~registration and preregistration~~; registration;

c. Information about current events and governmental structure; and

d. Information about the democratic process and how laws are made."

SECTION 12.1.(h) G.S. 115C-47(59) reads as rewritten:

"(59) To Encourage Student Voter ~~Registration and Preregistration~~. Registration. – Local boards of education are encouraged to adopt policies to promote student voter ~~registration and preregistration~~. registration. These policies may include collaboration with county boards of elections to conduct voter registration and preregistration in high schools. Completion and submission of voter registration ~~or preregistration~~ forms shall not be a course requirement or graded assignment for students."

SECTION 12.1.(i) The Department of Public Instruction is encouraged to improve outreach to high school students on registering to vote when they are eligible, including the curriculum element on instruction in voter registration already provided by G.S. 115C-47(59) and voter registration in public high schools as already allowed by G.S. 163-82.23.

SECTION 12.1.(j) This section becomes effective September 1, 2013. All voter preregistrations completed and received by the State Board prior to that date shall be processed and those voters registered, as appropriate.

PART 13. "WET INK" ON VOTER REGISTRATION FORMS

SECTION 13.1. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured signature, including signatures on applications generated by computer programs of third-party groups, shall not be valid on a voter registration form, except as provided in Article 21A of this Chapter. ~~An~~ Notwithstanding the provisions of this subsection, an electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

PART 14. COMPENSATION FOR VOTER REGISTRATION LIMITED

SECTION 14.1. G.S. 163-274(a) is amended by adding a new subdivision to read:

"(14) For any person to be compensated based on the number of forms submitted for assisting persons in registering to vote."

PART 16. ELIMINATE SAME-DAY VOTER REGISTRATION

SECTION 16.1. The subsections of G.S. 163-82.6A, other than subsection (e), are repealed.

SECTION 16.1A. The catch line of G.S. 163-82.6A reads as rewritten:

"**§ 163-82.6A. ~~In-person registration and voting~~ Address and name changes at one-stop sites.**"

SECTION 16.2. G.S. 163-59 reads as rewritten:

"**§ 163-59. Right to participate or vote in party primary.**

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.

(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to

register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. ~~Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)~~."

SECTION 16.3. G.S. 163-82.6(c) reads as rewritten:

"(c) Registration Deadlines for a Primary or Election. – In order to be valid for a primary or election, ~~except as provided in G.S. 163-82.6A~~, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the primary or election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the primary or election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the primary or election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to

the delegatee not later than 25 days before the primary or election, except as provided in subsection (d) of this section."

SECTION 16.4. G.S. 163-166.12(b2) reads as rewritten:

"(b2) Voting When Identification Numbers Do Not Match. – Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. ~~If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply~~."

SECTION 16.5. G.S. 163-227.2(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote

under the provisions of this ~~section and of G.S. 163-82.6A, as applicable~~. section."

SECTION 16.6. G.S. 163-283 reads as rewritten:

"**§ 163-283. Right to participate or vote in party primary.**

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.

(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c)

prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. ~~Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)~~."

SECTION 16.7. G.S. 163-283.1 reads as rewritten:

"**§ 163-283.1. Voting in nonpartisan primary.**

Any person who will become qualified by age to register and vote in the general election for which a nonpartisan primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such a person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. ~~Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)~~."

SECTION 16.8. G.S. 163-330 reads as rewritten:

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later

than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. ~~Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f).~~"

PART 17. ENHANCE DELIVERY OF MILITARY AND OVERSEAS ABSENTEE BALLOTS FOR PRESIDENTIAL ELECTIONS WHEN PRESIDENTIAL NOMINATING CONVENTIONS CONCLUDE AFTER LABOR DAY

SECTION 17.(a) G.S. 163-227.3 reads as rewritten:

"**§ 163-227.3. Date by which absentee ballots must be available for voting.**

(a) A board of elections shall provide absentee ballots of the kinds needed 60 days prior to the statewide general election in even-numbered years and 50 days prior to the date on which any other election shall be conducted, unless 45 days is authorized by the State Board of Elections under G.S. 163-22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. Provided, in a presidential election year, the board of elections shall provide general election ballots no later than three days after nomination of the presidential and vice presidential candidates if that nomination occurs later than 63 days prior to the statewide general election and makes compliance with the 60-day deadline impossible. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which

absentee voting is authorized to commence.
(b) Second Primary. – The board of elections shall provide absentee ballots, of the kinds needed, as quickly as possible after the ballot information for a second primary has been determined."

SECTION 17.(b) G.S. 163-258.9(a) reads as rewritten:

"(a) Not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before any other election, the county board of elections shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application, except for a second primary. Provided, in a presidential election year, the board of elections shall provide general election ballots no later than three days after nomination of the presidential and vice presidential candidates if that nomination occurs later than 63 days prior to the statewide general election and makes compliance with the 60-day deadline impossible. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. For a second primary which includes a candidate for federal office, the county board of elections shall transmit a ballot and balloting material to all covered voters who by that date submit a valid military-overseas ballot application no later than 45 days before the second primary. For a second primary which does not include a candidate for federal office, the transmission of the ballot and ballot materials shall be as soon as practicable and shall be transmitted electronically no later than three business days and by mail no later than 15 days from the date the appropriate board of elections orders that the second

primary be held pursuant to G.S. 163-111. If additional offices are added to the ballot to fill a vacancy occurring after the deadline provided by this subsection, those ballots shall be transmitted as soon as practicable."

PART 18. LIST MAINTENANCE/INTERSTATE AGREEMENTS TO IMPROVE VOTER ROLLS

SECTION 18.1. G.S. 163-82.14(a) reads as rewritten:

"(a) Uniform Program. – The State Board of Elections shall adopt a uniform program that makes a ~~reasonable effort~~: diligent effort not less than twice each year:

(1) To remove the names of ineligible voters from the official lists of eligible voters, and

(2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal ~~Service~~. Service, and entering into data sharing agreements with other states to cross-check information on voter registration and voting records. Any data sharing agreement shall require the other state or states to comply with G.S. 163-82.10 and G.S. 163-82.10B. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section

and with the program adopted by the State Board. The county boards of elections shall complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county."

SECTION 18.2. The State Board of Elections shall actively seek ways to share and cross-check information on voting records and voter registration with other states to improve the accuracy of voter registration lists, using resources such as the Electronic Registration Information Center and by entering into interstate compacts for this purpose.

SECTION 18.3. This Part is effective when it becomes law.

PART 19. NO MANDATED VOTER REGISTRATION DRIVE

SECTION 19.1. G.S. 163-82.25 is repealed.

PART 20. VOTER RECORDS ACCESS CLARIFICATION AND CHALLENGES

SECTION 20.1. G.S. 163-84 reads as rewritten:

"**§ 163-84. Time for challenge other than on day of primary or election.**

The registration records of each county shall be open to inspection by any registered voter of the ~~county~~, State, including any chief judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge."

SECTION 20.2. G.S. 163-87 reads as rewritten:

"**§ 163-87. Challenges allowed on day of primary or election.**

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the ~~precinct~~ county may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the ~~precinct~~ county may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).

(2) That the person has already voted in that primary or election.

(3) Repealed by Session Laws 2009-541, s. 16.1(b), effective August 28, 2009.

(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

PART 21. CANDIDATE WITHDRAWAL

SECTION 21.1. G.S. 163-106(e) reads as rewritten:

"(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee."

SECTION 21.2. G.S. 163-294.2(d) reads as rewritten:

"(d) Any person may withdraw his notice of candidacy at any time prior to the close of business on the third business day prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so."

SECTION 21.3. G.S. 163-323(c) reads as rewritten:

"(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section."

PART 22. PETITIONS IN LIEU

SECTION 22.1. G.S. 163-107.1 reads as rewritten:

"**§ 163-107.1. Petition in lieu of payment of filing fee.**

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ~~ten percent (10%)~~ five percent (5%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than ~~10,000~~ 8,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the

petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ~~ten percent (10%)~~ five percent (5%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to

implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. – Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ~~ten percent (10%)~~ five percent (5%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot."

SECTION 22.2. G.S. 163-325(b) reads as rewritten:

"(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by ~~10,000~~ 8,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ~~ten percent (10%)~~ five percent (5%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be

printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

PART 23. TIMELY WITHDRAWAL OF PARTY NOMINEE

SECTION 23.1. G.S. 163-113 reads as rewritten:

"**§ 163-113. Nominee's right to withdraw as candidate.**

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate unless, ~~at least 30 days before the general election~~, prior to the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, ~~he~~ that person submits to the board of elections which certified ~~his~~ the nomination a written request that ~~he~~ person be permitted to withdraw."

PART 24. BETTER MANAGE PRECINCT SIZES

SECTION 24.1. The Joint Legislative Elections Oversight Committee shall study optimal numbers of voters in election precincts so as to reduce overcrowding and long lines and recommend to the General Assembly any legislation it deems advisable. The study shall also examine the size of the polling place itself, its accessibility, and parking availability. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 25. EARLY VOTING SITES WITHIN A COUNTY

SECTION 25.1. G.S. 163-227.2(b) and (g) read as rewritten:

"**§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.**

…

(b) Not earlier than the ~~third~~ second Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, provided in subsection (g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. ~~1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday.~~ That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall

state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

…

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections

office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county. Any plan adopted by either the county board of elections or the State Board of Elections under this subsection shall provide for the same days of operation and same number of hours of operation on each day for all sites in that county for that election. The requirement of the previous sentence does not apply to the county board of elections office itself nor, if one-stop voting is not conducted at the county board of elections office, to the reasonably proximate alternate site approved under this subsection."

SECTION 25.2. G.S. 163-227.2 is amended by adding a new subsection to read:

"(g2) Notwithstanding the requirements of subsection (g) and (g1) of this section, for any county board of elections that provided for one or more sites as provided in subsection (g) of this section during the 2010 or 2012 general election, that county shall provide, at a minimum, the following:

"(1) The county board of elections shall calculate the cumulative total number of scheduled voting hours at all sites during the 2012 primary and general elections, respectively, that the county provided for absentee ballots to be applied for and voted under this section. For elections which include a presidential candidate on the ballot, the county shall ensure that at least the same number of hours offered in 2012 is offered for absentee ballots to be applied for and voted under this section through a combination of hours and numbers of one-stop sites during the primary or general election, correspondingly.

(2) The county board of elections shall calculate the cumulative total number of scheduled voting hours at all sites during the 2010 primary and general elections, respectively, that the county provided for absentee ballots to be applied for and voted under this section. For elections which do not include a presidential candidate on the ballot, the county shall ensure that at least the same number of hours offered in 2010 is offered for absentee ballots to be applied for and voted under this section through a combination of hours and numbers of one-stop sites during the primary or general election, correspondingly.

The State Board of Elections, to ensure compliance with this subsection, may approve a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, but may deny approval if a member of that board presents evidence that other equally suitable sites were available and the use of the sites chosen would unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county."

SECTION 25.3. G.S. 163-227.2 is amended by adding a new subsection to read:

"(g3) A county board of elections by unanimous vote of the board, with all members present and voting, may submit a request to the State Board to reduce the number of hours established in subsection (g2) of this section for a primary or a general election. The reduction shall take effect for that primary or general election only if approved by unanimous vote of the State Board with all members present and voting."

PART 26. STANDARDIZE SATELLITE POLLING PLACE APPROVAL

SECTION 26.1.(a) G.S. 163-130 reads as rewritten:

"**§ 163-130. Satellite voting places.**

A county board of elections by unanimous vote may, upon approval of a request submitted in writing to the State Board of Elections, establish a plan whereby elderly or disabled voters in a precinct may vote at designated sites within the precinct other than the regular voting place for that precinct. Any approval under this section is only effective for one year and shall be annually reviewed for extension. The State

Board of Elections shall approve a county board's proposed plan if:

(1) All the satellite voting places to be used are listed in the county's written request;

(2) The plan will in the State Board's judgment overcome a barrier to voting by the elderly or disabled;

(3) Adequate security against fraud is provided for; and

(4) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation."

SECTION 26.1.(b). This section becomes effective January 1, 2014. All plans approved under G.S. 163-130 prior to that date shall be reviewed and adopted in accordance with G.S. 163-130, as amended by this section.

PART 27. DELETE REFERENCE TO PRECINCT BOUNDARIES AFTER THE 2000 CENSUS

SECTION 27.1. G.S. 163-132.1 is repealed.

PART 28. REDUCE NEED FOR SECOND PRIMARY

SECTION 28.1. The Joint Legislative Elections Oversight Committee shall study the second primary and recommend to the General Assembly any legislation it deems advisable. The study may include the following:

(1) Whether to go to a plurality method of determining the result of the primary.

(2) Whether to reduce the current forty percent (40%) threshold.

(3) Whether to keep the forty percent (40%) threshold but also allow a smaller percentage if the margin between first and second place finisher is substantial.

(4) Whether to have a different system for different offices such as United States Senator, Governor, and Lieutenant Governor and other offices.

It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 29. CLARIFY STATE BOARD DUTY ON CHARACTERISTICS OF BALLOT

SECTION 29.1. G.S. 163-165.4 reads as rewritten:

"**§ 163-165.4. Standards for official ballots.**

The State Board of Elections shall ~~seek to~~ ensure that official ballots throughout the State have all the following characteristics:

(1) Are readily understandable by voters.

(2) Present all candidates and questions in a fair and nondiscriminatory manner.

(3) Allow every voter to cast a vote in every ballot item without difficulty.

(4) Facilitate an accurate vote count.

(5) Are uniform in content and format, subject to varied presentations required or made desirable by different voting systems."

PART 30. SIMPLIFY BALLOT RECORDS

SECTION 30.1. G.S. 163-165(1) reads as rewritten:

"(1) "Ballot" means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term "ballot" may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, ~~the face of a lever voting machine, the image on a direct record electronic unit, or a~~or a paper ballot used on any other voting system."

SECTION 30.2. G.S. 163-165 is amended by adding a new subdivision to read:

"(5a) "Paper ballot" means an individual paper document that bears marks made by the voter by hand or through electronic means."

SECTION 30.3. G.S. 163-165.7(a) and (d) read as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations

governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate ~~either~~ a paper ballot ~~or a paper record by which voters may verify their votes before casting them and~~ which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting ~~systems~~. systems that produce a paper ballot. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in voting tabulation district returns the votes

cast by voters outside of the voter's voting tabulation district as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper ~~record~~ ballot of each individual vote cast, which paper ~~record~~ ballot shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper ~~record~~ ballot generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper ~~record~~ ballot before the vote is cast.

…

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.

(6) Assistance to voters using voting systems.

(7) Duties of custodians of voting systems.

(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.

(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:

a. State Board of Elections.

b. Office of Information Technology Services.

c. The State chairs of each political party recognized under G.S. 163-96.

d. The purchasing county.

Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a

business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.

(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper ~~record.~~ ballot. Those procedures shall at a minimum include procedures to protect against the alteration of the paper ~~record~~ ballot after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any ~~paper record or copy of an~~ individually voted paper ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper ~~record~~.ballot.

…."

SECTION 30.4. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots ~~or paper records of individual voted ballots~~ are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there. The rules shall also provide that during that time no one shall remove from the voting enclosure any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

(4) All improperly voted official ballots ~~or paper records of individual voted ballots~~ are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter

registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 30.5. G.S. 163-182.1(b)(1) reads as rewritten:

"(1) Provide for a sample hand-to-eye count of the paper ballots ~~or paper records~~ of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each

election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, full counts of one or more one-stop early voting sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots ~~or records~~ have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted."

SECTION 30.6. G.S. 163-182.2(b)(1a) reads as rewritten:

"(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and

eye, those rules shall provide for a sample hand-to-eye count of the paper ballots ~~or paper records~~ of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots ~~or records~~ have been lost or destroyed or where there is another

reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night."

SECTION 30.7. G.S. 163-227.2(e1) reads as rewritten:

"(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230.1(a2), or shall have an equivalent identifier to allow for

retrievability. ~~The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used~~."

SECTION 30.8. Any direct record electronic (DRE) voting systems currently certified by the State Board of Elections which do not use paper ballots shall be decertified and shall not be used in any election held on or after January 1, 2018. Decertification of a DRE voting system that does not use paper ballots may not be appealed to the Superior Court of Wake County pursuant to G.S. 163-165.7(b).

SECTION 30.9. This Part becomes effective January 1, 2018.

PART 31. ORDER OF PARTIES ON THE BALLOT

SECTION 31.1. G.S. 163-165.6(d) reads as rewritten:

"(d) Order of Party Candidates on General Election Official Ballot. – Candidates in any ballot item on a general election official ballot shall appear in the following order:

(1) Nominees of political parties that reflect at least five percent (5%) of statewide voter registration, according to the most recent statistical report published by the State Board of Elections, in alphabetical order by party <u>beginning with the party whose nominee for Governor received the most votes in the most recent</u>

gubernatorial election, and in alphabetical order within the party.

(2) Nominees of other political parties, in alphabetical order by party and in alphabetical order within the party.

(3) Unaffiliated candidates, in alphabetical order."

PART 32. VOTE THE PERSON NOT THE PARTY

SECTION 32.1. G.S. 163-165.6(e) reads as rewritten:

"(e) No Straight-Party Voting. – Each official ballot shall not contain any place that allows a voter with one mark to vote for the candidates of a party for more than one office. ~~be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. Instructions for general election ballots shall clearly advise voters of the rules in this subsection and of the statutes providing for the counting of ballots.~~"

SECTION 32.2. G.S. 163-182.1(a)(7) is repealed.

PART 33. REGULATE EXTENSION OF CLOSE OF POLLS

SECTION 33.1. G.S. 163-166.01 reads as rewritten**:**

"**§ 163-166.01. Hours for voting.**

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. ~~In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M.~~ If the polls are delayed in opening for more than 15 minutes, or are interrupted for more than 15 minutes after opening, the State Board of Elections may extend the closing time by an equal number of minutes. As authorized by law, the State Board of Elections shall be available either in person or by teleconference on the day of election to approve any such extension. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

PART 34. ASSISTANCE TO VOTER

SECTION 34.1. The Joint Legislative Elections Oversight Committee shall study ways to improve protections for persons requiring assistance in

voting places and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014 and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 35. DATE OF PRESIDENTIAL PRIMARY

SECTION 35.1. G.S. 163-213.2 reads as rewritten:

"**§ 163-213.2. Primary to be held; date; qualifications and registration of voters.**

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political ~~party.~~ party, except that if South Carolina holds its presidential primary before the 15th day of March, the North Carolina presidential preference primary shall be held on the Tuesday after the first South Carolina presidential preference primary of that year.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the

basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

SECTION 35.2. G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

~~By the first Tuesday in February of the year preceding~~ No later than 90 days preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have been submitted to the State Board of Elections. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall

prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

PART 36. ADDITIONAL CANDIDATES ON PRESIDENTIAL PRIMARY BALLOT

SECTION 36.1. G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

By the first Tuesday in February of the year preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have

been submitted to the State Board of Elections. Additionally, the State Board of Elections, by vote of at least three of its members in the affirmative, may nominate as a presidential primary candidate any other person affiliated with a political party that it finds is generally advocated and recognized in the news media throughout the United States or in North Carolina as candidates for the nomination by that party. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

PART 38. REPEAL POLITICAL PARTIES FINANCING FUND, JUDICIAL ELECTIONS FUND, AND VOTER-OWNED ELECTIONS FUND

SECTION 38.1.(a) Article 22D of Chapter 163 of the General Statutes is repealed, except that G.S. 163-278.69 is repealed effective upon exhaustion of the funds for publication of the Judicial Voter Guide.

SECTION 38.1.(b) Article 22J of Chapter 163 of the General Statutes is repealed.

SECTION 38.1.(c) Article 22B of Chapter 163 of the General Statutes is repealed.

SECTION 38.1.(d) G.S. 84-34 reads as rewritten:

"**§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay

to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed three hundred dollars ($300.00), ~~plus a surcharge of fifty dollars ($50.00) for the implementation of Article 22D of Chapter 163 of the General Statutes~~, and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. ~~The fifty-dollar ($50.00) surcharge shall be sent on a monthly schedule to the State Board of Elections~~. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available

sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 38.1.(e) G.S. 105-159.1 is repealed.

SECTION 38.1.(f) G.S. 105-159.2 is repealed.

SECTION 38.1.(g) G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this

Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles ~~22B, 22D, 22E, 22F~~, 22G, 22H, ~~22J~~, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 38.1.(h) G.S. 163-278.13(e) reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

…

(e) ~~Except as provided in subsections (e2), (e3), and (e4) of this section, this~~ This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 38.1.(i) G.S. 163-278.13(e2) is repealed.

SECTION 38.1.(j) G.S. 163-278.13(e4) is repealed.

SECTION 38.1.(k) G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Director of Board.**

…

This section applies to Articles ~~22B, 22D, 22E, 22F~~, 22G, 22H, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 38.1.(l) G.S. 163-278.99E(d) is repealed effective upon exhaustion of the funds for publication of the Judicial Voter Guide in G.S. 163-278.69.

SECTION 38.1.(m) The State Board of Elections shall use the money in the North Carolina Public Campaign Fund to only publish Judicial Voter Guides as described in G.S. 163-278.69 until the funds have been exhausted.

SECTION 38.1.(n) The secretary-treasurer of the North Carolina State Bar shall remit any payments of the fifty-dollar ($50.00) surcharge payable for the taxable year January 1, 2013, to the State Board of Elections, and the State Board of Elections must credit the funds received to the North Carolina Public Campaign Fund.

SECTION 38.1.(o) The State Board of Elections shall notify the Revisor of Statutes when the funds have been exhausted for publication of the Judicial Voter Guide.

SECTION 38.1.(p) Subsection (d) of this section is effective for taxable years beginning on or after January 1, 2013. The fifty percent (50%) of the funds directed to be paid in 2013 under G.S. 163-278.41(c) in 2013 shall be disbursed as provided by law. Unexpended funds shall remain in the reserve until December 31, 2013, at which time those funds shall revert to the General Fund. The remainder of this section becomes effective July 1, 2013.

PART 39. EXPEDITE VOTER LIST MAINTENANCE

SECTION 39.1.(a) G.S. 163-33 reads as rewritten:

"**§ 163-33. Powers and duties of county boards of elections.**

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

…

(14) To make forms available for near relatives or personal representatives of a deceased voter's estate to provide signed statements of the status of a deceased voter to return to the board of elections of the county in which the deceased voter was registered. Forms may be provided, upon request, to any of the following: near relatives, personal representatives of a deceased voter's estate, funeral directors, or funeral service licensees."

SECTION 39.1.(b) G.S. 163-82.14(b) reads as rewritten:

"(b) Death. – The Department of Health and Human Services shall furnish free of charge to the State Board of Elections every month, in a format prescribed by the State Board of Elections, the names of deceased persons who were residents of the State. The State Board of Elections shall distribute every month to each county board of elections the names on that list of deceased persons who were residents of that county. The Department of Health and Human Services shall

base each list upon information supplied by death certifications it received during the preceding month. Upon the receipt of those names, each county board of elections shall remove from its voter registration records any person the list shows to be dead. Each county board of elections shall also remove from its voter registration records a person identified as deceased by a signed statement of a near relative or personal representative of the estate of the deceased voter. The county board need not send any notice to the address of the person so removed."

SECTION 39.2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.25C. Notification forms for deceased voters.**

(a) At the time funeral arrangements are made, a funeral director or funeral service licensee is encouraged to make available to near relatives of the deceased a form upon which the near relative may report the status of the deceased voter to the board of elections of the county in which the deceased was a registered voter.

(b) A funeral director or funeral service licensee may obtain forms for reporting the status of deceased voters from the county board of elections."

SECTION 39.3. This Part becomes effective October 1, 2013.

PART 41. CAMPAIGN FINANCE ELECTRONIC REPORTING

SECTION 41.1. The Joint Legislative Elections Oversight Committee shall study requiring campaign finance reports to be filed electronically and any issues with implementation of such a requirement, and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 42. CAMPAIGN CONTRIBUTIONS

SECTION 42.1. Effective for contributions made on or after January 1, 2014, G.S. 163-278.13(a), (b), and (c) read as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's ~~spouse, parents, brothers and sisters~~ spouse to make a contribution to the candidate or to

the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) for that election."

SECTION 42.2. G.S. 163-278.13 is amended by adding a new subsection to read:

"(a1) Effective for each odd-numbered calendar year beginning in 2015, the dollar amount of the contribution limitation established by subsections (a), (b), and (c) of this subsection shall be increased as provided in this subsection. On July 1 of each even-numbered year, the State Board of Elections shall calculate from data from the Bureau of Labor Statistics of the United States Department of Labor Register the percent difference between the price index for the July 1 of the previous even-numbered year. That percentage increase shall be multiplied by the previous dollar amount contribution limit, that number added to the previous dollar amount contribution limit, and the total shall become effective with respect to contributions made or accepted on or after January 1 of the next odd-numbered year. If the amount after adjustment is not a multiple of one hundred dollars ($100.00), the total shall be rounded to the nearest multiple of one hundred dollars ($100.00). As used in this subsection the term "price index" means the average over a calendar year of the Consumer Price Index (all items – United States city average) published monthly by the Bureau of Labor Statistics. The revised amount of the dollar limit of contributions shall remain in effect for two calendar years until the next adjustment is made. The State Board of Elections shall publish the revised amount in the North Carolina Register and shall notify the

Reviser of Statutes who shall adjust the dollar amounts in subsections (a), (b), and (c) of this section."

SECTION 42.3. G.S. 163-278.13(e3) is repealed.

PART 43 USE OF BUILDING FUNDS

SECTION 43.1. G.S. 163-278.19B(4) reads as rewritten:

"(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a principal headquarters building, to construct a principal headquarters building, to renovate a principal headquarters building, to pay a mortgage on a principal headquarters building, ~~or~~ to repay donors if a principal headquarters building is not purchased, constructed, or ~~renovated~~. renovated, or to pay building rent or monthly or bimonthly utility expenses incurred to operate the principal headquarters building. Donations deposited into that account shall be used solely for the purposes set forth in the preceding sentence, and specifically shall not be used for headquarters ~~rent, utilities, or~~ equipment other than ~~fixtures~~.fixtures, personnel compensation, or travel or fundraising expenses or requirements of any kind. Notwithstanding the above, personnel compensation and in-kind benefits may be paid to no more than three personnel whose functions are primarily

administrative in nature, such as providing accounting, payroll, or campaign finance reporting services, for the party and whose job functions require no more than ten percent (10%) of work time to be spent on political advocacy each calendar year."

PART 44. STAND BY YOUR AD

SECTION 44.1. G.S. 163-278.39A is repealed.

SECTION 44.2. G.S. 163-278.39(b) reads as rewritten:

"(b) Size Requirements. – In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute four percent (4%) of vertical picture height in ~~size~~. size, and where the television advertisement that appears is paid for by a candidate or candidate campaign committee, the visual disclosure legend shall appear simultaneously with an easily identifiable photograph of the candidate for at least two seconds. In a radio

advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood."

PART 45. STATE BOARD OF ELECTIONS

SECTION 45.1.(a) G.S. 163-19(a) reads as rewritten:

"(a) The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. No person may serve more than two consecutive four-year terms."

SECTION 45.1.(b) This section is effective when it becomes law and applies to members appointed on or after that date.

PART 47. TIGHTENING OF LOBBYING BUNDLING

SECTION 47.1.(a) G.S. 163-278.13C reads as rewritten:

"**§ 163-278.13C. Campaign contributions prohibition.**

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a. and G.S. 120C-104.

(b) No lobbyist may do any of the following with respect to a candidate or candidate campaign committee described in subdivisions (a)(1) and (a)(2) of this section:

(1) ~~collect~~ Collect a contribution or multiple contributions from one or ~~multiple~~ more ~~contributors~~, contributors intended for that candidate or candidate campaign committee.

(2) ~~take~~Take possession of ~~such~~ a contribution or multiple ~~contributions~~, contributions intended for that candidate or candidate campaign committee.

(3) ~~or transfer~~ Transfer or ~~deliver~~deliver ~~the~~ a collected contribution or multiple contributions to the intended ~~recipient~~. candidate or candidate campaign committee. ~~This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)~~a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.

(d) For purposes of this section, the term "lobbyist" shall mean an individual registered as a lobbyist under Chapter 120C of the General Statutes."

SECTION 47.1.(b) This section becomes effective October 1, 2013, and applies to contributions made on or after that date.

PART 48. CANDIDATE SPECIFIC COMMUNICATIONS

SECTION 48.1. Article 22G of Chapter 163 of the General Statutes is repealed.

SECTION 48.2. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, ~~22G, 22H~~, 22J, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 48.3. G.S. 163-278.23 reads as rewritten:

"**§ 163-278.23. Duties of Executive Director of Board.**

...

This section applies to Articles 22B, 22D, 22E, 22F, ~~22G, 22H~~, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 48.4. Article 22H of Chapter 163 of the General Statutes is repealed.

PART 49. VOTING IN INCORRECT PRECINCT

SECTION 49.1. G.S. 163-55 reads as rewritten:

"**§ 163-55. Qualifications to vote; exclusion from electoral franchise.**

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the ~~precinct, ward, or other election district~~ precinct in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in ~~any election held in this State~~. the precinct in which the person resides. Removal from one ~~precinct, ward, or other election district~~ precinct to another in this State shall not operate to deprive any person of the right to vote in the ~~precinct, ward, or other election district~~ precinct from which ~~he~~ the person has removed until 30 days after the person's removal.

Except as provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United

States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) ~~Precincts and Election Districts~~. Precincts. – For purposes of qualification to vote in an election, a person's residence in a ~~precinct, ward, or election district~~ precinct shall be determined in accordance with G.S. 163-57. ~~When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides~~. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. – For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum."

SECTION 49.3. G.S. 163-166.11(5) reads as rewritten:

"(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to ~~vote~~. vote, except that the ballot shall not be counted if the voter did not vote in the proper precinct under G.S. 163-55, including a central location as provided by that section."

SECTION 49.4 G.S. 163-182.2(a)(4) reads as rewritten:

"(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the ~~election district~~ precinct as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any

ballot item the voter was eligible by registration and qualified by residency to vote."

PART 50. ELECTIONEERING COMMUNICATION

SECTION 50.1. G.S. 163-278.6(8j) reads as rewritten:

"(8j) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. ~~Is~~ In the case of the general election in November of the even-numbered year is aired or transmitted after September 7 of that year, and in the case of any other election is aired or transmitted within 60 days of the time set for absentee voting to begin pursuant to G.S. 163-227.2 in an election for that office.

c. May be received by either:

1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election if in the form of broadcast, cable, or satellite communication.

2. 20,000 or more households, cumulative per election, in a

statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank."

PART 51. ELIMINATE INSTANT-RUNOFF FOR LATE JUDICIAL VACANCIES

SECTION 51.1. G.S. 163-329(b1) reads as rewritten:

"(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the results shall be determined on a plurality basis as provided by G.S. 163-292. ~~the "instant runoff voting" method shall be used to determine the winner. Under "instant runoff voting," voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each~~

~~seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.~~

~~(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8."~~

PART 52. IDENTIFYING PROVISIONAL BALLOTS AS SUCH

SECTION 52.1. Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.11A. Notation on provisional ballot.**

Whenever a voter is permitted to vote a provisional ballot, the election official issuing the ballot shall annotate in writing or other means on the ballot that it is a provisional ballot."

PART 53. ELECTION CYCLE AND REPORTING CHANGES

SECTION 53.1.(a) G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term "an election" means the period of time from January 1 of an odd-numbered year through ~~any~~ the day of the primary, the day after the primary through the day of the second primary, or the day after the primary through December 31 of the next even-numbered year, ~~general election in which the candidate or political committee may be involved~~, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate."

SECTION 53.1.(c) This section becomes effective January 1, 2014.

PART 54. DEFINITION OF POLITICAL COMMITTEE IN CAMPAIGN FINANCE ACT

SECTION 54.1. The Joint Legislative Elections Oversight Committee shall study establishing a threshold for the creation of a political committee and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 55. ALTER CAMPAIGN FINANCE REPORTING SCHEDULE

SECTION 55.1. The Joint Legislative Elections Oversight Committee shall study conforming political committees, electioneering communications, and independent expenditures reporting schedules to similar dates and information, and recommend to the

General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in 2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 56. DISCLOSURE REQUIREMENTS FOR MEDIA ADVERTISEMENTS

SECTION 56.1. G.S. 163-278.39(a) reads as rewritten:

"(a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1) or G.S. 163-278.12C(a).

(3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.

~~(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure~~.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

~~(7) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates that is an independent expenditure, the sponsor discloses the names of the individuals or persons making the five largest donations to the sponsor within the six-month period prior to the purchase of the advertisement if those donations are required to be reported under G.S. 163-278.12.~~

~~(8) In a print media advertisement that is an electioneering communication, the sponsor discloses the names of the individuals or person making the five largest donations to the sponsor within the six-month period prior to the purchase of the advertisement if those donations are required to be reported under G.S. 163-278.12C.~~

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors."

PART 57. STUDY ELIMINATION OF 48-HOUR REPORT

SECTION 57.1. The Joint Legislative Elections Oversight Committee shall study the elimination of the 48-hour campaign finance report provided by G.S. 163-278.9(4a), and recommend to the General Assembly any legislation it deems advisable. It may make an interim report prior to the date that the General Assembly reconvenes the 2013 Regular Session in

2014, and shall make a final report before the convening of the 2015 Regular Session of the General Assembly.

PART 59. RAFFLES BY CANDIDATES OR POLITICAL COMMITTEES

SECTION 59.1. G.S. 14-309.15(a) reads as rewritten:

"(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), or for any bona fide branch, chapter, or affiliate of such organization, candidate, political committee, and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling". For the purpose of this section, "candidate" and "political committee" have the meaning provided by Article 22A of Chapter 163A of the General Statutes, who have filed organization reports under that Article, and who are in good standing with the appropriate board of elections. Receipts and expenditures of a raffle by a candidate or political committee shall be reported in accordance with Article 22A of Chapter 163A of the General Statutes, and ticket purchases are contributions within the meaning of that Article."

PART 60. SEVERABILITY AND EFFECTIVE DATE

SECTION 60.1. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 60.2. This Part is effective when it becomes law. Except as provided herein, the remainder of this act becomes effective January 1, 2014.

In the General Assembly read three times and ratified this the 26th day of July, 2013.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 2:14 p.m. this 12th day of August, 2013

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-103
HOUSE BILL 836

AN ACT TO PROVIDE REGULATORY RELIEF FOR LOCAL GOVERNMENTS BY AUTHORIZING CITIES TO RESERVE CERTAIN EASEMENTS WHEN PERMANENTLY CLOSING STREETS AND ALLEYS; TO REPEAL THE REQUIREMENT FOR LICENSING OF GOING OUT OF BUSINESS SALES BY LOCAL GOVERNMENTS; TO AUTHORIZE ELECTRONIC SUBMISSION OF ABSENTEE BALLOT LISTS BY COUNTY BOARDS OF ELECTIONS; TO AUTHORIZE THE USE OF NEW TECHNOLOGY FOR PAPER BALLOTS; TO EXTEND THE TIME FRAME TO IMPLEMENT THE REQUIREMENT FOR PAPER BALLOTS FROM JANUARY 1, 2018 TO SEPTEMBER 1, 2019, FOR COUNTIES THAT USE DIRECT RECORD ELECTRONIC VOTING MACHINES FOR CURRENT VOTING REQUIREMENTS; TO AUTHORIZE CERTAIN MUNICIPALITIES TO CONDUCT MALT BEVERAGE AND UNFORTIFIED WINE ELECTIONS; TO REQUIRE COUNTY BOARDS OF ELECTIONS TO NOTIFY A REGISTERED VOTER OF THE OPTION TO COMPLETE A WRITTEN REQUEST FOR AN ABSENTEE BALLOT AT A ONE-STOP VOTING LOCATION WHEN THE VOTER PRESENTS WITHOUT AN ELIGIBLE FORM OF PHOTO IDENTIFICATION;

TO AUTHORIZE VOTERS WHO SUFFER FROM A REASONABLE IMPEDIMENT PREVENTING THE VOTER FROM OBTAINING PHOTO IDENTIFICATION TO COMPLETE REASONABLE IMPEDIMENT DECLARATIONS WHEN VOTING; TO REMOVE TERM LIMITS FOR SERVICE ON THE BOARD OF EDUCATION OF ALEXANDER COUNTY; AND TO REQUIRE ELECTRONIC POLL BOOKS TO BE CERTIFIED BY THE STATE BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

CLARIFY EASEMENT RESERVATION AUTHORITY FOR CITIES CLOSING STREETS AND ALLEYS

SECTION 1. G.S. 160A-299 reads as rewritten:

"**§ 160A-299. Procedure for permanently closing streets and alleys.**

…

(f) A city may reserve ~~its~~ a right, title, and interest in any ~~utility improvement~~ improvements or ~~easement~~ easements within a street closed pursuant to this section. ~~Such~~ An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. ~~Such~~ The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

…."

REPEAL LICENSING FOR GOING OUT OF BUSINESS/DISTRESS SALES

SECTION 2.(a) G.S. 66-77 is repealed.

SECTION 2.(b) G.S. 66-80 reads as rewritten:

"**§ 66-80. Continuation of sale or business beyond termination date.**

No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale beyond the termination date specified for such ~~sale, except as otherwise provided for in subsection (b) of G.S. 66-77~~;sale; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed for a period of 12 months; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. As used in this section, the term "person" includes individuals, partnerships, corporations, and other business entities. If a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or any other transaction, for the purpose of continuing the business, the successor entity or individual shall be considered the same person as the original entity for the purpose of this section. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, that entity shall be considered the same person as the individual for the purpose of this section."

SECTION 2.(c) This section becomes effective July 1, 2015.

ELECTRONIC REPORTING FOR COUNTY BOARDS OF ELECTIONS

SECTION 3.(a) G.S. 163-232 reads as rewritten:

"**§ 163-232. Certified list of executed absentee ballots; distribution of list.**

The county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the ~~chairman~~ chair shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, ~~chairman~~ chair of the _____ County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections and which have been returned no later than 5:00 p.m. on the day before the election. I certify that the ~~chairman~~,chair, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed

or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the _____ day of _____, _____

_____

(Signature of ~~chairman~~ chair of county board of elections)

Sworn to and subscribed before me this _____ day of _____, _____.

Witness my hand and official seal.

_____

(Signature of officer administering oath)

_____

(Title of officer)"

No later than 10:00 a.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately (i) submitted electronically in a manner approved by the State Board of Elections or (ii) deposited as "first-class" mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection and the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the county board of elections shall, upon request, provide a copy of the complete list to the ~~chairman~~ chair of each

political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed."

SECTION 3.(b) G.S. 163-232.1(c) reads as rewritten:

"(c) The board shall post one copy of the most current version of each list in the board office in a conspicuous location for public inspection and shall retain one copy until all challenges of absentee ballots have been heard by the county board of elections. The county board of elections shall cause one copy of each of the final lists of executed absentee ballots required under subsection (a) and subsection (b) of this section to be <u>(i) submitted electronically in a manner approved by the State Board of Elections or (ii)</u> deposited as "first-class" mail to the State Board of ~~Elections~~

Elections. The final lists shall be electronically submitted or mailed no later than 10:00 a.m. of the next business day following the deadline for receipt of such absentee ballots. Challenges shall be made to absentee ballots as provided in G.S. 163-89. In addition the county board of elections shall, upon request, provide a copy of each of the lists to the ~~chairman~~ chair of each political party, recognized under the provisions of G.S. 163-96, represented in the county."

PAPER BALLOTS AND VOTING SYSTEMS

SECTION 4.(a) G.S. 163-165(1) reads as rewritten:

"(1) "Ballot" means an instrument on which a voter indicates ~~a~~ that voter's choice for a ballot item so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term "ballot" may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system."

SECTION 4.(b) G.S. 163-165.5 reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

(a) ~~Each~~Except as provided in this section, each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of ~~seats to be filled~~ votes allowed in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear

on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163-123 or unless the ballot item is exempt from G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections.

(b) Notwithstanding subsection (a) of this section, an official ballot created and printed by use of a voting system in the voting enclosure shall be counted if all of the following apply:

(1) Each of the following are printed on that official ballot:

a. The date of the election.

b. The precinct name or a unique identification code associated with that ballot style.

c. The choices made by the voter for all ballot items in which the voter cast a vote.

(2) The electronic display of the voting system seen by the voter contains all

of the information required by subsection (a) of this section.

(3) The voter is capable of reviewing the printed official ballot, and voiding that ballot, prior to casting that voter's ballot.

(4) The voter's choices in and on the electronic display are removed prior to the next voter using that voting equipment."

SECTION 5.(a) G.S. 163-165, as amended by Section 4(a) of this act, reads as rewritten:

"**§ 163-165. Definitions.**

In addition to the definitions stated below, the definitions set forth in Article 15A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article:

(1) "Ballot" means an instrument on which a voter indicates that voter's choice for a ballot item so that it may be recorded as a vote for or against a certain candidate or referendum ~~proposal~~. proposal, and is evidenced by an individual paper document that bears marks made by the voter by hand or through electronic means, whether preprinted or printed in the voting enclosure. ~~The term "ballot" may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, or a paper ballot used on any other voting system~~.

(2) "Ballot item" means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.

(3) "Ballot style" means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county's official ballot containing only those district ballot items one individual voter may vote are the county's different ballot styles.

(4) "Election" means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.

(5) "Official ballot" means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.

~~(5a) "Paper ballot" means an individual paper document that bears marks~~

~~made by the voter by hand or through electronic means.~~

(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.

(7) "Referendum" means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.

(8) "Voting booth" means the private space in which a voter is to mark an official ballot.

(9) "Voting enclosure" means the room within the voting place that is used for voting.

(10) "Voting place" means the building or area of the building that contains the voting enclosure.

(11) "Voting system" means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as systems utilizing mechanical and electronic voting equipment."

SECTION 5.(b) Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.4B. Prohibited voting systems.**

A voting system that does not use or produce a ballot shall not be used in any referendum, primary, or other election as a means of voting or counting an official ballot."

SECTION 5.(c) This section becomes effective January 1, 2018. Counties authorized to use direct record electronic voting systems pursuant to S.L. 2013-381, as amended by Section 6 of this act, may continue to use direct record electronic voting systems in accordance with that act.

SECTION 6.(a) Section 30.8 of S.L. 2013-381 reads as rewritten:

"**SECTION 30.8.** Any direct record electronic (DRE) voting systems currently certified by the State Board of Elections which do not use paper ballots shall be decertified and shall not be used in any election held on or after ~~January 1, 2018~~.September 1, 2019, for counties that use direct record electronic voting machines on election day as of January 1, 2015, and January 1, 2018, for all other counties. Decertification of a DRE voting system that does not use paper ballots may not be appealed to the Superior Court of Wake County pursuant to G.S. 163-165.7(b)."

SECTION 6.(b) Section 30.9 of S.L. 2013-381 reads as rewritten:

"**SECTION 30.9.** This Part becomes effective ~~January 1, 2018~~. September 1, 2019, for counties that use direct record electronic voting machines on election day as of January 1, 2015. This Part becomes effective for all other counties January 1, 2018."

CERTAIN MUNICIPALITIES AUTHORIZED TO CONDUCT MALT BEVERAGE AND UNFORTIFIED WINE ELECTIONS

SECTION 7. G.S. 18B-600 is amended by adding a new subsection to read:

"(c1) Certain City Malt Beverage and Unfortified Wine Elections. – A city may hold a malt beverage or unfortified wine election only if all of the following criteria are met:

(1) The county in which more than fifty percent (50%) of the area of the primary corporate limits of the city is located has already held such an election, and the vote in the last county election was against the sale of that kind of alcoholic beverage.

(2) The city has a population of 200 or more.

(3) The county in which more than fifty percent (50%) of the area of the primary corporate limits of the city is located also contains three or more other cities that have previously voted to allow malt beverage and unfortified wine sales."

VOTER ID MODIFICATIONS

SECTION 8.(a) G.S. 163-166.13 reads as rewritten:

"**§ 163-166.13. Photo identification requirement for voting in person.**

(a) Every qualified voter voting in person in accordance with this Article, G.S. 163-227.2, or G.S. 163-182.1A shall present photo identification bearing

any reasonable resemblance to that voter to a local election official at the voting place before voting, except as follows:

(1) For a registered voter voting curbside, that voter shall present identification under G.S. 163-166.9.

(2) For a registered voter who has a sincerely held religious objection to being photographed and has filed a declaration in accordance with G.S. 163-82.7A at least 25 days before the election in which that voter is voting in person, that voter shall not be required to provide photo identification.

(3) For a registered voter who is a victim of a natural disaster occurring within 60 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State who declares the lack of photo identification due to the natural disaster on a form provided by the State Board, that voter shall not be required to provide photo identification in any county subject to such declaration. The form shall be available from the State Board of Elections, from each county board of elections in a county subject to the disaster declaration, and at each polling place and one-stop early voting

site in that county. The voter shall submit the completed form at the time of voting.

(b) Any voter who complies with subsection (a) of this section shall be permitted to vote.

(c) Any voter who does not comply with subsection (a) of this section shall be notified of the following options:

(1) The voter is permitted to vote a provisional official ballot which shall be counted in accordance with G.S. 163-182.1A.

(2) The voter is permitted to complete a reasonable impediment declaration, as provided in G.S. 163-166.15, and vote a provisional official ballot which shall be counted in accordance with G.S. 163-182.1B.

(3) The voter is permitted to complete a written request for an absentee ballot in accordance with G.S. 163-227.2(b1) until the deadline for submission of requests for absentee ballots provided in G.S. 163-230.1.

(d) The local election official to whom the photo identification is presented shall determine if the photo identification bears any reasonable resemblance to the voter presenting the photo identification. If it is determined that the photo identification does not bear any reasonable resemblance to the voter, the local election official shall comply with G.S. 163-166.14.

(e) Except as provided in subsection (e1) of this section, ~~As~~ as used in this section, "photo identification" means any one of the following that

contains a photograph of the registered ~~voter. In addition, the photo identification shall have~~ voter, has a printed expiration date, and is ~~date and shall be~~ unexpired, ~~provided that any voter having attained the age of 70 years at the time of presentation at the voting place shall be permitted to present an expired form of any of the following that was unexpired on the voter's 70th birthday~~: unless otherwise noted:

(1) A North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional ~~license~~. license, provided that it shall be acceptable if it has a printed expiration date that is not more than four years before it is presented for voting.

(2) A special identification card for nonoperators issued under ~~G.S. 20-37.7.~~ G.S. 20-37.7, provided that it shall be acceptable if it has a printed expiration date that is not more than four years before it is presented for voting.

(3) A United States passport.

(4) A United States military identification card, except there is no requirement that it have a printed expiration or issuance date.

(5) A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities facilities, except there is no

requirement that it have a printed expiration or issuance date.

(6) A tribal enrollment card issued by a federally recognized tribe, provided that if the tribal enrollment card does not contain a printed expiration date, it shall be acceptable if it has a printed issuance date that is not more than eight years before it is presented for voting.

(7) A tribal enrollment card issued by a tribe recognized by this State under Chapter 71A of the General Statutes, provided that card meets all of the following criteria:

a. Is issued in accordance with a process approved by the State Board of Elections that requires an application and proof of identity equivalent to the requirements for issuance of a special identification card by the Division of Motor Vehicles under G.S. 20-7 and G.S. 20-37.7.

b. Is signed by an elected official of the tribe.

(8) A drivers license or nonoperators identification card issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.

(e1) Any voter 70 years of age or older shall be permitted to present an expired form of photo identification listed in subsection (e) of this section, if that identification expired at any point after that voter's 70th birthday."

SECTION 8.(b) G.S. 163-227.2 is amended by adding the following new subsection to read:

"(b1) Until the deadline for submission of requests for absentee ballots provided in G.S. 163-230.1, any voter who fails to present an eligible form of photo identification in accordance with G.S. 163-166.13 shall be notified of the option to complete a written request form for an absentee ballot at that one-stop absentee voting location. The county board of elections shall notify the voter of each of the following:

(1) The option to request an absentee ballot to vote in that election, whether requested at that one-stop absentee voting location or as provided in G.S. 163-230.2.

(2) The instructions for completing the absentee ballot request in accordance with G.S. 163-230.1, along with the deadlines for returning the absentee ballot.

(3) The means by which the voter may transmit the executed ballot to the county board of elections as provided in G.S. 163-231, including through delivery in person to an election official at a one-stop voting location.

Upon receiving notice pursuant to this subsection, a voter shall sign a form acknowledging that the voter was notified of the option to request and vote an

absentee ballot. The list of names of those voters who signed an acknowledgment is a public record."

SECTION 8.(c) G.S. 163-227.2 is amended by adding the following new subsection to read:

"(j) The State Board of Elections shall adopt rules requiring signage to be displayed until the deadline for submission of requests for absentee ballots provided in G.S. 163-230.1 at all one-stop absentee voting locations notifying voters who do not have eligible photo identification of the option to request an absentee ballot as provided in subsection (b1) of this section."

SECTION 8.(d) Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.15. Reasonable impediment declarations.**

(a) Any voter who does not comply with the photo identification requirement of G.S. 163-166.13(a) due to a reasonable impediment that prevents the voter from obtaining photo identification may vote a provisional official ballot in accordance with this section.

(b) The voter shall complete a reasonable impediment declaration on a form provided by the State Board declaring that the voter meets all of the following criteria:

(1) Is the same individual who personally appeared at the polling place.

(2) Cast the provisional ballot while voting in person in accordance with this Article or G.S. 163-227.2.

(3) Suffers from a reasonable impediment that prevents the voter from obtaining photo identification. The voter also shall list the impediment, as set forth in subsection (e) of this section, unless

otherwise prohibited by State or federal law.

(c) The voter shall also present identification in the form of (i) a copy of a document listed in G.S. 163-166.12(a)(2) or the voter registration card issued to the voter by the county board of elections or (ii) the last four digits of the voter's Social Security number and the voter's date of birth. Upon compliance with this section, the voter may cast a provisional ballot. The declaration and a notation on the declaration form that the voter has provided the required identification shall be submitted with the provisional ballot envelope to the county board of elections and shall be counted in accordance with G.S. 163-182.1B.

(d) If a voter fails to present identification, as required in subsection (c) of this section, but completes a reasonable impediment declaration, the voter shall be permitted to vote a provisional official ballot. The declaration and a notation on the declaration form that the voter has not provided the required identification shall be submitted with the provisional ballot envelope to the county board of elections. The ballot shall be counted in accordance with G.S. 163-182.1B if the voter presents the required identification to the county board of elections in accordance with G.S. 163-182.1B.

(e) The reasonable impediment declaration form provided by the State Board shall, at a minimum, include the following:

(1) Separate boxes that a voter may check to identify the reasonable impediment, including at least the following:

a. Lack of transportation.

b. Disability or illness.

c. Lack of birth certificate or other documents needed to obtain photo identification.
d. Work schedule.
e. Family responsibilities.
f. Lost or stolen photo identification.
g. Photo identification applied for but not received by the voter voting in person.
h. Other reasonable impediment. If the voter checks the "other reasonable impediment" box, a further brief written identification of the reasonable impediment shall be required, including the option to indicate that State or federal law prohibits listing the impediment.

(2) A space for the voter to provide the last four digits of the Social Security number and the voter's date of birth, if the voter opts to provide this information as identification in accordance with subsection (c) of this section.

(3) A space to note whether the voter has provided a copy of the document listed in G.S. 163-166.12(a)(2) or the voter registration card issued to the voter by the county board of elections."

SECTION 8.(e) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.1B. Counting of provisional official ballots cast following completion of a reasonable impediment declaration when voting in person.**

(a) The county board of elections shall find that a voter's provisional official ballot cast following completion of a declaration of reasonable impediment in accordance with G.S. 163-166.15 is valid and direct that the provisional ballot be opened and counted in accordance with this Chapter, unless any of the following apply:

(1) The county board of elections has grounds, including an impediment evidentiary challenge by a voter, as provided in subsection (b) of this section, to believe the declaration is factually false, merely denigrated the photo identification requirement, or made obviously nonsensical statements.

(2) The voter failed to present identification in the form of one of the following:

a. Either a copy of a document listed in G.S. 163-166.12(a)(2) or the voter registration card issued to the voter by the county board of elections when voting or at the county board of elections.

b. The voter's last four digits of the Social Security number and date of birth.

(3) The voter provided the last four digits of the voter's Social Security number and date of birth as the form of

identification required under G.S. 163-166.15(c) and the county board of elections could not confirm the voter's registration using that information.

(4) The voter is disqualified for some other reason provided by law.

(b) An impediment evidentiary challenge may be made only on a form developed by the State Board of Elections as follows:

(1) Any registered voter of the county may make the challenge by submitting clear and convincing evidence in writing on a signed form to the county board of elections challenging the factual veracity of the impediment.

(2) Challenges shall be submitted no later than 5:00 P.M. on the third business day following the election.

(3) The county board shall hear evidentiary challenges on the day set for the canvass of the returns.

(4) A voter whose declaration has been challenged may personally, or through an authorized representative, appear before the county board and present evidence supporting the factual veracity of the impediment.

(5) In considering the challenge, the county board shall construe all evidence presented in the light most favorable to the voter submitting the reasonable impediment declaration.

(6) The county board shall not find a challenge valid if it provides only

evidence regarding the reasonableness of the impediment.

(7) The county board may find the challenge valid if the evidence demonstrates the declaration merely denigrated the photo identification requirement, made obviously nonsensical statements, or made statements or selected a reasonable impediment check box that was factually false.

(c) A voter who failed to present identification required in G.S. 163-166.15(c) when completing the reasonable impediment affidavit may comply with the identification requirement by appearing in person at the county board of elections to present the identification no later than 12:00 noon the day prior to the time set for the convening of the election canvass pursuant to G.S. 163-182.5.

(d) If the county board of elections determines that a voter has also cast a provisional official ballot for a cause other than the voter's failure to provide photo identification in accordance with G.S. 163-166.13(a), the county board shall do all of the following:

(1) Note on the envelope containing the provisional official ballot that the voter has complied with the reasonable impediment declaration requirement.

(2) Proceed to determine any other reasons for which the provisional official ballot was cast provisionally

before ruling on the validity of the voter's provisional official ballot.

(e) Within 60 days after each election, the county board of elections shall provide to the State Board of Elections a report of those reasonable impediments identified in that election by voters. The State Board shall use the information in the reports to identify and address obstacles to obtaining photo identification."

SECTION 8.(f) G.S. 163-82.8(e) reads as rewritten:

"(e) Display of Card May Not Be Required to Vote. – No county board of elections may require that a voter registration card be displayed in order to vote. A county board of elections may notify a voter that the voter's registration card may be used for the required identification in conjunction with a reasonable impediment declaration in accordance with G.S. 163-166.15."

SECTION 8.(g) Section 5.3 of S.L. 2013-381 reads as rewritten:

"**SECTION 5.3.** Education and Publicity Requirements. – The public shall be educated about the photo identification to vote requirements of this act as follows:

(1) As counties use their regular processes to notify voters of assignments and reassignments to districts for election to the United States House of Representatives, State Senate, State House of Representatives, or local office, by including information about the provisions of this act.

(2) As counties send new voter registration cards to voters as a result of new registration, changes of address, or other reasons, by including information about the provisions of this act.

(3) Counties that maintain a board of elections Web site shall include information about the provisions of this act.

(4) Notices of elections published by county boards of elections under G.S. 163-22(8) for the 2014 primary and 2014 general election shall include a brief statement that photo identification will be required to vote in person beginning in 2016.

(5) The State Board of Elections shall include on its Web site information about the provisions of this act.

(6) Counties shall post at the polls and at early voting sites beginning with the 2014 primary elections information about the provisions of this act.

(7) The State Board of Elections shall distribute information about the photo identification requirements to groups and organizations serving persons with disabilities or the elderly.

(8) The State Board of Elections, the Division of Motor Vehicles, and county boards of elections in counties where there is no Division of Motor Vehicles drivers license office open five days a

week shall include information about mobile unit schedules on existing Web sites, shall distribute information about these schedules to registered voters identified without photo identification, and shall publicize information about the mobile unit schedules through other available means.

(9) The State Board of Elections and county boards of elections shall direct volunteers to assist registered voters in counties where there is no Division of Motor Vehicles drivers license office open five days a week.

(10) The State Board of Elections shall educate the public regarding the reasonable impediment declaration and shall use the information on reasonable impediments reported by county boards of election as provided in G.S. 163-182.1B(e) to identify and address obstacles to obtaining voter photo identification."

SECTION 8.(h) Section 8(g) of this section becomes effective when this act becomes law. The remainder of this section becomes effective January 1, 2016, and applies to primaries and elections conducted on or after that date.

REMOVE TERM LIMITS FOR SERVICE ON THE BOARD OF EDUCATION OF ALEXANDER COUNTY

SECTION 9.(a) Sec. 8 of Chapter 774 of the Session Laws of 1969 reads as rewritten:

"**Sec. 8.** Member(s) whose terms of office expire and who desire to become candidates for re-election shall register and be voted upon in the same manner as herein provided and at the general election to be held in the year in which said terms of office ~~expire, provided no member shall serve more than two terms in succession~~. expire."

SECTION 9.(b) This section becomes effective January 1, 2016, and applies to elections conducted on or after that date.

VOTING SYSTEM CERTIFICATIONS

SECTION 10. G.S. 163-165.7(a) reads as rewritten:

"**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures set forth by the State Board of Elections and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all

applicable requirements of federal and State law. The State Board may certify ~~additional~~ voting systems only if they meet the requirements ~~of the request for proposal process~~ set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. ~~In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws~~. Among other ~~requirements~~, requirements as set by the State Board of Elections, the ~~request for proposal~~ certification requirements shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages ~~shall~~ may include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in voting tabulation district returns the votes cast by voters outside of the voter's voting tabulation district as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

~~In its request for proposal~~, As part of the certification requirements, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

~~If a voting system was acquired or upgraded by a county before August 1, 2005, the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting~~

~~system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection~~."

SECTION 11.(a) G.S. 163-165.7 is amended by adding a new subsection to read:

"(a2) Only electronic poll books that have been certified by the State Board in accordance with procedures and subject to standards adopted by the State Board shall be permitted for use in elections in this State."

SECTION 11.(b) This section becomes effective August 1, 2015.

EFFECTIVE DATE

SECTION 12. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2015.

s/ Chad Barefoot
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:15 p.m. this 22nd day of June, 2015

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-144
SENATE BILL 824

AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE.

The General Assembly of North Carolina enacts:

PART I: IMPLEMENTATION OF THE CONSTITUTIONAL REQUIREMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE

SECTION 1.1.(a) Article 17 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-869.1. Voter photo identification cards.**

(a) The county board of elections shall, in accordance with this section, issue without charge voter photo identification cards upon request to registered voters. The voter photo identification cards shall contain a photograph of the registered voter, the name of the registered voter, and the voter registration number for that registered voter. The voter photo identification card shall be used for voting purposes only and shall expire 10 years from the date of issuance. The expiration of a voter photo identification card shall not create a presumption that the voter's voter registration has expired or become inactive, and a voter's voter registration shall not be rendered inactive solely due to the expiration of the voter photo identification card.

(b) The State Board shall make available to county boards of elections the equipment necessary to print voter photo identification cards. County boards of elections shall operate and maintain the equipment necessary to print voter photo identification cards.

(c) County boards of elections shall maintain a secure database containing the photographs of registered voters taken for the purpose of issuing voter photo identification cards.

(d) The State Board shall adopt rules to ensure at a minimum, but not limited to, the following:

(1) A registered voter seeking to obtain a voter photo identification card shall provide the registered voter's name, the registered voter's date of birth, and the last four digits of the voter's social security number.

(2) Voter photo identification cards shall be issued at any time, except during the time period between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and election day for each primary and election.

(3) If the registered voter loses or defaces the voter's photo identification card, the registered voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, or by telephone or mail.

(4) If a registered voter has a change of name and has updated his or her voter registration to reflect the new name,

the registered voter may request and obtain a replacement card from the registered voter's county board of elections by providing the registered voter's date of birth and the last four digits of the registered voter's social security number in person, by telephone, or by mail.

(5) Voter photo identification cards issued must contain the following disclaimer: "Expiration of this voter photo identification card does not automatically result in the voter's voter registration becoming inactive."

(e) Ninety days prior to expiration, the county board of elections shall notify any registered voter issued a voter photographic identification card under this section of the impending expiration of the voter photographic identification card."

SECTION 1.1.(b) Voter photo identification cards, as required by G.S 163A-869.1, as enacted by this act, shall be available on request no later than May 1, 2019. The State Board shall adopt temporary rules to implement G.S. 163A-869.1, as enacted by this act, no later than April 15, 2019.

SECTION 1.2.(a) Article 20 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-1145.1. Requirement for photo identification to vote in person.**

(a) Photo Identification Required to Vote. – When a registered voter presents to vote in person, the registered voter shall produce any of the following

forms of identification that contain a photograph of the registered voter:

(1) Any of the following that is valid and unexpired, or has been expired for one year or less:

a. A North Carolina drivers license.

b. A special identification card for nonoperators issued under G.S. 20-37.7 or other form of nontemporary identification issued by the Division of Motor Vehicles of the Department of Transportation.

c. A United States passport.

d. A North Carolina voter photo identification card of the registered voter issued pursuant to G.S. 163A-869.1.

e. A tribal enrollment card issued by a State or federal recognized tribe.

g. A student identification card issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), provided that card is issued in accordance with G.S. 163A-1145.2.

h. An employee identification card issued by a state or local government entity, including a charter school, provided that card

is issued in accordance with G.S. 163A-1145.3.

i. A drivers license or special identification card for nonoperators issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.

(2) Any of the following, regardless of whether the identification contains a printed expiration or issuance date:

a. A military identification card issued by the United States government.

b. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities.

(3) Any expired form of identification allowed in this subsection presented by a registered voter having attained the age of 65 years at the time of presentation at the voting place, provided that the identification was unexpired on the registered voter's sixty-fifth birthday.

(b) Verification of Photo Identification. – After presentation of the required identification described in subsection (a) of this section, the precinct officials assigned to check registration shall compare the photograph contained on the required identification

with the person presenting to vote. The precinct official shall verify that the photograph is that of the person seeking to vote. If the precinct official disputes that the photograph contained on the required identification is the person presenting to vote, a challenge shall be conducted in accordance with the procedures of G.S. 163A-914. A voter shall be permitted to vote unless the judges of election present unanimously agree that the photo identification presented does not bear a reasonable resemblance to that voter.

(c) Provisional Ballot Required Without Photo Identification. – If the registered voter cannot produce the identification as required in subsection (a) of this section, the registered voter may cast a provisional ballot that is counted only if the registered voter brings an acceptable form of photograph identification listed in subsection (a) of this section to the county board of elections no later than the end of business on the business day prior to the canvass by the county board of elections as provided in G.S. 163A-1172. The State Board shall provide the registered voter casting a provisional ballot due to failure to provide photo identification an information sheet on the deadline to return to the county board of elections to present photo identification, and what forms of photo identification are acceptable, in order for the voter's provisional ballot to be counted.

(d) Exceptions. – The following exceptions are provided for a registered voter who does not produce an acceptable form of identification as required in subsection (a):

(1) Religious Objection. – If a registered voter does not produce an acceptable form of photograph identification due

to a religious objection to being photographed, the registered voter may complete an affidavit under penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) has a religious objection to being photographed. Upon completion of the affidavit, the registered voter may cast a provisional ballot.

(2) Reasonable Impediment. – If a registered voter does not produce an acceptable form of photograph identification because the registered voter suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification, the registered voter may complete an affidavit under the penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification. The registered voter also shall complete a reasonable impediment declaration

form provided in subsection (d1) of this section, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the registered voter may cast a provisional ballot.

(3) Natural Disaster. – If a registered voter does not produce an acceptable form of photograph identification due to being a victim of a natural disaster occurring within 100 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State, the registered voter may complete an affidavit under penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) was a victim of a natural disaster occurring within 100 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State. Upon completion of the affidavit, the registered voter may cast a provisional ballot.

(d1) Reasonable Impediment Declaration Form. – The State Board shall adopt a reasonable impediment declaration form that, at a minimum, includes the following as separate boxes that a registered voter may

check to identify the registered voter's reasonable impediment:

(1) Inability to obtain photo identification due to:

a. Lack of transportation.

b. Disability or illness.

c. Lack of birth certificate or other underlying documents required.

d. Work schedule.

e. Family responsibilities.

(2) Lost or stolen photo identification.

(3) Photo identification applied for but not yet received by the registered voter voting in person.

(4) Other reasonable impediment. If the registered voter checks the "other reasonable impediment" box, a further brief written identification of the reasonable impediment shall be required, including the option to indicate that State or federal law prohibits listing the impediment.

(e) County Board Review of Exceptions. – If the county board of elections determines that the registered voter voted a provisional ballot only due to the inability to provide proof of identification and the required affidavit required in subsection (d) of this section is submitted, the county board of elections shall find that the provisional ballot is valid unless the county board has grounds to believe the affidavit is false.

(f) Purpose. – The purpose of the identification required pursuant to subsection (a) of this section is to

confirm the person presenting to vote is the registered voter on the voter registration records. Any address listed on the identification is not determinative of a registered voter's residence for the purpose of voting. A registered voter's residence for the purpose of voting is determined pursuant to G.S. 163A-842."

SECTION 1.2.(b) Article 20 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-1145.2. Approval of student identification cards for voting identification.**

(a) The State Board shall approve the use of student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The chancellor, president, or registrar of the university or college submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

a. The identification cards that are issued by the university or college contain photographs of students taken by the university or college or its agents or contractors.

b. The identification cards are issued after an enrollment process that includes methods of confirming the identity of the student that include, but are not limited to, the social security number, citizenship

status, and birthdate of the student.

c. The equipment for producing the identification cards is kept in a secure location.

d. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.

e. University or college officials would report any misuse of student identification card equipment to law enforcement if G.S. 163A-1389(19) was potentially violated.

f. The cards issued by the university or college contain a date of expiration, effective January 1, 2021.

g. The university or college provides copies of standard identification cards to the State Board to assist with training purposes.

h. The college or university will provide a copy to students, when issuing the student identification card, of the documentation developed by the State Board on the requirements related to identification for voting; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free

North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs; and the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.

(2) The university or college complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the student identification process.

(b) The State Board shall approve the use of student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) every four years.

(c) The State Board shall produce a list of participating universities and colleges every four years. The list shall be published on the State Board's Web site and distributed to every county board of elections.

(d) If a participating college or university with a student identification card approved for use by the State Board as provided in subsection (b) of this section changes the design of the student identification card, that college or university shall provide copies of the

new design of the student identification cards to the State Board to assist with training purposes."

SECTION 1.2.(c) Article 20 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-1145.3. Approval of employee identification cards for voting identification.**

(a) The State Board shall approve the use of employee identification card issued by a state or local government entity, including a charter school, for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The head elected official or lead human resources employee of the state or local government entity or charter school submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

a. The identification cards that are issued by the state or local government entity contain photographs of the employees taken by the employing entity or its agents or contractors.

b. The identification cards are issued after an employment application process that includes methods of confirming the identity of the employee that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee.

c. The equipment for producing the identification cards is kept in a secure location.

d. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.

e. State or local officials would report any misuse of identification card equipment to law enforcement if G.S. 163A-1389(19) was potentially violated.

f. The cards issued by the state or local government entity contain a date of expiration, effective January 1, 2021.

g. The state or local government entity provides copies of standard identification cards to the State Board to assist with training purposes.

(2) The state or local government entity complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the employee identification process.

(b) The State Board shall approve the use of employee identification cards issued by a state or local government entity, including a charter school, for voting identification under G.S. 163A-1145.1 every four years.

(c) The State Board shall produce a list of participating employing entities every four years. The

list shall be published on the State Board's Web site and distributed to every county board of elections."

SECTION 1.2.(d) G.S. 163A-1307 reads as rewritten:

"**§ 163A-1307. Absentee ballots, applications on container-return envelopes, and instruction sheets.**

(a) Absentee Ballot Form. – In accordance with the provisions of G.S. 163A-1308, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board, providing for all of the following:

(1) The voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Part.

(2) A space for identification of the envelope with the voter and the voter's signature.

(3) A space for the identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163A-1310, those persons' signatures, and those persons' addresses.

(4) A space for the name and address of any person who, as permitted under G.S. 163A-1298(a), assisted the voter if the voter is unable to complete and sign the certification and that individual's signature.

(5) A space for approval by the county board of elections.

(6) A space to allow reporting of a change of name as provided by G.S. 163A-880.

(7) A prominent display of the unlawful acts under G.S. 163A-1298 and G.S. 163A-1389, except if there is not room on the envelope, the State Board may provide for that disclosure to be made on a separate piece of paper to be included along with the container-return envelope.

(8) An area to attach additional documentation necessary to comply with the identification requirements in accordance with State Board rules, as provided in G.S. 163A-1309.

The container-return envelope shall be printed in accordance with the instructions of the State Board.

(c) Instruction Sheets. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before

a statewide primary, other general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election."

SECTION 1.2.(e) G.S. 163A-1309 reads as rewritten:

"**§ 163A-1309. Method of requesting absentee ballots.**

(a) Valid Types of Written Requests. – A completed written request form for an absentee ballot as required by G.S. 163A-1308 is valid only if it is on a form created by the State Board and signed by the voter requesting absentee ballots or that voter's near relative or verifiable legal guardian. The State Board shall make the form available at its offices, online, and in each county board of elections office, and that form may be reproduced. A voter may make a request in person or by writing to the county board for the form to request an absentee ballot. The request form for an absentee ballot shall require at least the following information:

(1) The name and address of the residence of the voter.

(2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.

(3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.

(4) ~~One or more of the following in the order of preference~~:

~~a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license~~.

~~b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.~~

~~c. The last four digits of the applicant's social security number~~.

The identification required in accordance with State Board rules, as provided in subsection (f) of this section.

(5) The voter's date of birth.

(6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.

(b) A completed request form for an absentee ballot shall be deemed a request to update the official record of voter registration for that voter and shall be confirmed in writing in accordance with G.S. 163A-877(d).

(c) The completed request form for an absentee ballot shall be delivered to the county board of elections. If the voter does not include the information requested in subdivision (a)(4) of this section, a copy of a document listed in G.S. 163A-1144(a)(2) shall accompany the completed request form.

(d) Upon receiving a completed request form for an absentee ballot, the county board shall confirm that

voter's registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163A-1308(b). If the voter's official record of voter registration conflicts with the completed request form for an absentee ballot or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

(e) Invalid Types of Written Requests. – A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163A-1308.

(f) Rules by State Board. – The State Board shall adopt rules for the enforcement of this ~~section~~. section, including rules to provide for the forms of identification that must be included with the written request for an absentee ballot. At a minimum, the rules shall include the following:

(1) Acceptable forms of readable identification that are substantially similar to those required under G.S. 163A-1145.1.

(2) A process for a voter without acceptable readable identification under subdivision (1) of this section to complete an alternative affidavit in accordance with G.S. 163A-1145.1(d)(1), (d)(2), or (d)(3) that includes lack of access to a method to attach an electronic or physical copy of

the identification card to the written request as a reasonable impediment to compliance with the identification requirement.

(3) A process for a voter to request the option to return the information required by subdivision (1) or (2) of this section with the absentee ballot container-return envelope, as provided in G.S. 163A-1307."

SECTION 1.2.(f) Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, the State Board shall approve (i) tribal enrollment cards issued by a tribe recognized by this State under Chapter 71A of the General Statutes; (ii) student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3); and (iii) employee identification cards issued by a state or local government entity, including a charter school, for use as voting identification under G.S. 163A-1145.1 no later than March 15, 2019, for use in primaries and elections held in 2019 and 2020, and again no later than May 15, 2021, for elections held on or after that date. The State Board shall adopt temporary rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than February 1, 2019. The State Board shall adopt permanent rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than May 15, 2021. The State

Board shall produce the initial list of participating institutions and employing entities no later than April 1, 2019.

SECTION 1.2.(g) Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, a student identification card issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) or an employee identification card issued by state or local government entity that does not contain an expiration date shall be eligible for use in any election held before January 1, 2021.

SECTION 1.2.(h) Notwithstanding G.S. 163A-1145.1(d)(2), for elections held in 2019, any voter who does not present a photograph identification listed as acceptable in G.S. 163A-1145.1(a) when presenting to vote in person shall be allowed to complete a reasonable impediment affidavit and cast a provisional ballot, listing as the impediment not being aware of the requirement to present photograph identification when voting in person or failing to bring photograph identification to the voting place.

SECTION 1.2.(i) The State Board of Elections and Ethics Enforcement shall develop temporary rules in accordance with G.S. 163A-1309, as amended by this section, no later than July 1, 2019, and permanent rules no later than January 1, 2020. In the development of these rules, the State Board shall consult with Disability Rights North Carolina to develop forms and instructions that are accessible to the disabled community. At least 14 days prior to adoption of the temporary and permanent rules, the State Board shall report to the Joint Legislative

Elections Oversight Committee on the content of the proposed rules. In addition, the State Board shall report to the Joint Legislative Elections Oversight Committee no later than March 1, 2019, on the following:

(1) Any other recommendations to secure the absentee voting by mail process, including, but not limited, to the following:

a. Increasing the potential criminal penalty for violations of that process.

b. Increasing training and education for absentee voters by mail.

c. Improved technological or administrative methods to ensure the proper chain of custody of absentee voting by mail.

(2) Any recommended statutory changes related to security of absentee voting by mail, including legislation recommended for implementation of subsections (d) and (e) of this section.

SECTION 1.3.(a) G.S. 20-37.7 reads as rewritten:

"**§ 20-37.7. Special identification card.**

…

(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State as follows:

(1) The applicant is legally blind.

(2) The applicant is at least ~~70~~ 17 years old.

(3) The applicant or who has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease.

(4) The applicant is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

~~(5) The applicant is registered to vote in this State and does not have photo identification acceptable under G.S. 163A-1145. To obtain a special identification card without paying a fee, a registered voter shall sign a declaration stating the registered voter is registered and does not have other photo identification acceptable under G.S. 163A-1145. The Division shall verify that voter registration prior to issuing the special identification card. Any declaration shall prominently include the penalty~~

~~under G.S. 163A-1389(13) for falsely making the declaration~~.

~~(6) The applicant is appearing before the Division for the purpose of registering to vote in accordance with G.S. 163A-883 and does not have other photo identification acceptable under G.S. 163A-1145. To obtain a special identification card without paying a fee, that applicant shall sign a declaration stating that applicant is registering to vote and does not have other photo identification acceptable under G.S. 163A-1145. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely making the declaration~~.

(7) The applicant has a developmental disability. To obtain a special identification card without paying a fee pursuant to this subdivision, an applicant must present a letter from his or her primary care provider certifying that the applicant has a developmental disability. For purposes of this subdivision, the term "developmental disability" has the same meaning as in G.S. 122C-3.

…

(d2) Notwithstanding subsection (b) of this section, for a person whose valid drivers license, permit, or endorsement, is required to be seized or surrendered due to cancellation, disqualification, suspension, or revocation under applicable State law, the Division

shall issue a special identification card to that person without application, if eligible to receive a special identification card, upon receipt by the Division of the seized or surrendered document. The Division shall issue and mail, via first-class mail to that person's address on file, a special identification card pursuant to this subsection at no charge.

…."

SECTION 1.3.(b) The issuance of special identification cards without application for any person whose valid drivers license, permit, or endorsement is received by the Division upon seizure or surrender, as required by G.S. 20-37.7(d2), as enacted by this act, shall begin no later than May 1, 2019.

SECTION 1.4.(a) G.S. 163A-1137(a) reads as rewritten:

"(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address and presenting photo identification in accordance with ~~G.S. 163A-1145~~. G.S. 163A-1145.1. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign

the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting."

SECTION 1.4.(b) G.S. 163A-1300(b) reads as rewritten:

"(b) Not earlier than the third Wednesday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 7:00 P.M. on the last Friday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in G.S. 163A-1303. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board and present photo identification in accordance with ~~G.S. 163A-1145~~. G.S. 163A-1145.1. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163A-989, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163A-1391. The voter shall complete the application in the presence of the authorized member or employee of

the board, and shall deliver the application to that person."

SECTION 1.4A. G.S. 163A-741 is amended by adding a new subsection to read:

"(o1) The State Board shall include in all forms prepared by the Board a prominent statement that submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163A of the General Statutes."

SECTION 1.5.(a) The Bipartisan State Board of Elections and Ethics Enforcement (State Board) shall establish an aggressive voter education program concerning the provisions contained in this legislation. The State Board shall educate the public as follows:

(1) Post information concerning changes contained in this legislation in a conspicuous location at each county board of elections, the State Board's office, and their respective websites.

(2) Train precinct officials at training sessions required as provided in G.S. 163A-889 to answer questions by voters concerning the changes in this legislation.

(3) Require documentation describing the changes in this legislation to be disseminated by precinct officials at every election held following the effective date of this act.

(4) Coordinate with each county board of elections so that at least two seminars are conducted in each county prior to September 1, 2019.

(5) Coordinate with local and service organizations to provide for additional informational seminars at a local or statewide level.

(6) Coordinate with local media outlets, county boards of commissions, and county boards of elections to disseminate information in a way that would reasonably inform the public concerning the changes in this legislation. In executing these duties, the Board shall ensure that it makes necessary efforts to inform the public regarding the provisions of this act; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs.

(7) In conducting the educational program under this section, the educational program shall, when appropriate, inform the public regarding the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.

(7a) Make available on the State Board's Web site a document that provides the information in subdivisions (6) and (7) of this subsection regarding the provisions of this act; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs; and the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.

(8) Notify each registered voter who does not have a North Carolina issued drivers license or identification card a notice of the provisions of this act by no later than September 1, 2019. This notice must include the requirements to vote absentee, early, or on election day and a description of voting by provisional ballot. It must also state the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1.

(9) Mail information to all North Carolina residential addresses, in the same manner as the Judicial Voter Guide,

twice in 2019 and twice in 2020 that, at a minimum, describes forms of acceptable photo identification when presenting to vote in person, the options for provisional voting for registered voters who do not present the required photo identification, and a description of voting mail-in absentee.

(10) Prominently place the following statement in all voter education materials mailed to citizens and on informational posters displayed at one-stop voting sites and precincts on election day: "All registered voters will be allowed to vote with or without a photo ID card. When voting in person, you will be asked to present a valid photo identification card. If you do not have a valid photo ID card, you may obtain one from your county board of elections prior to the election, through the end of the early voting period. If you do not have a valid photo ID card on election day, you may still vote and have your vote counted by signing an affidavit of reasonable impediment as to why you have not presented a valid photo ID."

(11) In addition to the items above, the State Board may implement additional educational programs in its discretion.

SECTION 1.5.(b) The State Board is directed to create a list containing all registered voters of North Carolina who are otherwise qualified to vote but do not have a North Carolina drivers license or other form of identification containing a photograph issued by the Division of Motor Vehicles of the Department of Transportation, as of September 1, 2019. The list must be made available to any registered voter upon request. The State Board may charge a reasonable fee for the provision of the list in order to recover associated costs of producing the list. The Division of Motor Vehicles must provide the list of persons with a North Carolina drivers license or other form of identification containing a photograph issued by the Division of Motor Vehicles at no cost to the State Board.

SECTION 1.5.(c) County boards of elections shall make available information describing the changes in this legislation, including acceptable forms of photograph identification, to all voters in the 2019 municipal primary and election and at the 2020 primary election.

SECTION 1.5.(d) By September 1, 2019, the State Board of Elections and Ethics Enforcement shall review, update, and make further recommendations to the Joint Legislative Elections Oversight Committee on steps to implement the use of electronic and digital information in all polling places statewide. The review shall address all of the following:

(1) Obtaining digital photographs of registered voters and verifying identity of those voters, including transfer of digital photographs for registered voters held by the

Department of Transportation, Division of Motor Vehicles.

(2) Maintaining information stored electronically in a secure fashion.

(3) Utilizing electronically stored information, including digital photographs and electronic signatures, to create electronic pollbooks.

(4) Using electronic pollbooks to assist in identifying individuals attempting to vote more than once in an election.

(5) A proposed plan for a pilot project to implement electronic pollbooks, including the taking of digital photographs at the polling place to supplement the electronic pollbooks.

(6) Any other related matter identified by the State Board impacting the use of digital and electronic information in the voting place.

PART II: REPEAL OF UNCODIFIED SECTIONS OF THE VOTER INFORMATION VERIFICATION ACT

SECTION 2.(a) Sections 1.1, 5.2, 5.4, and 5.5 of S.L. 2013-381 are repealed.

SECTION 2.(b) Section 5.3 of S.L. 2013-381, as amended by Section 8.(g) of S.L. 2015-103, is repealed.

PART III: REPEAL OF CODIFIED SECTIONS OF THE VOTER INFORMATION VERIFICATION ACT AND RELATED STATUTES

SECTION 3.1.(a) G.S. 163A-868 is repealed.

SECTION 3.1.(b) G.S. 163A-869(e) reads as rewritten:

"(e) Display of Card May Not Be Required to Vote. – No county board of elections may require that a voter registration card be displayed in order to vote. ~~A county board of elections may notify a voter that the voter's registration card may be used for the required identification in conjunction with a reasonable impediment declaration in accordance with G.S. 163A-1147."~~

SECTION 3.1.(c) G.S. 163A-913 reads as rewritten:

"**§ 163A-913. Challenges allowed on day of primary or election.**

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the county may exercise the right of challenge, and when the voter does so may enter the voting enclosure to make the challenge, but the voter shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the county may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163A-911(c).

(2) That the person has already voted in that primary or election.

(3) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

~~(4) Except as provided in G.S. 163A-1145(d) and G.S. 163A-1146, the voter~~

~~does not present photo identification in accordance with G.S. 163A-1145.~~

(4a) The registered voter does not present photo identification in accordance with G.S. 163A-1145.1.

The chief judge, judge, or assistant appointed under G.S. 163A-815 or 163A-818 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163A-911(c)(3), the voter may still transfer that voter's registration under G.S. 163A-878(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163A-919(a) if the transfer is made. A person who has transferred that voter's registration under G.S. 163A-911(c)(3) may be challenged at the precinct to which the registration is being transferred."

SECTION 3.1.(d) G.S. 163A-1140(b) is repealed.

SECTION 3.1.(e) G.S. 163A-1145 is repealed.

SECTION 3.1.(f) G.S. 163A-1146 is repealed.

SECTION 3.1.(g) G.S. 163A-1147 is repealed.

SECTION 3.1.(h) G.S. 163A-1167 is repealed.

SECTION 3.1.(i) G.S. 163A-1168 is repealed.

SECTION 3.1.(j) G.S. 163A-1301 is repealed.

SECTION 3.2.(a) G.S. 130A-93.1(c) reads as rewritten:

"(c) Upon verification of voter registration, the State Registrar shall not charge any fee under subsection (a) of this section to a registered voter who signs a declaration stating the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage

license necessary to obtain photo identification acceptable under ~~G.S. 163A-1145~~. G.S. 163A-1145.1. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely or fraudulently making the declaration."

SECTION 3.2.(b) G.S. 161-10(a)(8) reads as rewritten:

"(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. – For furnishing a certified copy of a death or birth certificate or marriage license ten dollars ($10.00). Provided however, a register of deeds, in accordance with G.S. 130A-93, may issue without charge a certified birth certificate to any person over the age of 62 years. Provided, however, upon verification of voter registration, a register of deeds, in accordance with G.S. 130A-93, shall issue without charge a certified copy of a birth certificate or a certified copy of a marriage license to any registered voter who declares the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under ~~G.S. 163A-1145.~~ G.S. 163A-1145.1. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely or fraudulently making the declaration."

SECTION 3.2.(c) G.S. 163A-1389(13) reads as rewritten:

"(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting, including declarations made under this ~~Subhapter, G.S. 20-37.7(d)(5), 20-37.7(d)(6), 130A-93.1(c)~~, Subchapter, G.S. 130A-93.1(c), and G.S. 161-10(a)(8)."

SECTION 3.2.(d) G.S. 163A-1389 is amended by adding a new subdivision to read:

"(19) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a form of photo identification provided in G.S. 163A-1145.1 for the purposes of voting."

SECTION 3.3. G.S. 163A-821 reads as rewritten:

"**§ 163A-821. Observers; appointment.**

(a) The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents

of the State who may attend any voting place in the State. The list submitted by the chair of the political party may be amended between the one-stop period under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 and general election day to substitute one or all at-large observers for election day. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time, except that in addition one of the at-large observers from each party may also be in the voting enclosure. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers by the chair of a county political party must be registered voters of the county for which appointed and must have good moral character. Persons appointed as observers by the chair of a State political party must be registered voters of the State and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

(b) Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct, except that the list of at-large observers authorized in subsection (a) of this section shall be submitted to the county director of elections. Individuals authorized to appoint observers must, prior

to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct or at-large status for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected precinct, except that the list of at-large observers shall be provided by the county director of elections to the chief judge. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe. At-large observers may serve at any one-stop site.

…."

SECTION 3.4.(a) G.S. 163A-867(g)(2) reads as rewritten:

"(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under

subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by absentee ballot except in person under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. The county board of elections shall establish a procedure at the voting site for:

a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and

b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163A-916."

SECTION 3.4.(b) G.S. 163A-1133(b) reads as rewritten:

"(b) Photographing Voters Prohibited. – No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. This subsection shall also apply to one-stop sites under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. This subsection does not apply to cameras used as a regular part of the security of the facility that is a voting place or one-stop site."

SECTION 3.4.(c) G.S. 163A-1134(e) reads as rewritten:

"(e) Buffer Zone and Area for Election-Related Activity at One-Stop Sites. – Except as modified in this subsection, the provisions of this section shall apply to one-stop voting sites in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

(1) Subsection (c) of this section shall not apply.

(2) The notice in subsection (d) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site."

SECTION 3.4.(d) G.S. 163A-1298(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance.

(2) For any person to assist a voter to vote an absentee ballot under the absentee

voting procedure authorized by G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 except as provided in that section.

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163A-1302, or to receive assistance except as provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

…."

SECTION 3.4.(e) G.S. 163A-1300(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163A-1295 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and ~~G.S. 163A-1301, 163A-1302~~, G.S. 163A-1302, 163A-1303, and 163A-1304."

SECTION 3.4.(f) G.S. 163A-1300(i) reads as rewritten:

"(i) Notwithstanding the provisions of G.S. 163A-916(a) and (b), a challenge may be entered against a voter at a one-stop site under G.S. 163A-1303 or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-

stop voting under this section and ~~G.S. 163A-1301, 163A-1302~~, G.S. 163A-1302, 163A-1303, and 163A-1304 or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed by the State Board. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163A-916(e)."

SECTION 3.4.(g) G.S. 163A-1303 reads as rewritten:

"**§ 163A-1303. Sites and hours for one-stop voting.**

(a) Notwithstanding any other provision of G.S. 163A-1300, ~~163A-1301~~, 163A-1302, this section, and G.S. 163A-1304, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under these sections. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board as part of a Plan for Implementation approved by both the county board of elections and by the State Board which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163A-821 for party observers at voting places on election day. A county board of elections may propose in its Plan not to

offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(b) The State Board shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163A-1046 to demand and use as an election-day voting place, unless the State Board finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, this section, and G.S. 163A-1304, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the

building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under these sections. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, this section, and G.S. 163A-1304. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board.

…."

SECTION 3.4.(h) G.S. 163A-1306 reads as rewritten:

"**§ 163A-1306. Register of absentee requests, applications, and ballots issued; a public record.**

The State Board shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.

(2) Number of assigned voter's application when issued.

(3) Precinct in which applicant is registered.

(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, a notation of that fact.

(5) Date request for application for ballots is received by the county board of elections.

(6) The voter's party affiliation.

(7) The date the ballots were mailed or delivered to the voter.

(8) Whatever additional information and official action may be required by this Part.

The State Board may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall

be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

SECTION 3.4.(i) G.S. 163A-1308(c) reads as rewritten:

"(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____ " or an abbreviation approved by the State Board and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board.

(2) The chair, member, officer, or employee of the board of elections

shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163A-1307(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the ballots to the voter in person or by

mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. No election official shall issue applications for absentee ballots except in compliance with this Part."

SECTION 3.4.(j) G.S. 163A-1310(c) reads as rewritten:

"(c) For purposes of this section, "Delivered in person" includes delivering the ballot to an election official at a one-stop voting site under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 during any time that site is open for voting. The ballots shall be kept securely and delivered by election officials at that site to the county board of elections office for processing."

SECTION 3.4.(k) G.S. 163A-1315 reads as rewritten:

"**§ 163A-1315. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be

retained by the board to be counted by the county board of elections as herein provided.

…

(6) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is

sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163A-916(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(7) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

…."

SECTION 3.4.(*l*) G.S. 163A-1368 reads as rewritten:

"**§ 163A-1368. Absentee voting at office of board of elections.**

Notwithstanding any other provisions of this Subchapter, any covered voter under this Part shall be

permitted to vote an absentee ballot pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 if the covered voter has not already voted an absentee ballot which has been returned to the board of elections, and if the covered voter will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to the covered voter applying to vote pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. The covered voter shall be eligible to vote pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 no later than 5:00 P.M. on the day next preceding the primary, second primary or election."

SECTION 3.4.(m) G.S. 163A-1411(41) reads as rewritten:

"(41) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. In the case of the general election in November of the even-numbered year is aired or transmitted after September 7 of that year, and in the case of any other election is aired or transmitted within 60 days of the time set for absentee voting to begin pursuant to G.S.

163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 in an election for that office.

c. May be received by either:

1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election if in the form of broadcast, cable, or satellite communication.

2. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank."

SECTION 3.4.(n) G.S. 163A-1520(a) reads as rewritten:

"(a) Judicial Voter Guide. – The State Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The State Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 for the primary and no

more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 for the general election."

PART IV. APPROPRIATION

SECTION 4.(a) There is appropriated from the General Fund to the State Board of Elections and Ethics Enforcement the sum of two million two hundred fifty thousand dollars ($2,250,000) for the 2018-2019 fiscal year. Of the funds appropriated, the sum of seven hundred fifty thousand dollars ($750,000) shall be used to implement the provisions of this act and may be used to create temporary positions at the State Board of Elections and Ethics Enforcement. The State Board of Elections and Ethics Enforcement shall transfer to the Highway Fund one million five hundred thousand dollars ($1,500,000) for the 2018-2019 fiscal year to address the loss of revenues resulting from implementation of this act.

SECTION 4.(b) There is appropriated from the General Fund to the North Carolina Public Campaign Fund the sum of eight hundred fifty thousand dollars ($850,000) for the 2018-2019 fiscal year. Notwithstanding any other law to the contrary, the State Board of Elections and Ethics Enforcement shall allocate these funds to county boards of elections for maintenance grants for printing equipment or to assist in the implementation of this act.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of December, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 3:39 p.m. this 19th day of December, 2018.

s/ James White
House Principal Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-239
SENATE BILL 683

AN ACT TO AMEND THE LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS; TO RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING; TO EXTEND THE TIME BY WHICH COUNTY BOARDS OF ELECTION NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS; TO AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION; AND TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF THE STATE BOARD OF ELECTIONS, CONSISTENT WITH HOUSE BILL 966 OF THE 2019 REGULAR SESSION.

The General Assembly of North Carolina enacts:

PART I. AMEND LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS

SECTION 1.1.(a) G.S. 163-228 reads as rewritten:

"**§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.**

(a) ~~The~~ With respect to each request for mail-in absentee ballots, the State Board ~~of Elections~~ shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.

(2) Number of assigned voter's application when issued.

(3) Precinct in which the applicant is registered.

(4) Address to which ballots are to be ~~mailed, or, if the voter voted pursuant to G.S. 163-227.2, 163-227.5, and 163-227.6, a notation of that fact~~. mailed.

(5) Repealed by Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date.

(6) Date request for application for ballots is received by the county board of elections.

(7) The voter's party affiliation.

(8) The date the ballots were mailed or delivered to the voter.

(9) Whatever additional information and official action may be required by this Article.

(a1) With respect to each early "one-stop" absentee ballot voted under G.S. 163-227.2, 163-227.5, and 163-227.6, the State Board shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested.

(2) Number of assigned voter's application when issued.
(3) The precinct in which the voter is registered.
(4) The date the voter voted early "one-stop."
(5) The voter's party affiliation.
(6) Whatever additional information and official action may be required by this Article.

(b) The State Board ~~of Elections~~ may provide for the ~~register~~ official registers required by this section to be kept by electronic data processing ~~equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.~~ equipment.

(c) The official register required by subsection (a) of this section shall be confidential and not a public record until the opening of the voting place in accordance with G.S. 163-166.01, at which time the official register shall constitute a public record. The official register ~~of absentee requests, applications and ballots issued~~ required by subsection (a1) of this section shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

(d) The State Board shall require the county board of elections to transmit information in the official register provided for in this section and the list required by G.S. 163-232 ~~to be transmitted~~ to the State

Board. The State Board shall adopt rules to implement this subsection, including frequency of transmittal.

(e) Notwithstanding subsection (c) of this section, the State Board or a county board of elections shall inform the voter of the status of that voter's request for mail-in absentee ballots upon inquiry of the voter or the voter's near relative or verifiable legal guardian."

SECTION 1.1.(b) G.S. 163-233 reads as rewritten:

"**§ 163-233. Applications for absentee ballots; how retained.**

(a) The county board of elections shall retain, in a safe place, the original of all applications made for absentee ~~ballots and shall make them~~ ballots, which shall be available to inspection by the State Board ~~of Elections~~ or to any person upon the directive of the State ~~Board of Elections~~. Board. Any copies of any photographic identification associated with the absentee ballots shall not be a public record.

(b) The county board of elections shall create a list of applications made for absentee ballots received by the county board, which shall be updated daily from the date the county board begins to mail application and ballots through the date of canvass. Such list shall be a public record.

(c) All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which ~~they~~ those applications may be destroyed."

SECTION 1.1.(c) G.S. 163-82.10 reads as rewritten:

"**§ 163-82.10. Official record of voter registration.**

(a) Official Record. – The State voter registration

system is the official voter registration list for the conduct of all elections in the State. The State Board ~~of Elections~~ and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Natural and Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State ~~Board of Elections~~. Board. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter.

(a1) Personal Identifying Information. – Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, any electronic mail address submitted under this Article, Article 20, or Article 21A of this Chapter, photocopies of identification for voting, and drivers license ~~numbers that may be generated in the voter registration process,~~ numbers, whether held by ~~either~~ the State Board ~~of Elections~~ or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross

negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(a2) Voter Signatures. – The signature of the voter, either on the paper application or an electronically captured image of it, whether held by the State Board or a county board of elections, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.

…."

SECTION 1.2.(a) G.S. 163-230.1(h) is recodified as G.S. 163-226(f).

SECTION 1.2.(b) G.S. 163-230.1, as amended by subsection (a) of this section, reads as rewritten:

"**§ 163-230.1. Simultaneous issuance of absentee ballots with application.**

(a) Written Request. – A qualified voter who ~~desires to vote by absentee ballot~~, is eligible to vote by absentee ballot under G.S. 163-226, or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board of elections receives that completed request form not later than 5:00 P.M. on the Tuesday before the election. That completed written request form shall be in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the completed request form, the county board of elections shall cause to be mailed to that voter a single package that includes all of the following:

(1) The official ballots ~~that~~ the voter is entitled to vote.

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.

(3) An instruction sheet.

(4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned ballot.

(a1) Mailing of Application and Ballots. – The ballots, envelope, and instructions shall be mailed to the voter by the county board's ~~chairman~~, chair, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(b) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request ~~under subsection (a) of this section~~ for absentee ballots in person to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal ~~guardian.~~ guardian, and shall enter in the register of absentee requests, applications, and ballots issued the

information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote.

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.

(3) An instruction sheet.

(4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned application and voted ballots.

(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ~~ballots~~, ballots from the voter, or the near relative or the verifiable legal guardian of that voter, the county board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board ~~of Elections~~ and insert in the blank space the number assigned the applicant's application in the register of absentee requests,

applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State ~~Board of Elections~~. Board.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning

> the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163-227.2, 163-227.5, and 163-227.6. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. – The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(e) Approval of Applications. – At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(f) Required Meeting of County Board of Elections. – During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the ~~chairman~~ chair or any other member of the board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3).

(g) Rules. – The State ~~Board of Elections,~~ Board, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots. At a minimum, the rules shall include the following:

(1) Acceptable photocopies of forms of readable identification, as described in G.S. 163-166.16(a).

(2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's

identification with the written request as a reasonable impediment to compliance with the identification requirement. If a reasonable impediment under this subdivision states inability to attach a physical copy of the voter's identification with the written request, the reasonable impediment shall include one of the following:

a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.

c. The last four digits of the voter's social security number."

SECTION 1.3.(a) G.S. 163-230.2 reads as rewritten:

"**§ 163-230.2. Method of requesting absentee ballots.**

(a) Valid Types of Written Requests. – A completed written request form for ~~an~~ absentee ~~ballot~~ ballots as required by G.S. 163-230.1 is valid only if it is on a form created by the State Board and signed by the voter requesting absentee ballots or that voter's near relative or verifiable legal guardian. The State Board shall make the form available at its offices, online, and in each county board of elections office, and that form

may be reproduced. ~~A voter may make a request in person or by writing to the county board for the form to request an absentee ballot~~. The request form ~~for an absentee ballot~~ created by the State Board shall require at least the following information:

(1) The name and address of the residence of the voter.

(2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.

(3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.

(4) ~~The identification required in accordance with State Board rules, as provided in subsection (f) of this section~~. One of the following:

a. The number of the applicant's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

b. The number of the applicant's special identification card for nonoperators issued under G.S. 20-37.7.

c. The last four digits of the applicant's social security number.

(5) The voter's date of birth.

(6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.

(7) A clear indicator of the date the election generating the request is to be held, except for annual calendar year requests in accordance with G.S. 163-226(b).

(b) Request to Update Voter Registration. – A completed request form for ~~an~~ absentee ~~ballot~~ ballots shall be deemed a request to update the official record of voter registration for that voter and shall be confirmed in writing in accordance with G.S. 163-82.14(d).

(c) Return of Request. – The completed request form for ~~an~~ absentee ~~ballot~~ ballots shall be delivered to the county board of ~~elections. If the voter does not include the information requested in subdivision (a)(4) of this section, a copy of a document listed in G.S. 163-166.12(a)(2) shall accompany the completed request form.~~ 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 pursuant to G.S. 163-226.3.

(d) Confirmation of Voter Registration. – Upon receiving a completed request form for ~~an~~ absentee ~~ballot~~, ballots, the county board shall confirm that voter's registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and

certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163-230.1(b). If the voter's official record of voter registration conflicts with the completed request form for ~~an~~ absentee ~~ballot~~ ballots or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

(e) Invalid Types of Written Requests. – ~~A request is not valid if it does not comply with subsection (a) of this section~~. If a county board of elections receives a request for ~~an~~ absentee ~~ballot~~ ballots that does not comply with this subsection or subsection (a) of this section, the board shall not issue an application and ~~ballot~~ ballots under G.S. 163-230.1. A request for absentee ballots is not valid if any of the following apply:

(1) The completed written request is not on a form created by the State Board.

(2) The 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. A member of a multipartisan team trained and authorized by the county board of elections pursuant to G.S. 163-226.3 may assist in completion of the request.

(3) The written request does not contain all of the information required by subsection (a) of this section.

(4) The completed written request is returned to the county board by

someone other than a person listed in subsection (c) of this section, the United States Postal Service, or a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(e1) Assistance by Others. – If a voter is in need of assistance completing the written request form due to blindness, disability, or inability to read or write and there is not a near relative or legal guardian available to assist that voter, the voter may request some other person to give assistance, notwithstanding any other provision of this section. If another person gives assistance in completing the written request form, that person's name and address shall be disclosed on the written request form in addition to the information listed in subsection (a) of this section.

(f) Rules by State Board. – The State Board shall adopt rules for the enforcement of this ~~section, including rules to provide for the forms of identification that must be included with the written request for an absentee ballot. At a minimum, the rules shall include the following~~:

~~(1) Acceptable forms of readable identification that are substantially similar to those required under G.S. 163-166.16.~~

~~(2) A process for a voter without acceptable readable identification under subdivision (1) of this section to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes lack of access to a method to attach an electronic or physical copy of the~~

~~identification card to the written request as a reasonable impediment to compliance with the identification requirement~~.

~~(3)~~ ~~A process for a voter to request the option to return the information required by subdivision (1) or (2) of this section with the absentee ballot container-return envelope, as provided in G.S. 163-229.~~ section."

SECTION 1.3.(b) G.S. 163-226(b) reads as rewritten:

"(b) Annual Request by Person With Sickness or Physical Disability. – If the applicant ~~so requests and~~ reports ~~in the application~~ that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year, the ~~application shall constitute a~~ voter may request ~~for an~~ to vote by mail-in absentee ballot for all of the primaries and elections held during the calendar year when the ~~application~~ completed written request under G.S. 163-230.1 is received."

SECTION 1.3.(c) G.S. 20-30(6) reads as rewritten:

"(6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the ~~Commissioner~~. Commissioner or is made to comply with G.S. 163-230.2. It shall be lawful to make a black and white

photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card."

SECTION 1.3.(d) On or before May 1, 2020, the State Board of Elections shall report to the Joint Legislative Elections Oversight Committee and the General Assembly as to its plans to implement Sections 1.2 and 1.3 of this act and any recommendations for statutory changes necessary to implement these provisions.

SECTION 1.3.(e) Notwithstanding G.S. 163-230.2, as amended by this section, the State Board shall issue absentee application and ballots to any voter who has submitted a valid request for absentee ballots prior to the effective date of this act for elections held in 2019 and 2020.

SECTION 1.4. G.S. 163-229(b) reads as rewritten:

"(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed

and prescribed by the State ~~Board of Elections~~, Board, providing for all of the following:

(1) The voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Part.

(2) A space for identification of the envelope with the voter and the voter's signature.

(3) A space for the identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163-231, those persons' signatures, and those persons' addresses.

(4) A space for the name and address of any person who, as permitted under G.S. 163-226.3(a), assisted the voter if the voter is unable to complete and sign the certification and that individual's signature.

(5) A space for approval by the county board of elections.

(6) A space to allow reporting of a change of name as provided by G.S. 163-82.16.

(7) A prominent display of the unlawful acts under G.S. 163-226.3 and G.S. 163-275, except if there is not room on the envelope, the State Board ~~of Elections~~ may provide for that disclosure to be made on a separate piece of paper to be included along with the container-return envelope.

(8) An area to attach additional documentation necessary to comply with the identification requirements in accordance with State Board rules, as provided in ~~G.S. 163-230.2.~~ G.S. 163-230.1.

The container-return envelope shall be printed in accordance with the instructions of the State ~~Board of Elections.~~ Board, which shall prohibit the display of the voter's party affiliation on the outside of the container-return envelope."

SECTION 1.5.(a) G.S. 163-237 reads as rewritten:

"**§ 163-237. Certain violations of absentee ballot law made criminal offenses.**

(a) False Statements under Oath Made Class ~~2~~ 1 Misdemeanor. – If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, ~~he~~ that person shall be guilty of a Class ~~2~~ 1 misdemeanor.

(b) False Statements Not under Oath Made Class ~~2~~ 1 Misdemeanor. – Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, ~~he~~ that person shall be guilty of a Class ~~2~~ 1 misdemeanor.

(c) Candidate Witnessing Absentee Ballots of Nonrelative Made Class ~~2~~ 1 Misdemeanor. – A person is guilty of a Class ~~2~~ 1 misdemeanor if that person acts as a witness under G.S. 163-231(a) in any primary or

election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in ~~G.S. 163-230.1(f)~~.G.S. 163-226(f).

(d) Fraud in Connection with Absentee Vote; Forgery. – Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class ~~I~~ G felony.

(d1) Sell or Attempt to Sell Completed Absentee Ballot. – Any person who sells or attempts to sell, or purchases or agrees to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class I felony.

(d2) Destruction of Absentee Ballot. – Any person who intentionally, with the intent of obstructing a vote by a registered voter, fails to deliver or intentionally destroys a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class G felony.

(d3) Copies or Retention of Identifying Information. – Any person, other than the voter or near relative or verifiable legal guardian of that voter, who copies or otherwise retains the request for absentee ballots, a completed application for absentee ballots, or any identifying information, as defined in G.S. 14-113.20, disclosed in a request or application, shall be guilty of a Class G felony.

(d4) Compensation Based on Requests. – Any person who compensates another, or who accepts compensation, based on the number of returned written

requests for absentee ballots under G.S. 163-230.2, shall be guilty of a Class I felony.

(d5) Intent to Unlawfully Influence. – Any person who commits, attempts to commit, or conspires to commit a crime identified in G.S. 163-82.6(b), 163-226.3(a), 163-274, 163-275, or this section with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain, shall be guilty of a Class F felony.

(d6) Disclosure of Register of Absentee Ballot Requests. – Notwithstanding G.S. 132-3(a), any person who steals, releases, or possesses the official register of absentee requests for mail-in absentee ballots as provided in G.S. 163-228 prior to the opening of the voting place in accordance with G.S. 163-166.01, for a purpose other than the conduct of business at the county board of elections, shall be guilty of a Class G felony.

(e) Violations Not Otherwise Provided for Made Class ~~2~~ 1 Misdemeanors. – If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, ~~he~~ that person shall be guilty of a Class ~~2~~ 1 misdemeanor."

SECTION 1.5.(b) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

SECTION 1.6. Rule Making. – The State Board of Elections shall adopt emergency rules for the implementation of this Part in accordance with G.S. 150B-21.1A. This section does not require any rule making if not otherwise required by law.

PART II. RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING

SECTION 2.(a) G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third ~~Wednesday~~ Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than ~~7:00 P.M. on the last Friday~~ 3:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in G.S. 163-227.6. A county board of elections shall conduct one-stop voting on the last Saturday before the election from 8:00 A.M. until 3:00 P.M. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board and present photo identification in accordance with G.S. 163-166.16. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an

~~application form as specified in G.S. 163-277.~~ application for absentee ballots. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 2.(b) G.S. 163-227.6, as amended by S.L. 2019-22, reads as rewritten:

"**§ 163-227.6. Sites and hours for one-stop voting.**

(a) Notwithstanding any other provision of G.S. 163-227.2, 163-227.5, and this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under these sections. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board ~~of Elections~~ as part of a Plan for Implementation approved by both the county board of elections and by the State Board ~~of Elections~~ which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board ~~of Elections~~ finds that the sites in the Plan as a whole

provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board ~~of Elections~~ to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board ~~of Elections~~ may adopt a Plan for that county. The State Board, in that plan, shall take into consideration ~~factors including geographic, demographic, and partisan interests of that county~~. whether the Plan disproportionately favors any party, racial or ethnic group, or candidate.

(b) The State Board ~~of Elections~~ shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board ~~of Elections~~ finds that other equally suitable sites were not available and that the use of the sites chosen will not ~~unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county~~. disproportionately favor any party, racial or ethnic group, or candidate. In providing the site or sites for one-stop absentee voting under G.S. 163-227.2, 163-227.5, and this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the

start of one-stop absentee voting under these sections. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under 163-227.2, 163-227.5, and this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State ~~Board of Elections~~. Board.

(c) For all sites approved for one-stop voting under this section, a county board of elections shall provide the following:

(1) Each one-stop site across the county shall be open at that same location during the period required by G.S. 163-227.2(b).

(2) If any one-stop site across the county is opened on any day during the period required by G.S. 163-227.2(b), all one-stop sites shall be open on that day.

(3) On each weekday during the period required by G.S. 163-227.2(b), all one-

stop sites shall be open from ~~7:00 A.M. to 7:00 P.M~~. 8:00 A.M. to 7:30 P.M.

(4) If the county board of elections opens one-stop sites on Saturdays other than the last Saturday before the election during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Saturdays.

(5) If the county board of elections opens one-stop sites on Sundays during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Sundays.

(6) All one-stop sites shall be open on the last Saturday before the election, for the hours required under G.S. 163-227.2(b) for that last Saturday.

(d) Notwithstanding subsection (c) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for the number of sites set out below in that county for absentee ballots to be applied for and cast with days and hours that vary from the county board of elections, or its alternate, and other additional one-stop sites in that county. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation, a member or members of the county board of elections may petition the State Board to adopt a plan for the county and the State Board may adopt a Plan for Implementation for that county.

However, any Plan of Implementation approved under this subsection shall provide for uniform location, days, and hours for that one site throughout the period required by ~~G.S. 163A-1300(b)~~. G.S. 163-227.2(b). This subsection applies only to a county that meets any of the following:

(1) One site in a county that includes a barrier island, which barrier island meets all of the following conditions:
   a. It has permanent inhabitation of residents residing in an unincorporated area.
   b. It is bounded on the east by the Atlantic Ocean and on the west by a coastal sound.
   c. It contains either a National Wildlife Refuge or a portion of a National Seashore.
   d. It has no bridge access to the mainland of the county and is only accessible by marine vessel.

(2) Up to two sites in a county that is bounded by the largest sound on the East Coast and the county seat is located at the intersection of two rivers, which divide the county.

(e) Notwithstanding ~~G.S. 163A-1300~~ G.S. 163-227.2 and subdivisions (c)(2) and (c)(3) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for sites in that county for absentee ballots to be applied for and cast in elections conducted in odd-numbered years. The proposed Plan for

Implementation shall specify the hours of operation for the county board of elections for an election conducted in that county for that odd-numbered year. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation for that odd-numbered year, a member or members of the county board of elections may petition the State Board to adopt a Plan for Implementation for the county, and the State Board may adopt a Plan for Implementation for that county. However, throughout the period required by ~~G.S. 163A-1300(b)~~, G.S. 163-227.2(b), any Plan of Implementation approved under this subsection shall provide for a minimum of regular business hours consistent with daily hours presently observed by the county board of elections for the county board of elections, or its alternate, and for uniform locations, days, and hours for all other additional one-stop sites in that county."

PART III. EXTENSION OF TIME BY WHICH COUNTY BOARDS OF ELECTIONS NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS

SECTION 3.(a) Notwithstanding Section 3.11 of S.L. 2018-13, the State Board of Elections (State Board) may authorize, upon such terms and conditions as the State Board deems appropriate, a county board of elections to use a direct record electronic (DRE) voting system in any election prior to July 1, 2020, provided the State Board determines the following conditions are satisfied:

(1) The county board of elections submits a hardship request to the State Board

to use a DRE voting system in an election or elections prior to July 1, 2020, as specified in the request, and provides documentation that replacement of the machines prior to July 1, 2020, would create an undue hardship for the county.

(2) The county board of elections provides sufficient information for the State Board to conclude that the use of the DRE voting system will not jeopardize the security of the election or elections.

(3) The county board of elections has begun the process and time line for replacing the DRE voting system and provides documentation to the State Board regarding the time line for that process and specifically the time of testing as required by G.S. 163-165.9.

SECTION 3.(b) This section is effective when it becomes law and expires August 1, 2020.

PART IV. AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION

SECTION 4.(a) G.S. 163-165.9(a) reads as rewritten:

"(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting

system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State ~~Board of Elections,~~ Board, of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State ~~Board of Elections~~. Board.

(3) ~~Test~~, Test the voting system in at least one of the following ways:

a. ~~during~~ During an election, ~~the proposed voting system~~ in at least one precinct in the county where the voting system would be used if adopted.

b. During a simulated election, in accordance with standards established by the State Board."

SECTION 4.(b) This section is effective when it becomes law.

PART V. APPROPRIATIONS FOR THE STATE BOARD OF ELECTIONS

SECTION 5.1. The appropriations made in this Part and S.L. 2019-209 are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget for the State Board of Elections in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall

revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

CURRENT OPERATIONS AND EXPANSION

SECTION 5.2. Appropriations from the General Fund for the budget of the State Board of Elections are made for the fiscal biennium ending June 30, 2021, as follows:

Current Operations – General Fund Elections	**FY 2019-2020**	**FY 2020-2021**
Requirements	$8,091,301	$6,980,220
Less: Receipts	$102,000	$102,000
Net Appropriation	$7,989,301	$6,878,220

OTHER APPROPRIATIONS

SECTION 5.3.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated for each fiscal year of the 2019-2021 fiscal biennium, as follows:

(1) All budget codes listed in the Governor's Recommended Budget and in the Budget Support Document for State Board of Elections for the 2019-2021 fiscal biennium submitted pursuant to G.S. 143C-3-5 are appropriated up to the amounts specified, as adjusted by the General Assembly in this act.

(2) Departmental receipts up to the amounts needed to implement the legislatively mandated salary increases and employee benefit increases provided in this Part for each fiscal year of the 2019-2021 fiscal biennium.

SECTION 5.3.(b) Receipts collected in a fiscal year in excess of the amounts appropriated by this section shall remain unexpended and unencumbered until appropriated by the General Assembly, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by G.S. 143C-6-4. Overrealized receipts are appropriated in the amounts necessary to implement this subsection.

SECTION 5.3.(c) Funds may be expended only for the specified programs, purposes, objects, and line items or as otherwise authorized by the General Assembly.

OTHER RECEIPTS FROM PENDING AWARD GRANTS

SECTION 5.4.(a) Notwithstanding G.S. 143C-6-4, the State Board of Elections may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this Part for grant awards that are for less than two million five hundred thousand dollars ($2,500,000), do not require State matching funds, and will not be used for a capital project. The State Board of Elections shall report to the Joint Legislative Commission on Governmental Operations within 30 days of receipt of such funds.

The State Board of Elections may spend all other funds from grants awarded after the enactment of this Part only with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 5.4.(b) The Office of State Budget and Management shall work with the State Board of Elections to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the State Board of Elections.

SECTION 5.4.(c) Notwithstanding the provisions of this section, the State Board of Elections may not accept a grant not anticipated in this Part if acceptance of the grant would obligate the State to make future expenditures relating to the program receiving the grant or would otherwise result in a financial obligation as a consequence of accepting the grant funds.

STATE BOARD OF ELECTIONS – USE OF GENERAL FUND APPROPRIATIONS

SECTION 5.5. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025) from the General Fund, the sum of one million six hundred ten thousand two hundred fifty-two dollars ($1,610,252) for the 2019-2020 fiscal year and the sum of four hundred ninety-nine thousand one hundred seventy-one dollars ($499,171) for the 2020-2021 fiscal year shall be used as follows:

(1) User Support Assistance (Fund Code 1300). – One hundred ten thousand thirteen dollars ($110,013) on a recurring basis in the 2019-2020 fiscal year and one hundred sixty-five thousand twenty dollars ($165,020) on a recurring basis in the 2020-2021 fiscal year to establish two User Support Specialist positions. These positions are effective November 1, 2019.

(2) Voter Identification (ID) (Fund Code 1400). – One million one hundred sixty-six thousand eighty-eight dollars ($1,166,088) on a nonrecurring basis in the 2019-2020 fiscal year to implement the voter ID requirements pursuant to S.L. 2018-144, Implementation of Voter ID Constitutional Amendment.

(3) Salary Reserve (Fund Code Multiple). – Twenty-two thousand two hundred twenty dollars ($22,220) on a recurring basis for each year of the 2019-2021 fiscal biennium to adjust the salary of an existing position that will be designated as the Board's General Counsel.

(4) Base Budget Adjustment (Fund Code Multiple). – Three hundred eleven thousand nine hundred thirty-one dollars ($311,931) on a recurring basis for each year of the 2019-2021 fiscal

biennium to correct the base budget to reflect actual agency composition.

ELECTIONS GENERAL FUND REDUCTIONS

SECTION 5.6. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025), the sum of four hundred fifty-four thousand two hundred forty-eight dollars ($454,248) for each year of the 2019-2021 fiscal biennium shall be reduced as follows:

(1) Vacant Position Elimination (Fund Code 1300). – One hundred thirty-three thousand four hundred fifty-five dollars ($133,455) on a recurring basis in the 2019-2020 fiscal year to eliminate a vacant General Counsel (60088198) position.

(2) Personal Services Reduction (Fund Code Multiple). – Three hundred twenty thousand seven hundred ninety-three dollars ($320,793) on a recurring basis in the 2019-2020 fiscal year to reduce the personal services budget for positions.

ELECTIONS SPECIAL FUND

SECTION 5.7. The funds appropriated in this Part to the State Board of Elections Special Fund (28025) are adjusted as follows:

(1) HAVA Election Security Funds (Fund Code 2401). – Three million dollars ($3,000,000) on a nonrecurring basis in each year of the 2019-2021 fiscal biennium to modernize the Statewide

Elections Information Management System.

ELECTIONS MODIFICATIONS

VACANT POSITION ELIMINATION FLEXIBILITY AND REPORT

SECTION 5.8. Notwithstanding any provision of this act to the contrary, the State Board of Elections shall meet the personal services reduction required by this act by eliminating positions, either vacant or filled, for each year of the 2019-2021 fiscal biennium. By December 1, 2019, and December 1, 2020, the Board shall submit a report to the Joint Legislative Oversight Committee on General Government, the House of Representatives Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division on the actions taken to achieve the budgeted reduction for vacant position eliminations for the fiscal year. The report shall include a list of each alternative position eliminated, along with its position number, title, and the amount of salary and fringe benefits associated with each position.

ELECTIONS/DESIGNATE EXISTING POSITION AS AGENCY GENERAL COUNSEL

SECTION 5.9. The State Board of Elections shall designate one of its current full-time employee positions as "Agency General Counsel." The State Board of Elections shall consult with the Office of State Human Resources and the Office of State Budget and Management to ensure that the designation authorized

by this section is made in accordance with State policies and procedures.

STATE BUDGET ACT APPLIES

SECTION 5.10.(a) The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this Part by reference.

SECTION 5.10.(b) The budget enacted by the General Assembly is for the maintenance of the State Board of Elections for the 2019-2021 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended budget to the General Assembly in the Governor's Recommended Budget and in the Budget Support Document for the State Board of Elections for the 2019-2021 fiscal biennium, dated March 2019. The adjustments to the recommended budget for the State Board of Elections made by the General Assembly are set out in this act.

SECTION 5.10.(c) The budget enacted by the General Assembly for the State Board of Elections shall also be interpreted in accordance with the provisions of this Part and other appropriate legislation. In the event that there is a conflict between the line-item budget certified by the Director of the Budget for the State Board of Elections and the budget enacted by the General Assembly for the State Board of Elections, the budget enacted by the General Assembly for the State Board of Elections shall prevail.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 5.11.(a) If House Bill 966, 2019 Regular Session, becomes law, then Section 25.1 and Section 25.2 of that act are repealed.

SECTION 5.11.(b) Except where expressly repealed or amended, S.L. 2019-209, and any other enactments affecting the State budget during the 2019 Regular Session of the General Assembly, shall remain in effect.

MOST TEXT APPLIES ONLY TO THE 2019-2021 FISCAL BIENNIUM

SECTION 5.12. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2019-2021 fiscal biennium, the textual provisions of this Part apply only to funds appropriated for, and activities occurring during, the 2019-2021 fiscal biennium.

EFFECT OF HEADINGS

SECTION 5.13. The headings to the Parts, subparts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part or subpart.

SEVERABILITY CLAUSE

SECTION 5.14. If any section or provision of this Part is declared unconstitutional or invalid by the courts, it does not affect the validity of this Part as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 5.15. Except as otherwise provided, this Part becomes effective July 1, 2019.

PART VI. REPORT ON POST-ELECTION AUDITS

SECTION 6.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.12A. Post-election audits.**

After conducting a post-election audit, the State Board shall produce a report which summarizes the audit, including the rationale for and the findings of the audit. The report shall be submitted to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government within 10 business days of the date the audit is completed."

SECTION 6.(b) This section is effective when it becomes law and applies to post-election audits conducted on or after that date.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act becomes effective January 1, 2020, and applies to elections conducted on or after that date.

In the General Assembly read three times and ratified this the 30th day of October, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:14 p.m. this 6th day of November, 2019

Dkt. 103

In the
United States Court of Appeals
for the Fourth Circuit

No. 20-1092

[Filed: July 27, 2020]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, CHAPEL HILL – CARRBORO NAACP, GREENSBORO NAACP, HIGH POINT NAACP, MOORE COUNTY NAACP, STOKES COUNTY BRANCH OF THE NAACP, WINSTON SALEM – FORSYTH COUNTY NAACP,

Plaintiffs-Appellees,

v.

KEN RAYMOND, in his official capacity as a member of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections; JEFFERSON CARMON, in his official capacity as a member of the North Carolina State Board of Elections; DAVID C.

BLACK, in his official capacity as a member of the North Carolina State Board of Elections,

Defendants-Appellants,

&

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,

Intervenors.

On Appeal from the United States District Court
for the Middle District of North Carolina

REPLY BRIEF OF THE STATE BOARD DEFENDANTS-APPELLANTS

Dated: July 27, 2020 (Counsel listed on reverse)

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*[***tables omitted for purposes of printing***]*

INTRODUCTION

Plaintiffs' brief fails to show that, on this underdeveloped record, the preliminary injunction entered by the district court is supported by the precedent or the evidence. This court should reverse the district court's injunction for several reasons.

First, Plaintiffs failed to account for the fact that insufficient evidence shows that the design of 2018 N.C. Sess. Laws 144 (S.B. 824), which includes a number of features that ameliorate the burden imposed by the requirement that North Carolina voters present photo IDs to vote, was motivated by discriminatory intent. Plaintiffs failed to establish that, in comparison to the other voter ID laws that are now enforced throughout the United States, S.B. 824 has a sufficiently large disparate impact to support a finding of discriminatory intent.

Second, Plaintiffs erroneously ask this Court to place too strong an emphasis on the history that predates the enactment of S.B. 824 and on the fact that some lawmakers who voted for S.B. 824 also voted for its predecessor, 2013 N.C. Sess. Laws 381 (H.B. 589), which this Court partially invalidated. While this history is one factor that the Court should consider when determining whether the law was enacted with discriminatory intent, it is only one of several. Instead of establishing any single factor, plaintiffs "must offer other evidence that establishes discriminatory intent *in the totality of the circumstances*." *N.C. State Conf. of the*

NAACP v. McCrory, 831 F.3d 204, 231 (4th Cir. 2016) (emphasis added). Here, given the lack of drastic departures from the normal legislative process during S.B. 824's enactment, and improvements in this photo ID law as compared to its failed predecessor, among other factors, Plaintiffs here failed to do so on this record.

Third, even if Plaintiffs could show that S.B. 824 was enacted with discriminatory intent, the record also contains evidence of non-racial motivations for the enactment of S.B. 824. The record shows that the proponents of S.B. 824 believed that the legislation was needed to boost public confidence in elections and implement the state constitution's photo ID mandate. Plaintiffs and the district court failed to give due deference to those interests.

Fourth, Plaintiffs failed to cross-appeal from the district court's decision below that rejected their claim that S.B. 824 violated the Voting Rights Act ("VRA"). They also failed to show that the district court's conclusion that the VRA claim is not likely to succeed on the merits was erroneous. The Court should therefore reject Plaintiffs' call to reverse that portion of the district court's order.

While the State Board Defendants maintain that the preliminary injunction was improperly entered, this Court should exercise appropriate caution in ordering any remedy in view of the approaching voting period. As the State Board Defendants noted in their opening brief, Doc. 34 at 17-18, the Board will begin mailing out absentee ballots on September 4, 2020. In compliance with the district court's injunction and the

separate injunction entered in the parallel challenge to S.B. 824 that is pending in state court, the instructions for completing and returning those ballots will not include photo identification requirements. As a result, at this point in time, changes to the current process would run a substantial risk of confusion and disparate treatment of voters for this election cycle. Thus, any mandate that the Court issues reversing the injunction should be given effect only after the current election cycle. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.,* 140 S. Ct. 1205, 1207 (2020); *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The proximity to the election, and particularly to the September 4th distribution date for absentee ballots in North Carolina, make it practically impossible for the State Board to fairly and effectively administer the November 2020 elections under the photo ID law, particularly in light of the significant administrative and voter-outreach efforts that would be required to do so. These burdens have been exacerbated by the COVID-19 emergency.

Accordingly, this Court should hold that the State Board Defendants are likely to succeed on the merits of their defense of S.B. 824, but should delay the commencement of the law's implementation until after the current election cycle. *E.g.*, *Frank v. Walker*, 574 U.S. 929 (2014); *South Carolina v. United States*, 898 F. Supp. 2d 30, 48-51 (D.D.C. 2012).

ARGUMENT

I. Plaintiffs Failed to Show that the Evidence of S.B. 824's Design Supports an Inference of Discriminatory Intent.

Plaintiffs claim that S.B. 824 disparately impacts minority voters. Doc. 77 at 74-82. Whether the law bears more heavily on a minority, while not classified as "the sole touchstone" of the discrimination claim, nevertheless is "one of the circumstances evidencing discriminatory intent." *McCrory*, 831 F.3d at 231. However, the record evidence at this preliminary stage does not support Plaintiffs' argument that S.B. 824 has a sufficiently large disparate impact to support a finding of discriminatory intent.

A. S.B. 824 provides for many kinds of qualifying photo IDs.

First, Plaintiffs did not show through record evidence, nor did the district court find, that a substantial number of persons eligible to vote in North Carolina will be unable to get a qualifying photo ID. *See Frank v. Walker*, 768 F.3d 744, 746-47 (7th Cir. 2014). Presumably that evidence is lacking because S.B. 824 provides for an array of different qualifying IDs. The number of qualifying IDs in North Carolina is, for example, larger that the number of IDs allowed under Alabama's recently upheld photo ID law. *See Greater Birmingham Ministries v. Sec'y of State*, No. 18-10151, 2020 WL 4185801, at *4 (11th Cir. July 21, 2020). Likewise, North Carolina's process for obtaining free IDs is less cumbersome than Wisconsin's "petition" process, S.B. 824, secs. 1.1(a), 1.3(a), which the Seventh

Circuit recently upheld. *Luft v. Evers*, 2020 U.S. App. LEXIS 20245, at *29-38 (7th Cir. June 29, 2020).

Plaintiffs also erroneously argue that the State Board's "no-match list" supports their claim that S.B. 824 would have a disproportionate impact. Doc. 77 at 73-74, 79, Op 38-43. But that claim is misleading: The no-match list showed only the likely rate of possession of DMV-issued IDs in the State and left out all other additional categories of IDs that are likely to reduce the claimed disparity. J.A. 2122-36, J.A. 2124 ¶ 8.

Plaintiffs further assert that some of the additional categories of IDs allowed under S.B. 824 would nevertheless fail to reduce the ID-possession disparity. The limited record before this Court does not support that claim. The photo ID law, for example, permits State Board-approved college IDs to be used for voting in North Carolina. Contrary to Plaintiff's argument, Doc. 77 at 62, n. 8, all historically Black colleges and universities ("HBCUs") and many major public institutions and entities in North Carolina have had their IDs approved for voting.[1] Similarly, S.B. 824 also permitted the use of the approved state government IDs to vote. The record shows that the photo ID law's inclusion of these categories of IDs would have likely benefitted HBCU students and employees, as well as Black voters who make up approximately 30.5% of state employees. J.A. 2168.

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[1] *See* North Carolina State Board of Elections, FTP Voter Id Data, available at https://dl.ncsbe.gov/?prefix=Voter%20ID/ (accessed July 22, 2020).

In summary, SB 824's large number of qualifying IDs undermines the district court's finding of discriminatory intent.

B. The alleged disparity in possession rates is ameliorated by the availability of free IDs, the reasonable impediment process, and the provisional ballot cure process.

Even with the expanded list of IDs under S.B. 824, it is nevertheless likely that, as experiences in other states show, a certain level of disparity in the possession of qualifying photo IDs remains. This disparity, however, does not make S.B. 824 infirm, because the law still allows voters who lack a qualifying ID to vote.

This Court has previously upheld a lower court's finding that Virginia's photo ID law was not enacted with discriminatory intent, because that state's "steps to mitigate any burdens that [its photo ID] requirement might impose on voters . . . suggest[ed] that a benign purpose underlay [the law's] enactment." *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 607 (4th Cir. 2016). Here, S.B. 824 contains a number of measures to reduce the impact of a potential disparity in ID possession rates, including: the availability of two forms of free IDs, the opportunity to vote without an ID by declaring that a reasonable impediment prevented the voter from presenting an ID, and the opportunity for voters who forget their ID to cast provisional ballots and cure their provisional ballots by presenting their ID to the elections board at a later date. Doc. 34 at 16-18.

To try to diminish the ameliorative value of these measures, Plaintiffs first argue that North Carolina's free IDs are "not truly free." Doc. 77 at 76-77. That may be true, but the existence of some inconvenience in the voting process does not necessarily prove discriminatory intent. For instance, in *Crawford v. Marion County Election Board*, the Supreme Court has held that the "inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote[.]" *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008); *see also Ohio Democratic Party v. Husted*, 834 F.3d 620, 631-51 (6th Cir. 2016); *Frank v. Walker*, 768 F.3d 744, 748-49 (7th Cir. 2014). While *Crawford* did not address an intentional discrimination claim, its holding nevertheless shows that obtaining a photo ID should not be viewed as a major obstacle for most voters.

Moreover, S.B. 824 alleviates some of the inconveniences that Plaintiffs raise by requiring the county boards of elections to "issue without charge voter photo identification cards" to registered voters without a need to present any documents. S.B. 824, sec. 1.1(a), § 163A-869.1(d)(1). Voters are not required to present any documents to obtain a voter photo ID card. The law also enables the North Carolina DMV to issue free nonoperator ID cards that can be used for voting to all eligible individuals over the age of seventeen. *Id.*, sec. 1.3(a). The state also provides, free of charge, the documents necessary to obtain a DMV ID, if the voter does not have a copy of those documents. *Id.* § 161-10(a)(8). Plaintiffs' argument that these IDs are "not

truly free" therefore fails to show that there was sufficient evidence of disparate impact to support the district court's finding of discriminatory intent.

Plaintiffs and their supporting amici Democracy North Carolina also contend that North Carolina's reasonable impediment declaration process is not "a cure all." Doc. 77 at 82-83, Doc. 97 at 11-27. But this Court has already upheld a lower court decision that found that Virginia's photo ID law was not enacted with discriminatory intent, even though that law offered no reasonable impediment process at all. *See Lee*, 843 F.3d at 603. S.B. 824's allowance of a reasonable impediment process therefore provides support for the law's validity.

Moreover, in *South Carolina v. United States*, a three-judge panel of federal judges upheld South Carolina's photo ID law against a challenge under the Voting Rights Act due to its substantively similar reasonable impediment provision. 898 F. Supp. 2d 30, 46 (D.D.C. 2012).[2] Both North and South Carolina require that reasonable impediment ballots be counted unless a county board determines that there are grounds to believe the impediment affidavit is false. *Compare* S.C. Code Ann. § 7-13-710(D)(1)(b) *with* S.B. 824, sec. 1.2.(a), § 163A-1145.1(e).

Plaintiffs nevertheless argue that North Carolina's election officials have too much discretion in deciding whether a ballot submitted with reasonable

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[2] The discriminatory effects analysis under section 5 of the Voting Rights Act is similar to the burdens analysis under *Arlington Heights*. *South Carolina*, 898 F. Supp. 2d at 38; *see id.* at 43.

impediment affidavit should be counted. Doc. 77 at 78-81. That argument ignores the plain text of S.B. 824, which states that a reasonable impediment ballot "shall" be counted "unless the county board has grounds to believe the [reasonable impediment form] is false." S.B. 824, sec. 1.2.(a), § 163A-1145.1(e).[3] The State Board also does not interpret S.B. 824 to make reasonable impediment ballots subject to challenge by other voters, as the State Board explained in its opening brief. Doc. 34 at 13 n. 7.

Given these features of S.B. 824, Plaintiffs and Democracy North Carolina's comparisons to North Carolina's prior reasonable impediment law fail. Unlike S.B. 824, the prior law allowed a reasonable impediment ballot to be rejected for grounds other than falsity. *See* Sess. Law 2015-103, sec. 8.(e), § 163-182.1B(a)(1) (allowing for ballots to be rejected because an excuse provided by a voter was "nonsensical" or "merely denigrated the photo identification requirement").

To suggest that the State's ameliorative measures would nevertheless fail, Plaintiffs additionally argue that the State Board's efforts to implement voter ID requirements were "lackluster" and the voters lack awareness of the law's requirements. Doc. 77 at 77-78. The record at this procedural stage, however, showed the opposite.

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[3] Separately, the State Board has also promulgated a rule that provides that county boards may only reject a reasonable-impediment ballot based on falsity if all five members of a county board unanimously agree to reject the ballot. *See* 08 N.C. Admin. Code 17 .0101(b); J.A. 798 ¶ 9, J.A. 891.

Before S.B. 824 was enjoined, the State Board had "already undertaken a series of actions to implement this law, and intend[ed] to undertake additional actions to implement the Photo ID Law." J.A. 797 ¶ 6. Among other measures, the Board conducted a statewide conference and trainings for county board members and staff from all 100 county boards, provided guidance on the reasonable impediment process, promulgated rules on issuing free IDs and implementing the photo ID requirements, processed reimbursements for counties for the printing equipment for free IDs, distributed mass mailings to every registered voter who may not possess DMV-issued IDs, mailed information about voter ID to every residential address in the State, created posters and informational handouts in English and Spanish, created a dedicated webpage to inform the public about the new Photo ID rules, approved dozens of student and employee IDs, and made adjustments to its elections management information system to enforce the photo ID requirement. J.A. 798-808 ¶¶ 8–40.

In short, the State Board was diligently implementing the Photo ID law before it was enjoined on December 31, 2019. J.A. 795-990. The State Board would have continued its implementation throughout this year, and particularly its voter outreach, education and poll worker training efforts, if not for the district court's injunction. The record here simply does not support a finding of insufficient implementation prior to the entry of the district court's injunction.

Democracy North Carolina similarly argues that more time, training, voter and election officials'

education is needed to implement the photo ID requirement. Doc. 97 at 19-34. Nothing in the record supports an inference that the State Board could not restart photo ID implementation, including voter education on the photo ID exceptions and the reasonable impediment process, after the 2020 elections. *See infra* pp. 22-30. This record also fails to show that a successful rollout of the S.B. 824's photo ID requirement would be unlikely if the injunction were lifted after this fall's election.

Finally, Plaintiffs posit that the requirement of photo ID itself may have a deterrent effect on minority voting and thereby reduce the effect of any ameliorative provisions. But the record contains insufficient evidence to support this finding. The mere possibility that a photo ID requirement may deter some persons from voting, standing alone, does not support a finding of discriminatory intent.

II. S.B. 824's Historical Background Does Not Eclipse the Remaining *Arlington Heights* Factors.

Plaintiffs' discussion of S.B. 824's historical background suggests that North Carolina's unquestionable history of voting-related discrimination should outweigh all other *Arlington Heights* factors. *See* Doc. 77 at 21-32, 34-44, 49-52, 59-74, 84-85. That discussion, however, is not determinative of discriminatory intent. The other *Arlington Heights* factors weigh against such a finding.

First, the State Board Defendants agree that the historical background that preceded the enactment of

S.B. 824 provides support for a finding of discriminatory intent. *See* J.A. 2583-84. But Plaintiffs' heavy focus on history overlooks this Court's admonition that while history is a factor in the court's analysis of discriminatory intent, it is not conclusive. *McCrory*, 831 F.3d at 241.

In declaring the last photo ID law invalid, this Court emphasized that "our injunction does not freeze North Carolina election law in place as it is today[,]" and that [n]either the Fourteenth Amendment nor [section] 2 of the Voting Rights Act binds the State's hands in such a way." *Id*. It then stressed that "[i]f in the future the General Assembly finds that legitimate justifications counsel modification of its election laws, then the General Assembly can certainly so act." *Id*.

Other courts agree. *See, e.g.*, *Greater Birmingham Ministries v. Sec'y of State for Alabama*, No. 18-10151, 2020 WL 4185801, at *18 (11th Cir. July 21, 2020) ("[I]t cannot be that Alabama's history bans its legislature from ever enacting otherwise constitutional laws about voting. Surely, 'past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.'" (quoting *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 74 (1980))); *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) ("[T]he presumption of legislative good faith [is] not changed by a finding of past discrimination").

The remaining parts of the *Arlington Heights* analysis weigh in favor of reversing the injunction. As the State Board Defendants detail in their opening brief, Doc. 34 at 42-53, the enactment of S.B. 824 was

marked by neither an unusual sequence of events nor drastic departures from the normal legislative order.

Plaintiffs minimize the aisle-crossing that took place during the enactment of S.B. 824, suggesting that it was limited to one legislator. Doc. 77 at 67-69. But two Senate Democrats voted for the Senate version of the bill, two House Democrats voted for the House version, and one Democrat voted in favor of a motion to concur. J.A. 2091, 2083, 2085. Likewise, a veto override was achieved with some Democratic support in both legislative chambers. J.A. 2087, 2089. In *Lee*, notably, this Court upheld a lower court's finding that Virginia's photo ID law was not enacted with discriminatory intent where, like here, only a small number of Democrats voted for the measure. 843 F.3d at 603. ("While there was a substantial party split on the vote enacting the law, two non-Republicans (one Democrat and one Independent) voted for the measure as well.").[4]

Furthermore, the current record on the legislative history of S.B. 824 also does not support a finding of discriminatory intent, notwithstanding Plaintiffs' contrary contentions. Doc. 77 at 69-74. As detailed in the State Board Defendants' opening brief, Doc. 34 at 48-53, the drafters of S.B. 824 based the legislation on

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[4] Moreover, S.B. 824's legislative process in North Carolina compares favorably with the process that surrounded the enactment of the recently upheld photo ID law in Alabama, where "(1) the Senate invoked cloture,(2) not a single black senator who was present voted in favor of HB19, (3) the House passed it by a largely party-line vote of 64-31, and (4) the Senate passed the bill by a straight party-line vote." *Greater Birmingham Ministries*, 2020 WL 4185801, at *4.

South Carolina's pre-cleared photo ID law and paid specific attention to avoiding the pitfalls that this Court identified with respect to the state's prior photo ID law in *McCrory*. Legislators from both parties acknowledged the positive differences in both the process leading up to the enactment of S.B. 824 and in the content of the photo ID law as compared with its predecessor. Many amendments made by the Democrats were adopted. And contrary to Plaintiffs' insistence, S.B. 824 is considerably different from its predecessor in substance. *See* Doc. 34 at 20-23. S.B. 824's list of qualifying IDs is broader, its reasonable impediment provision is more expansive and was included as part of the original bill, its provisions were not enacted as part of an omnibus bill that targeted many other voting practices preferred by minority voters, and its photo ID requirement extends to absentee voters.

Finally, the fact that a previous legislature enacted a law that was found to be discriminatory and that a later legislature shares some of the same members and leaders, standing alone, cannot support Plaintiffs' inference of discrimination in the later legislature. Doc. 77 at 85. Such an argument impermissibly makes a single factor of the *Arlington Heights* analysis—a law's historical background—the only factor of the *Arlington Heights* analysis. This Court, however, has already held a law's historical background cannot, by itself, support a finding of discriminatory intent. *See McCrory*, 831 F.3d at 241.

In sum, when weighed together, the *Arlington Heights* factors support reversal of the district court's preliminary injunction.

III. The State's Interest in Voter Confidence and Implementing the Photo I.D. Constitutional Amendment Supports S.B. 824.

Finally, as the State Board Defendants argued in their opening brief, even if Plaintiffs could show that discriminatory purpose was a motivating factor for S.B. 824, the district court did not sufficiently weigh the evidence that shows that there were nondiscriminatory motivations for the law.

The record shows that the proponents of S.B. 824 believed that the law served the State's interest in implementing its constitution's requirement that voters present a photo ID when they vote. *See, e.g.*, J.A. 1248-49, 1413, 1588; T pp 137-139. Likewise, the record shows that the proponents believed that the law would promote voter confidence. *see* J.A. 1556, 1577-79, 1580-81, 1585-87, 1597-98, 1735-36, 1765-66, 1770, 1775. Multiple courts have held that promoting voter confidence is an appropriate state interest. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008); *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014); *Luft v. Evers*, 2020 U.S. App. LEXIS 20245, at *36 (7th Cir. June 29, 2020); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 632 (6th Cir. 2016).

Plaintiffs argue that North Carolina has to prove its interest in enacting photo ID legislation by citing specific instances of in-person voter fraud and by

affirmatively showing that S.B. 824's proponents lacked any improper racial motivations. Doc. 77 at 86-88, 96-97. That high burden placed on the state misconstrues the law.

"[W]hether a photo ID requirement promotes public confidence in the electoral system is a 'legislative fact'—a proposition about the state of the world, as opposed to a proposition about these litigants or about a single state." *Frank*, 768 F.3d at 750. As a result, North Carolina need not establish by evidence that photo ID laws actually do promote voter confidence. "On matters of legislative fact, courts accept the findings of legislatures[.]" *Id*. (citing *Armour v. Indianapolis*, 132 S. Ct. 2073, 2080 (2012)).

In summary, both the precedent discussed above and the record here show that the proponents of S.B. 824 believed that the law would serve North Carolina's interest in implementing the state constitution's new mandate that voters present a photographic ID to vote and its interest in ensuring voter confidence in elections.[5]

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[5] On June 11, 2020, the General Assembly amended the provisions of S.B. 824 by adding to the list of the qualifying voter IDs "an identification card issued by a department, agency, or entity of the United States government or this State for a government program of public assistance." *See* 2020 N.C. Sess. Law 17, sec. 10. This Court has previously held that later amendments to a law cannot cleanse a law of its alleged discriminatory intent, but that they may provide grounds to vacate an injunction if the amendment "completely cures the harm" caused by the original law. *McCrory*, 831 F.3d at 240. Here, this Court need not address the effect of the amendment to S.B. 824 on this appeal because, as stated above,

IV. The Likelihood of Success of Plaintiffs' Voting Rights Act Challenge to S.B. 824 Is Not Properly Before this Court.

Below, Plaintiffs alleged that portions of S.B. 824 violate section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301, J.A. 41-42 ¶¶ 7–8 . Here, Plaintiffs ask the Court to uphold the injunction because they are likely to succeed on both their VRA and their constitutional claims. Doc. 77 at 59-91. The district court, however, rejected a preliminary injunction grounded in section 2 of the VRA, holding that "Plaintiffs [had] not demonstrated a likelihood of success under § 2's results standard sufficient to independently warrant a preliminary injunction[,]" because "the outcomes in *Lee* and *South Carolina*, coupled with the Fourth Circuit's statements about the different impact showings required for § 2 results claims versus discriminatory intent claims, suggest that the bill's anticipated impact, on its own, is not enough to invalidate S.B. 824[.]" J.A. 2672-73.

Plaintiffs did not cross-appeal from that decision. Without taking an appeal, they now seek to modify the district court's order to enjoin S.B. 824's because its impact is so great that it violates the VRA in addition to violating Constitution. But if a "prevailing party raises arguments that seek to alter or modify the judgment below, then a cross-appeal is required." *Rosenruist-Gestao E Servicos LDA v. Virgin Enters.*, 511 F.3d 437, 447 (4th Cir. 2007). While a "prevailing

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the record before the district court did not support its decision to enjoin S.B. 824 as originally enacted.

party may urge an appellate court 'to affirm a judgment on any ground appearing in the record,' and may do so without having to file a cross-appeal," *id.*, it can only present arguments that "would not lead to a reversal or modification of the judgment rather than an affirmance." *JH v. Henrico County Sch. Bd.*, 326 F.3d 560, 567 n.5 (4th Cir. 2003).

Here, the Court should not so substantially modify the district court's judgment without a proper cross-appeal by Plaintiffs. Nor did the Plaintiffs establish that the district court's ruling on that issue should be reversed without a cross-appeal.

V. The District Court's Injunction Should Be Lifted to Permit the State Board to Begin Photo ID Implementation After the Approaching Election.

Under the district court's preliminary injunction, S.B. 824's photo ID requirement for voting is not currently being enforced. If this Court were to lift the injunction immediately to require implementation of the photo ID law in this November's elections, the harm to the parties, to the State's elections-administration process, and to the voters of this State would be extensive and irreparable.

The U.S. Supreme Court has recognized that, to prevent confusion and avoid disenfranchising voters, federal courts should not change election rules on the eve of an election. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. at 1207; *Purcell*, 549 U.S. at 4-5. Here, "[g]iven the short time left before the [impending] elections, and given the numerous

steps necessary to properly implement the [photo ID] law," *South Carolina*, 898 F. Supp. 2d at 32, this Court should instead reverse the decision below and remand with instructions to lift the injunction, but only after this November's elections.

The injunction should not be lifted now for multiple reasons. As an initial matter, this appeal can no longer be decided in time for the State Board and the county boards to begin implementing S.B. 824 in time for this fall's election. Moreover, any attempt to implement S.B. 824 now would be further complicated by the current COVID-19 pandemic.

In March, the State Board Defendants informed this Court that to implement S.B. 824 in time for the general election, the State Board would need to restart preparations well in advance of the start of voting. *See* Doc. 34 at 18. Similarly, in April, the State Board Defendants informed the state court that is hearing the parallel challenge to S.B. 824 that, if the State Board were to resume implementation of photo ID, it would have had to start that effort in early July 2020, at the latest. *See* State Defs.' Resp. to Legis. Defs.' Mot. for CMO at 2, *Holmes v. Moore*, No. 18 CVS 15292 (N.C. Super. Ct., Apr. 14, 2020), Add. 2.

That early July target date factored in the time required to update the code in the State Board's information management system to allow elections officials to document photo ID compliance when voters cast their ballots. *See* State Bd. Not. of Filing, Bell Aff. ¶¶ 21–22, *Holmes v. Moore*, No. 18 CVS 15292 (Wake Cty. Super. Ct. June 19, 2019), Add. 8.

That early July target date also accounted for the time needed to prepare absentee envelopes. *Id.* Absentee ballots have to be mailed to voters by September 4, 2020, which requires significant lead-time for designing the ballot envelope, for procuring ballots, and for printing them. *See* N.C. Gen. Stat. § 163-229(b). Requiring photo ID for absentee voting, pursuant to S.B. 824, would compel a complete overhaul of the absentee ballot container that a voter receives from their county board and submits for voting, and then urgent procurement of such envelopes in sufficient quantity to meet the demand for absentee voting. *See* S.B. 824, sec. 1.2(d); 08 N.C. Admin. Code 17 .0109(b). That is because the copy of the voter's ID or affidavit may not be inserted into the same pocket as the ballot. The voter's absentee application and witness signature must be presented with the ID or affidavit, separated from the sealed ballot, because those items must be reviewed for compliance by the county board before the ballot can be opened and counted. *See* N.C. Gen. Stat. §§ 163-229, -231, as amended by N.C. Sess. Law 2020-17; *id.* § 163-234(1). The extra envelopes or pockets must be custom designed to provide the proper instructions to voters so they understand which pocket is for the sealed ballot and which pocket is for the copy of their ID or affidavit. The absentee envelope for the fall election, which does not include these features, has already been designed and provided to county boards of elections for printing and distribution.

While the State Board's early July target date took these factors into consideration, it did not factor in the myriad complications that the COVID-19 pandemic

now poses for implementing photo ID for this fall's election.

The State Board and the 100 county boards of elections have been working tirelessly to ensure that voting this fall—whether it is absentee voting, one-stop early voting, or election day—will be conducted safely and accessibly. To that end, the State Board has issued directives to county boards to ensure that they continue to process voter registrations and ballot requests, canvass votes from the primaries earlier this year, and carry out other critical functions, while also practicing social distancing for the safety of election workers and the public. N.C. State Bd. of Elections, Numbered Memo 2020-11 (March 15, 2020), https://bit.ly/32GWbYH. The State Board has also provided detailed guidance to help county boards prepare for the public-health precautions required for in-person voting in the fall. N.C. State Bd. of Elections, Numbered Memo 2020-12 (June 1, 2020), https://bit.ly/2CB3hD9. Such precautions require reconfiguring polling sites, identifying alternative sites, procuring protective supplies, and procuring sufficient ballots and ballot counters to meet the skyrocketing demand for voting by mail, to name just a few examples. These efforts have been significantly aided by legislation enacted by the General Assembly earlier this summer. *See* N.C. Sess. Law 2020-17, secs. 1, 2, 2.5, 4, 5, 7, 11.1, 11.2, https://bit.ly/2OO0Kba.

County boards must also establish procedures to ensure they can timely process the torrent of mailed-in

ballots that are anticipated this fall,[6] which will involve adjudicating whether each ballot meets the detailed requirements for valid absentee ballots, *see* N.C. Gen. Stat. §§ 163-229, -231, *as amended by* N.C. Sess. Law 2020-17, and providing an opportunity for voters to cure any deficiencies.

Additionally, given the fact that many poll workers are in a high-risk category for the virus, elections officials throughout the state are working to recruit and train a new crop of poll workers. N.C. State Bd. of Elections, Election Officials Searching for Democracy Heroes, Launch New Portal (June 19, 2020), https://bit.ly/32IcBQA. This effort was similarly aided by recent legislation that provides financial incentives for poll workers. *See* N.C. Sess. Law 2020-71, https://bit.ly/39hXiz6. And last week, the Executive Director of the State Board issued an emergency order requiring county boards to take specific actions to reduce crowding at voting sites and thereby minimize the risk of spreading COVID-19. N.C. State Bd. of Elections, Emergency Order at 6–8 (July 17, 2020), https://bit.ly/3hmNoPx.

These efforts are necessary to ensure safe and accessible voting in current environment. But they also impose new and unanticipated strains on the state's elections workers. Introducing the implementation of photo ID on top of these responsibilities, at this late

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[6] *See* Jim Morrill, Coronavirus fears spark 'striking surge' of mail-in ballot requests, Charlotte Observer (July 13, 2020), https://bit.ly/32Lh1pS (linking to analysis of increase in absentee ballot requests by Professor Michael Bitzer of Catawba College).

stage, would lead to confusion among poll workers and voters, and it would jeopardize the ability of elections officials to conduct elections without disruption.

The public health emergency has also undermined the ability of elections officials to carry out the mandates of the photo ID law this fall.

S.B. 824 requires county boards to print and issue free voter IDs to voters, S.B. 824, sec. 1.1(a), but such voters must appear in person to have their photograph taken. *See* 08 N.C. Admin. Code 17 .0107(a)–(b). Numerous county board offices were closed to the public following the initial outbreak of COVID-19, and many have remained closed to visitors or have limited access to the office. *See* N.C. State Bd. of Elections, County Board of Elections Closures/Change in Hours (July 20, 2020), https://bit.ly/2Ctp8wA. Similarly, S.B. 824 requires the state Division of Motor Vehicles (DMV) to issue free photo ID that can be used for voting. S.B. 824, sec. 1.3. But many DMV offices remain closed or are operating by appointment only. *See* N.C. Div. of Motor Vehicles, NCDMV Services in Response to COVID-19 (July 21, 2020), https://bit.ly/32K4brS; N.C. Div. of Motor Vehicles, DMV Office Locations (June 24, 2020), https://bit.ly/30BG2Rx. These closures of county board offices and DMV offices may make it harder for certain voters who do not currently have appropriate ID to obtain the free IDs that the statute requires.

Additionally, in compliance with the district court's injunction, the State Board has not educated North Carolina voters on how to comply with the photo ID mandate, and county boards of elections have not

trained poll workers on how to enforce the law's requirements and exceptions. *See N.C. State Conf. of NAACP*, 430 F. Supp. 3d 15, 54 (M.D.N.C. 2019). Restarting the process now, at this late stage, may be ineffective—or worse, may engender increased confusion among voters and poll workers—undermining the statute's mandate to carry out voter education and training. S.B. 824, sec. 1.5(a).

Additionally, elections officials shall wear cloth face coverings and make face coverings available to voters pursuant to CDC recommendations and the Executive Director's Emergency Order regarding the conduct of voting. *See* Ctrs. For Disease Control and Prevention, Considerations for Election Polling Locations and Voters (June 22, 2020), https://bit.ly/3jwVRkX; N.C. State Bd. of Elections, Emergency Order, *supra*, at 27. Face coverings complicate poll workers' ability to enforce S.B. 824's requirement that they determine whether voters resemble the photo on their identification. S.B. 824, sec. 1.2, § 163A-1145.1(b). Enforcing S.B. 824's photo ID requirement during this pandemic would require poll workers to undergo significant additional training for ensuring photo ID compliance according to the CDC guidelines. 08 N.C. Admin. Code 17 .0101(c)(3); Ctrs. For Disease Control and Prevention, *supra*.

Accordingly, the State Board Defendants agree with the Governor that it is too close to the election to restart the implementation of photo ID. *See* Doc. 98 at 9–16. It would be practically impossible for the State Board to fairly and effectively implement the photo ID law during this fall's elections, particularly in light of

the significant administrative and voter-outreach efforts that would be necessary to do so, which the COVID-19 emergency has only complicated further. Thus, while the preliminary injunction should be reversed, it should be reversed with a mandate to lift the injunction only after the upcoming election, to prevent confusion and disparate treatment of voters.

Justice Kavanaugh, then a Circuit Judge sitting on a three-judge panel of district court, confronted a similar dilemma in *South Carolina v. United States*, 898 F. Supp. 2d 30, 48-51 (D.D.C. 2012). The court precleared South Carolina's photo ID law under section 5 of the VRA, but held that, "at this late date, the Court [was] unable to conclude that South Carolina can implement [the law] for the 2012 elections." *Id*. The court decreed, however, that South Carolina "may implement [the photo ID law] for future elections[.]" *Id.* This Court should follow the same path.

CONCLUSION

This Court should reverse the district court's injunction, but temporarily stay the implementation of S.B. 824 until after the November 2020 election.

Respectfully submitted,

JOSHUA H. STEIN
Attorney General

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Counsel for the State Board

July 27, 2020

*[***certificates omitted for printing purposes***]*

CONTENTS OF ADDENDUM

Addendum Page

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR.,	)
Plaintiffs,	)
v.	)
TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select	)

Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

STATE DEFENDANTS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER

Defendants the State of North Carolina and the North Carolina State Board of Elections (the "State Defendants") hereby respond to the Legislative Defendants' Motion for Entry of a Case Management Order, which was served on the parties and emailed to the Trial Court Administrator on April 10, 2020.

The State Defendants defer to the Court's discretion as to whether an expedited pretrial schedule is appropriate. Below, the State Defendants highlight a number of considerations that impact the potential implementation of S.B. 824 and its photo ID requirement before the 2020 general election, including considerations arising from the current public health emergency. The State Defendants have discussed these considerations with counsel for the Legislative Defendants and the Plaintiffs.

The Legislative Defendants propose a trial schedule with the hope of allowing enough time after final decision—if S.B. 824 is upheld and the current injunction is lifted—to apply its provisions to the November 2020 general election, for which voting is scheduled to begin on September 4, 2020, less than 5 months from now.

As the Legislative Defendants note (Mot. at 6), in early March 2020, in the federal case challenging the photo ID requirement, the State Defendants informed the Fourth Circuit Court of Appeals that the elections boards would need to restart photo ID implementation activities—which had been suspended in December 2019 pursuant to the federal court's order—well in advance of the start of absentee voting on September 4, 2020. The State Defendants have since determined with more specificity that, without factoring in the likelihood of additional delays resulting from the effects of the pandemic, which are discussed below, implementation activities would need to begin by early July. This estimate is based solely on accommodating the State Board's activities in logistically preparing to administer an election with the new photo ID requirement. It does not take into account voter-education activities that would also need to take place to inform voters that the photo ID law that was enjoined for the primary election in March would be enforced in the general election in November.

The early July estimate also does not take into account any measures that may be necessary to deal with the reality that the State now faces in trying to prepare for and carry out an election amid the

disruption to regular activities that the COVID-19 pandemic has caused. At present, it is unclear how long the social distancing requirements, limits on mass gatherings, and other public health-related restrictions ordered or recommended by state, local, and federal authorities will last, or in what ways they might be reduced over time. Agencies involved in election administration, including the State and county boards and the Division of Motor Vehicles (DMV), must begin consideration and planning now for administering the upcoming general election consistent with some or all of these public health restrictions, while allowing for the possibility of new or modified restrictions over time.

One challenge for local elections boards is ensuring that they will have enough poll workers. The average age of poll workers in the state is 70, meaning that most poll workers are in the category of individuals most at risk from the COVID-19 virus. Because of this and because of the uncertainty associated with the ongoing public health emergency, elections boards must work to identify and train alternate poll workers in the event that some poll workers opt out or are directed to avoid the potential exposure that could come from working at polling sites. The State Board must begin now to plan to reconfigure thousands of polling sites statewide to allow for adequate distancing, sanitization, and minimal contact with surfaces that would increase the chances of virus transmission, to protect both poll workers and voters. This will require significant preparation, training of employees and volunteers, and procurement of supplies to support these procedures.

State and county elections boards must also plan now for an expected massive increase in the number of voters who may cast their votes by absentee ballot. The State Board estimates that 40% or more of the state's voters may cast their vote by absentee ballot—in comparison to the approximately 4% of voters who have done so in election cycles in the recent past. To prepare for an increase in absentee ballots of this magnitude, State and county elections boards need to ensure the availability of absentee ballots, coordinate with postal services, including by potentially establishing designated drop-off points for ballots to be mailed, and create new processes to open, count, audit, and report election results for this volume of absentee ballots.

Implementing a photo ID requirement in the midst of the evolving public health emergency would require the State and county boards to undertake additional measures. Restarting implementation of S.B. 824 would require meeting voters' requests for free IDs and documentation needed to obtain those IDs. However, the State Board, many county boards, and other federal, state, and local government agencies are currently closed to the public or are operating with reduced hours and staff. The same is true for DMV offices, which issue the most common form of photo identification in the state.

In addition, public health requirements that may be in place would compel State and county boards to undertake extra planning and training to implement the photo ID requirement during in-person voting, which begins in mid-October. For example, if social-distancing and face-mask requirements are in effect

during in-person voting, State and county boards of elections will need to have planned and trained for effective procedures to verify photo IDs, provide assistance to voters lacking photo IDs, and assist voters in filling out provisional voting applications and reasonable impediment affidavits, while abiding by the public health requirements.

Prior to the public health emergency, the State Board had been planning to conduct in-person training for county boards and staff during its August conference. The county boards and their staff would then provide in-person training to their poll workers in the weeks following the State Board's conference. This kind of in-person training will be particularly critical if S.B. 824 is in effect because it imposes administratively complex requirements on poll workers and elections-board staff. The State Board is not aware of poll worker training having been conducted remotely by any county board before, and is unsure of the efficacy of such remote training—particularly in light of the fact that many communities and poll workers will face technical hurdles to remote training. If social-distancing guidelines are in effect in the summer and fall, the State Board will not be able to conduct in-person training during its August conference and county staff will not be able to train poll workers in-person in September and October.

In sum, the State and local boards are working to address a number of uncertainties and logistical challenges associated with administering the November 2020 elections amidst the COVID-19 pandemic. Implementing a photo ID requirement

would add to these. The State Defendants defer to the Court's discretion on the trial schedule and stand ready to continue to update the Court with any additional information requested.

If the Court orders an accelerated discovery and trial schedule similar to the one proposed by the Legislative Defendants, the State Defendants request that the Court's order provide flexibility to account for the current and any subsequent orders of the North Carolina courts that govern the use of remote hearings, depositions, and testimony.

Respectfully submitted this the 14th of April, 2020.

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*[***certificates omitted for purposes of printing***]*

STATE OF NORTH CAROLINIA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

[Filed: June 19, 2019]

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN and PAUL KEARNEY, SR.,	)
Plaintiffs,	)
v.	)
TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	)
Defendants.	)

NOTICE OF FILING

NOW COMES Defendants the State of North Carolina and the North Carolina State Board of Elections, (collectively "State Defendants"), by and through the undersigned counsel, and hereby submit the following Affidavit of Karen Brinson Bell and accompanying exhibits in support of State Defendants' Response to Plaintiffs' Motion For Preliminary Injunction.

Respectfully submitted, this 19th day of June, 2019.

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STATE OF NORTH CAROLINIA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

[Filed: June 18, 2019]

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,	)
Plaintiffs,	)
v.	)
TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	)
Defendants.	)

AFFIDAVIT OF KAREN BRINSON BELL

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. Prior to my employment as an Executive Director of the State Board, I spent a significant portion of my professional life working on a wide scope of issues related to election administration, including in the State of North Carolina.

4. I served as an Election Administration Consultant for the Ranked Choice Voting Resource Center from October 2016 until May 2019. I worked part time for the Center from April 2016 to October 2016. Prior to that, I was employed as a Business

Development Director/Project Management Director at EasyVote Solutions from April 2015 until September 2016, and as a Director of Elections for the Transylvania County Board of Elections from March 2011 until March 2015. I also worked for the State Board as a District Elections Technician from February 2006 until March 2011.

5. The State Board is responsible for implementing much of North Carolina Session Law 2018-144, as amended by Session Law 2019-4 and Session Law 2019-22 (the "Photo ID Law").

6. The State Board has already undertaken a series of actions to implement this law, and intends to undertake additional actions aimed at implementing the Photo ID Law between now and when the Photo ID Law is enforced in the 2020 elections and beyond. Both the description of the implementing activities that have already occurred, and those that the State Board intends to undertake, are set forth below in this affidavit. Because the budgetary allocation to the State Board in Session Law 2018-144 was non-recurring, staff have asked the legislature to make additional allocations in subsequent fiscal years.

7. The State Board has adopted a temporary rule for the issuance of free voter photo identification cards by county boards of elections, as mandated by the Photo ID Law. *See* 08 N.C. Admin. Code 17 .0107. A true and accurate copy of the rule is attached as **Exhibit A** to this affidavit. The rule went into effect on April 29, 2019. Additionally, the State Board voted to publish the proposed text of temporary rules regarding photo ID absentee-by-mail implementation and other

conforming changes on June 13, 2019. The State Board will accept public comment on the rules from June 21 to July 12, 2019, and will hold a public hearing to accept public comment on the rules on July 11, 2019. State Board staff met with representatives from Disability Rights North Carolina to discuss the proposed rules and changes to accompanying forms.

8. The State Board prescribes a form for voters to request a voter photo identification card free of charge at the county board of elections office, or at another location in the county if approved by a majority of the county board of elections. That request form is attached as **Exhibit B** to this affidavit.

9. The State Board has informed all county boards of elections that they should submit reimbursement requests to the State Board for the cost of the ID equipment that enables each local board to issue a voter photo identification card free of charge. All 100 county boards of elections now have equipment for ID printing and the capability to provide free IDs upon a voter's request.

10. The State Board has developed training materials and has trained county staff on how to use the equipment that prints photo identification cards. The presentation is attached as **Exhibit C** to this affidavit.

11. The State Board approved student and employee IDs for use in voting on March 15, 2019, and published a list of approved student and employee identifications on its website: https://s3.amazonnaws.com/dl.ncsbe.gov/Voter%20ID/Student%2C%20Employee

%20and%20Tribal%20ID%20Approvals.pdf. That list is attached as **Exhibit D** to this affidavit.

12. The General Assembly recently enacted Session Law 2019-22 (House Bill 646), which relaxes certain requirements for the State Board's approval of student and employee IDs. The law permits the State Board to consider student and employee IDs from institutions that were not approved by March 15, 2019, for use in the 2020 elections. The State Board will accept applications for student and employee ID approvals under this new legislative mandate in the coming months and will approve qualifying applications for student and employee IDs no later than November 1, 2019. For student and employee IDs that were denied approval on March 15, 2019, the State Board will approve qualifying applications no later than December 1, 2019. The State Board has delegated the authority to approve these IDs to the Executive Director. A copy of Session Law 2019-22 is attached as **Exhibit E**.

13. The State Board has a training and outreach team of five full-time employees and one temporary employee. Among other responsibilities, that team is charged with educating the public on the requirements of the Photo ID Law. The team is in the process of hiring two additional full-time staff members. This team is overseen by the Chief Learning Officer, who worked at the State Board during the last Photo ID implementation period.

14. The voter outreach team prepared a presentation on Photo ID which will be delivered at all 100 county boards through public seminars coordinated by the State Board. These seminars are advertised to

the media and the general public. The seminars are free and open to the public. Two seminars will be held in every county prior to September 1, 2019. The State Board started holding these seminars in May 2019. As of the date of this affidavit, 48 such seminars have been conducted and 154 more have been scheduled. A current seminar schedule is attached as **Exhibit F** to this affidavit.

15. The State Board has created a website to inform the public on Photo ID, which can be found at ncsbe.gov/voter-id (or alternatively, voterid.ncsbe.gov). That website is updated with details on the aforementioned educational seminars that have been scheduled in the counties. The website also displays which forms of ID are acceptable at the polls. It also includes a link to a form that allows a voter to request a free photo ID from a voter's county board of elections. The State Board has created posters and informational handouts that will be provided to the county boards of elections to go in every precinct and one-stop early voting location for the 2019 elections. Those materials contain the information required by the Photo ID law. A true and accurate copy of one such handout designated as "Infosheet on Voter ID" is attached as **Exhibit G** to this affidavit. This Infosheet is also available on the State Board's website and is being translated into Spanish.

16. The State Board is in the process of developing an informational document to be provided by colleges and universities to students, in conjunction with the issuance of student identification cards, pursuant to

Section 1.2.(b) of Session Law 2018-144, as amended by Session Law 2019-22.

17. The State Board is in the process of updating its official voter registration form to include information about photo ID. The agency is also in the process of updating other forms affected by the Photo ID Law– including the absentee request form, absentee container return envelope, and provisional application– and is drafting template letters to implement photo ID for absentee-by-mail voting. The agency is also updating the station guide, one copy of which will be provided to every voting place for the 2020 elections.

18. The State Board has requested the State Procurement Office to issue a request for proposals to procure a vendor to print and mail two mass-mailings to all households in North Carolina in 2019 regarding Photo ID.

19. The State Board has scheduled a statewide conference for July 29-30, 2019, to train county boards of elections members, directors, and staff. During this training, State Board staff plans, among other things, to provide presentations from its legal and voter outreach teams on implementation of the Photo ID Law. The agency is also drafting pollworker training documents that include information about the Photo ID Law.

20. It is critically important for the effective and even-handed enforcement of the Photo ID Law that the State Board educate the public on the photo ID requirements between now and the 2020 elections. It is equally important for the effective and even-handed

enforcement of the Photo ID Law for the State Board to train county board members, their staffs, and poll workers on proper enforcement of the Photo ID law, to include uniform application of the reasonable impediment provision.

21. There are many aspects of election preparation that take place over weeks and months. For example, the process of updating the Statewide Elections Information Management System (SEIMS) to reflect processes and requirements from the Photo ID Law takes approximately four months. The administration of voter registration and many other voting processes, including processing of absentee-by-mail requests, relies on the SEIMS system; it is the informational backbone of elections administration in this state. The SEIMS development process begins with documentation of business requirements, and includes developing, testing, and production phases. To ensure continuity and reduce the burden on county boards of elections, I have instructed staff responsible for making these changes to include functionality to allow a return to the current version of SEIMS, to account for the possibility of a court-ordered injunction against Photo ID implementation at some point before the 2020 elections.

22. To avoid disrupting a current election, including processing absentee requests, changes to SEIMS may only be made at certain times. Any changes, including changes to implement the Photo ID Law, must be in place prior to the time absentee ballots are sent out. For the 2020 primary election, federal law requires that ballots be available beginning January 13, 2020.

Any second primary would take place seven or ten weeks after the primary, depending on whether a federal candidate was on the ballot for the second primary. Changes to SEIMS may be made over the summer, after the conclusion of any second primary, and prior to absentee ballots being sent out on September 4, 2020, for the 2020 general election.

23. Because it takes approximately four months to carry out the development process to make changes to SEIMS, the State Board will need begin the development process no later than mid-September, 2019, to have changes in place prior to the start of absentee by mail voting in mid-January, 2020.

24. Should the Photo ID Law be enjoined at this stage of the litigation and later be reinstated, certain actions required by the Photo ID Law may not take place. For example, an injunction prior to September 1, 2019, would halt the educational seminars being conducted in North Carolina's 100 counties. It could also result in a delay of the statutorily required mailings to every household in North Carolina or the creation of a matching list and accompanying mailing, pursuant to Sections 1.5.(a) and 1.5.(b) of Session Law 2018-144. If the injunction was later lifted, it might not be possible to complete all educational and outreach activities that were required by the Photo ID Law prior to the primary election in 2020.

This concludes my affidavit.

This the 18th day of June, 2019.

[SEAL]

/s/ Karen Brinson Bell
Karen Brinson Bell, Executive Director
N.C. State Board of Elections

Sworn to and subscribed before me this 18 day of June, 2019.

/s/ Allison L. Blackman
(Notary Public)

My commission expires: 8/31/2021

Exhibit A

08 NCAC 17 .0107
VOTER PHOTO IDENTIFICATION CARD

(a) Request. A voter may request a voter photo identification card free of charge in person at the county board of elections office, or at another location in the county prior to the start of the one-stop early voting period if approved by a majority of the county board of elections, in the county where the voter is registered to vote. The request shall be made on a form prescribed by the State Board of Elections Office and available on the State Board website and in the county board of elections office or another location designated by the county board of elections. The form shall include prompts for the voter's full name, voter's date of birth, the last four digits of the voter's Social Security number, the voter's signature or mark, and the date of request. If the required information provided by the voter matches the information on the voter registration on file with the county board of elections, the county board of elections shall issue the card. The county board of elections shall not refuse to issue a card because the voter registration does not contain the last four digits of the voter's Social Security number or complete date of birth. If the voter registration does not contain the last four digits of the voter's Social Security number or complete date of birth, the form shall serve as an update to the voter's voter registration record.

(b) Issuance. Once the county board of elections determines it shall issue the voter photo identification card, it shall take a photograph of the voter. If the face of the voter is covered, the county board of elections shall give the voter the opportunity to remove the

covering but shall not require removal. If the voter declines to remove the covering, the county board of elections shall inform the voter that a voter photo identification card cannot be produced while the voter's face is covered and shall inform the voter of the ability to vote provisionally due to religious objection to being photographed pursuant to G.S. 163A-1145.1(d)(1).

(c) Simultaneous registration and request. A voter may register to vote and request a voter photo identification card simultaneously in person at the county board of elections office. The county board of elections shall process the voter registration form as soon as it is received and, if the voter appears eligible to vote based on the voter registration form, the county board of elections shall process the voter registration, assign a voter registration number to the voter, and issue a voter photo identification card to the voter. A voter who is not registered to vote in the county may apply to register to vote and request a voter photo identification card at another location in the county. The registration shall be processed at the county board of elections office, which shall mail the voter photo identification card to the voter if it makes a tentative determination that the applicant is qualified to vote pursuant to G.S. 163A-867.

(d) Timing of issuance. Voter photo identification cards shall be issued at any time, except during the time period between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and the end of Election Day for each primary and election. A county board of election shall process a request for voter photo identification at the time it is received and shall issue the card to the voter. If, due to the photo identification card being requested a location other than the county

board of elections office or equipment, software, or other issues, the county board of elections cannot produce the photo identification card at the time the request is received, the county board of elections shall mail the photo identification card to the voter as soon as the issue is resolved.

(e) Replacement card. If a registered voter loses or defaces the voter's photo identification card, the registered voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, by telephone, or by mail. Cards may not be requested by any other method, including e-mail. A request in person or by mail shall be made on a form required in Paragraph (a) of this Rule. In making the request, the voter shall provide the voter's name and the voter's date of birth or last four digits of the voter's Social Security number. If the information provided by the voter matches the information on file with the county board of elections, the county board of elections shall issue the replacement card. If the request is by telephone or mail, the county board of elections shall mail the card to the mailing address in the voter's voter registration file. A voter may request a new photo identification card in accordance with Paragraph (a) if the voter believes the photo does not reflect a change in the voter's appearance.

(f) Name change. If a registered voter has a change of name and has updated his or her voter registration to reflect the new name, the registered voter may request and obtain a replacement card ftom the registered voter's county board of elections by providing the registered voter's current name, date of birth, and the last four digits of the registered voter's Social Security number in person, by telephone, or by mail. Cards may

not be requested by any other method, including e-mail. A request in person or by mail shall be made on a form required in Paragraph (a) of this Rule. If the information provided by the voter matches the information on file with the county board of elections, the county board of elections shall issue the replacement card. If the request is by telephone or mail, the county board of elections shall mail the card to the mailing address on the voter's voter registration file. The voter may use the form required in Paragraph (a) of this Rule to update the name on his or her voter registration record and shall include the voter's former name and current name, date of birth, the last four digits of the voter's Social Security number, and the voter's signature or mark.

(g) Content and design of card. The Executive Director of the State Board shall design the card. A voter photo identification card shall contain only the following information unique to the voter:

(1) A photograph of the voter;

(2) The voter's full name;

(3) The voter's voter registration number; and

(4) Expiration date.

The card may also contain a barcode including any of the information listed in this Paragraph. Voter photo identification cards shall contain the following disclaimer: "Expiration of this voter photo identification card does not automatically result in the voter's voter registration becoming inactive."

(h) Validity. A voter photo identification card shall be valid statewide for voting purposes. The photo identification card shall serve as proof of the voter's identity, not proof that the person is a registered voter.

(i) Assistance. A voter may receive assistance in

completing the form required in this Rule but the voter shall sign or place his or her mark on the request form.
(j) Form retention. The county board of elections shall upload the form required by this Rule into the statewide computerized voter registration system, and the uploaded document shall serve as the official record of the form for records retention purposes.

History Note: *Authority G.S. 163A-741; 163.A.-869.1(d); S.L. 2018-144, s. 1.1.(b). Temporary Adoption Eff. April 29, 2019.*

Exhibit B

NC VOTER IDENTIFICATION CARD REQUEST FORM

NC State Board of Elections • P.O. Box 27255 • Raleigh, NC 27611-7255 • (866) 522-4723 [LOGO]

INSTRUCTIONS

- Use this form to request a new or replacement **North Carolina Voter Identification Card** (NC Voter ID). The NC Voter ID card is a form of acceptable photo ID to vote in North Carolina. For more information about photo ID, visit VoterId.ncsbe.gov.
- Any registered voter may request a NC Voter ID in the county where the voter is registered to vote. If you already have an acceptable photo ID, you do not need to request a NC Voter ID. Visit **VoterID.ncsbe.gov** to see the full list of acceptable photo IDs.
- If you are not registered to vote in the county where you now live, you must submit a voter registration form at the same time you submit this form.
- The card is valid for 10 years from the date of issuance and is valid for voting purposes statewide.
- You may get help completing this form, but you must sign or place your mark beside the "X" on the form.
- To request a new NC Voter ID, submit this form in person to your county board of elections. You must

provide all required information. The county board of elections will take your photograph and issue the card to you if the information you provided matches the information on your voter registration record. If you have a NC Voter ID and believe the photo on the card does not reflect a change in your appearance since the card was issued, you may request a new card and the county board of elections will take a new photograph.

- To request a *replacement* NC Voter ID card, submit this form to your county board of elections in person or by mail. Include your full name and date of birth or last four digits of your Social Security number on this form. You may also request a replacement card by telephone. You may request a replacement card if you lose or damage your card or if your name changes.
- If you need to update your voter registration after a name change, Just provide your former name, current name, date of birth, and last four digits of your Social Security number on this form.

NC VOTER IDENTIFICATION CARD REQUEST FORM

NC State Board of Elections • P.O. Box 27255 • Raleigh, NC 27611-7255 • (866) 522-4723

NORTH CAROLINA
STATE BOARD OF ELECTIONS

SBOE v2019.04

☐ I am requesting a new NC Voter ID card. ☐ I am requesting a duplicate NC Voter ID card.

1 Provide your full legal name. *(last name, first name and middle name)*

Last Name | Suffix

First Name | Middle Name

Previous Name (if different than above)

2 Provide your date of birth and Social Security Number.

Date of Birth (MM/DD/YYYY) | Last Four Digits of Social Security Number

NC Driver License (optional)

ADMIN USE ONLY: Enter voter's SVRN

3 Provide your current residential address. (If different than the address on your voter record, your voter record will be updated.)

Address Number | Street Name and Type

Address Line 2 (e.g. apartment, lot or unit number)

City | State | Zip Code

County | Have you lived at this address for 30 or more days? ☒ Yes ☐ No | If "No", date moved?

4 Provide a mailing address if you do not receive mail at your residential address.

Mailing Address Line 1

Mailing Address Line 2

Mailing Address Line 3

Mailing City | State | Zip Code

5 Please provide your contact information in case we need to get in touch with you.

Phone Number | Email

6 Please sign below.

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES.

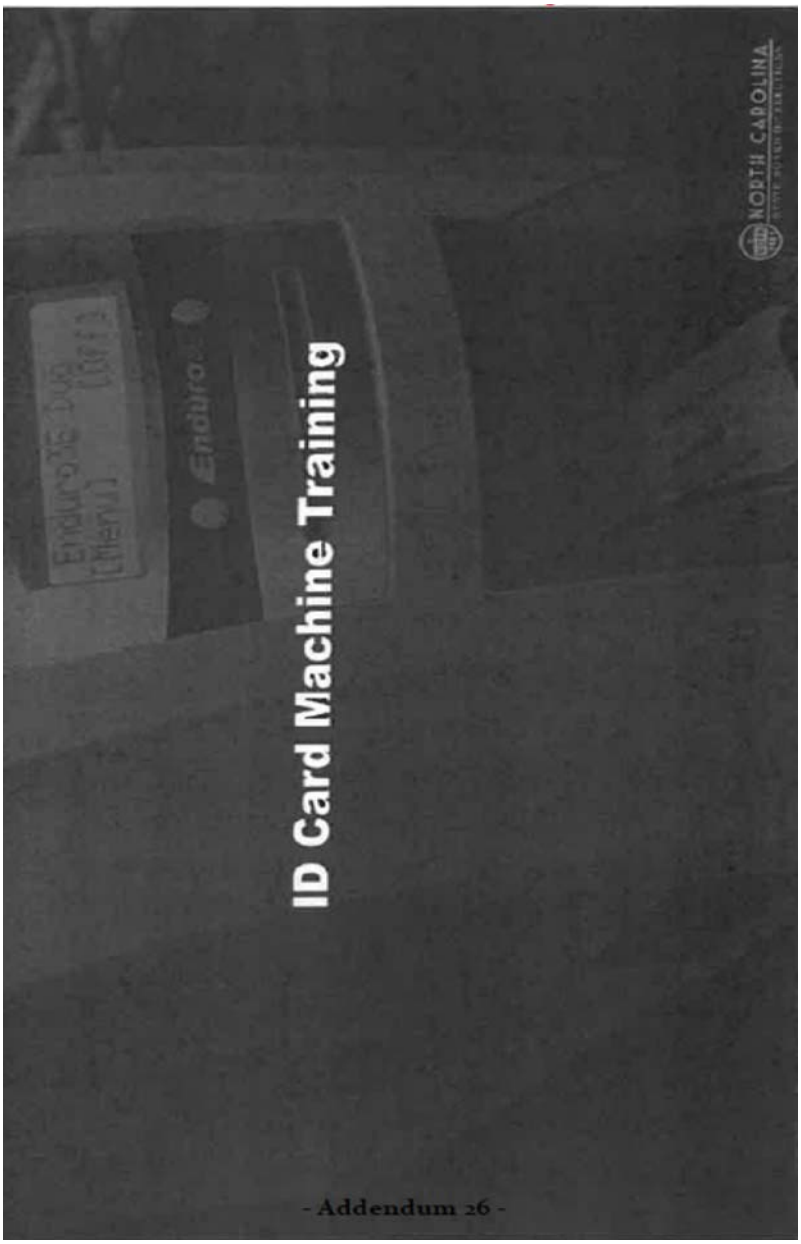
I attest that I am the voter requesting a NC Voter ID card and my information given above is correct.

X _____ _____
Signature | Date

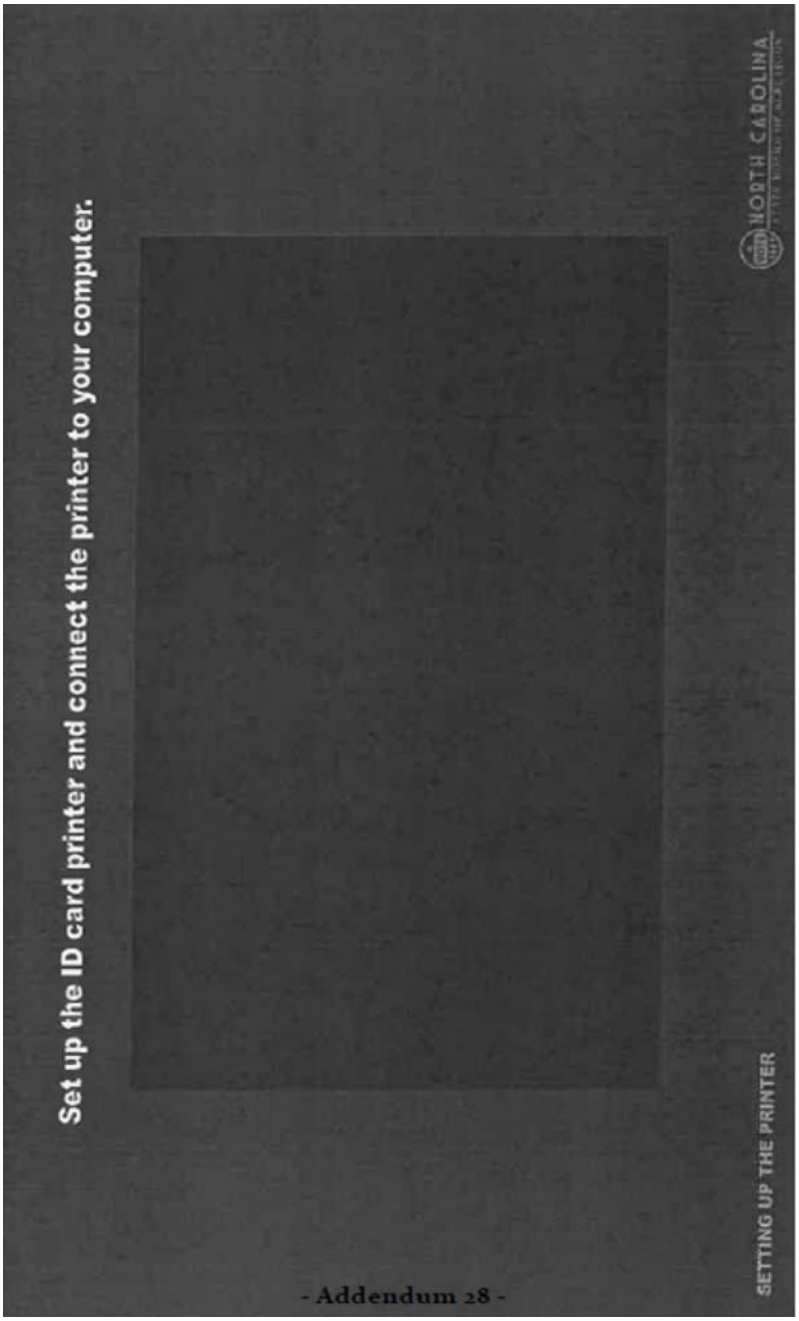
ADMIN USE ONLY

Voter ID Issued by | Issuance Date | Expiration Date

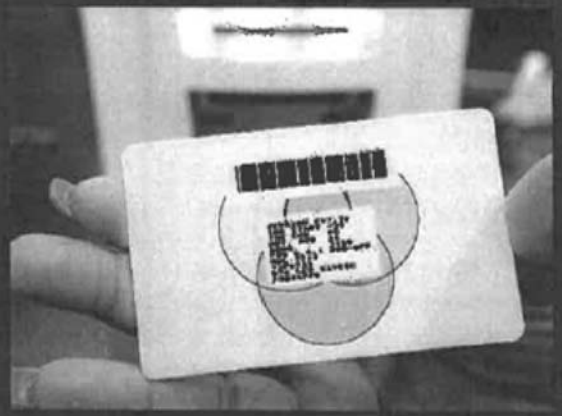
Exhibit C



Setting Up the Printer
Unpack the printer, cards, camera, and the USB software key for Bodino.
Bodino
NORTH CAROLINA
- Addendum 27 -


Set up the ID card printer and connect the printer to your computer.
NORTH CAROLINA
SETTING UP THE PRINTER
- Addendum 28 -

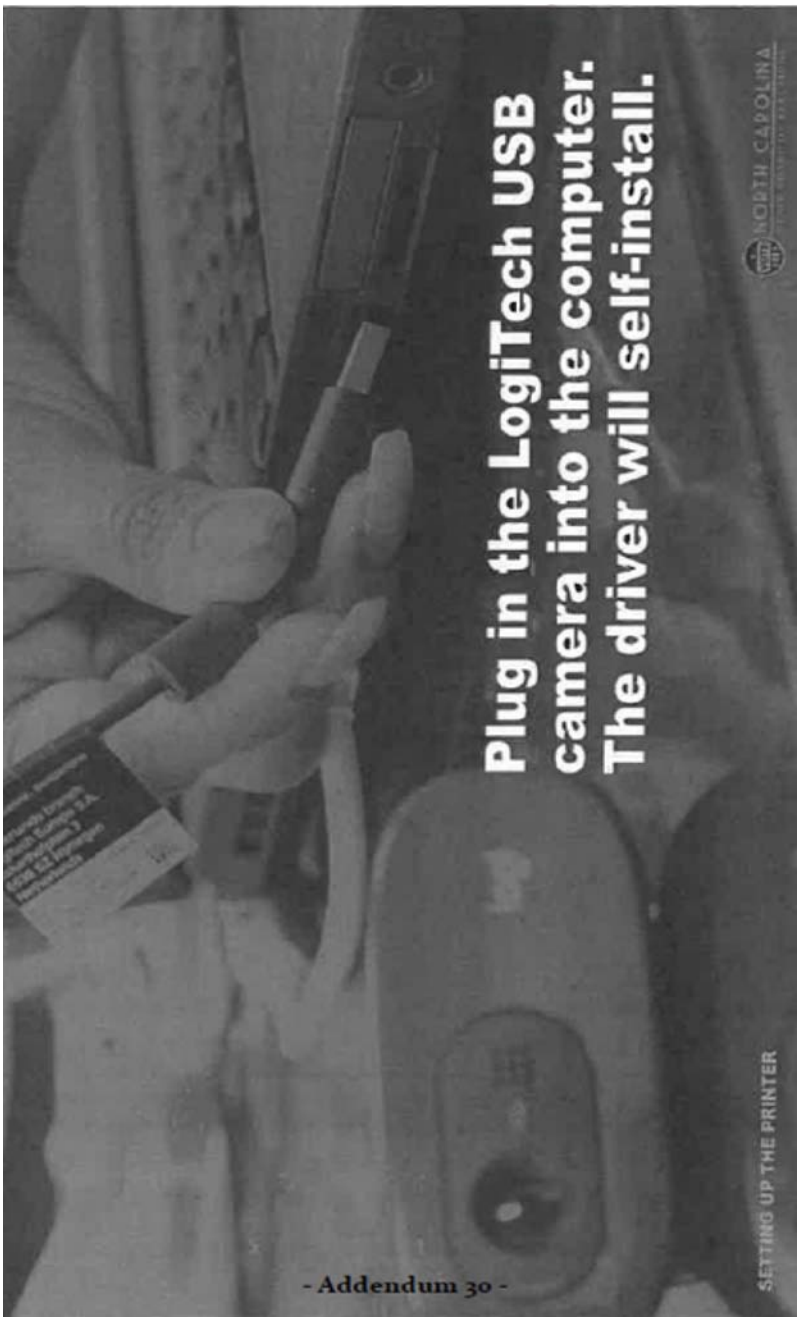
Check the status of the printer by printing a test card.



Step 1: Press the Menu button to navigate to the Test Card

Step 2: Press the OK button to begin printing a test card

A test card will print.


Plug in the LogiTech USB camera into the computer. The driver will self-install.
SETTING UP THE PRINTER
- Addendum 30 -

Software Installation

Install the Bodno software on your computer.

1. Insert the USB Key into your computer. Choose the Open folder to view file options. Choose the Bodno USB drive.

2. Double click on the Bodno executable file and the Installation Wizard will run. Follow the prompts of the wizard. Be sure to check the "install for all users" box.

For the first time logging in, the user name is countyoperator and the password is countyoperator.

Create a new password after logging in the first time.

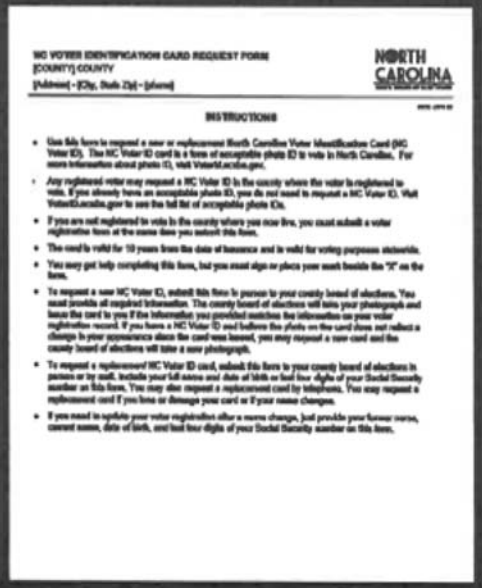
SOFTWARE INSTALLATION

NORTH CAROLINA

Be sure to register the product and to download any software updates.
Register
SOFTWARE INSTALLATION
NORTH CAROLINA
- Addendum 33 -

Keep the software key secure. Install on as many computers as you like, but you must have the software key inserted to have full functionality of the software. You must have the key inserted to print ID cards.
- Addendum 34 -
SOFTWARE INSTALLATION
NORTH CAROLINA

The ID Card Request Form can be found on the FTP site:
Election_Administration\Election_Forms\Voter_Registration



NC VOTER IDENTIFICATION CARD REQUEST FORM
[COUNTY] COUNTY
[Address] - [City, State Zip] - [phone]

NORTH CAROLINA

INSTRUCTIONS

- Use this form to request a new or replacement North Carolina Voter Identification Card (NC Voter ID). The NC Voter ID card is a form of acceptable photo ID to vote in North Carolina. For more information about photo ID, visit VoterId.ncsbe.gov.
- Any registered voter may request a NC Voter ID in the county where the voter is registered to vote. If you already have an acceptable photo ID, you do not need to request a NC Voter ID. Visit VoterID.ncsbe.gov to see the full list of acceptable photo IDs.
- If you are not registered to vote in the county where you now live, you must submit a voter registration form at the same time you submit this form.
- The card is valid for 10 years from the date of issuance and is valid for voting purposes statewide.
- You may get help completing this form, but you must sign or place your mark beside the "X" on the form.
- To request a new NC Voter ID, submit this form in person to your county board of elections. You must provide all required information. The county board of elections will take your photograph and issue the card to you if the information you provided matches the information on your voter registration record. If you have a NC Voter ID and believe the photo on the card does not reflect a change in your appearance since the card was issued, you may request a new card and the county board of elections will take a new photograph.
- To request a replacement NC Voter ID card, submit this form to your county board of elections in person or by mail. Include your full name and date of birth or last four digits of your Social Security number on this form. You may also request a replacement card by telephone. You may request a replacement card if you lose or damage your card or if your name changes.
- If you need to update your voter registration after a name change, just provide your former name, current name, date of birth, and last four digits of your Social Security number on this form.

NC VOTER IDENTIFICATION CARD REQUEST FORM
[COUNTY] COUNTY
[County Address] - [County City, State Zip] - [County Phone]

NORTH CAROLINA

☐ I am requesting a new NC Voter ID card. ☐ I am requesting a duplicate NC Voter ID card.

1 Provide your full legal name.

2 Provide your date of birth and Social Security Number.

3 Provide your current residential address.

4 Provide a mailing address. Form de not receive mail at your residential address.

5 Please provide your contact information in case we need to get in touch with you.

6 Review, sign, date.

I attest that I am the voter requesting a NC Voter ID card and my information given above is correct.

X _____ _____

Number Date

ADMIN USE ONLY

Voter ID Issued ☐ Yes ☐ No Issuance Clerk Distribution Date

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Taking a Picture

Open the Bodno software.
Click on the third icon to open the database.

NORTH CAROLINA

Select the preloaded template.
Explorer
Sort Cards By
1 Card(s)
NORTH CAROLINA
TAKING A PICTURE

- Addendum 37 -

Log into the database using your county's username and password.

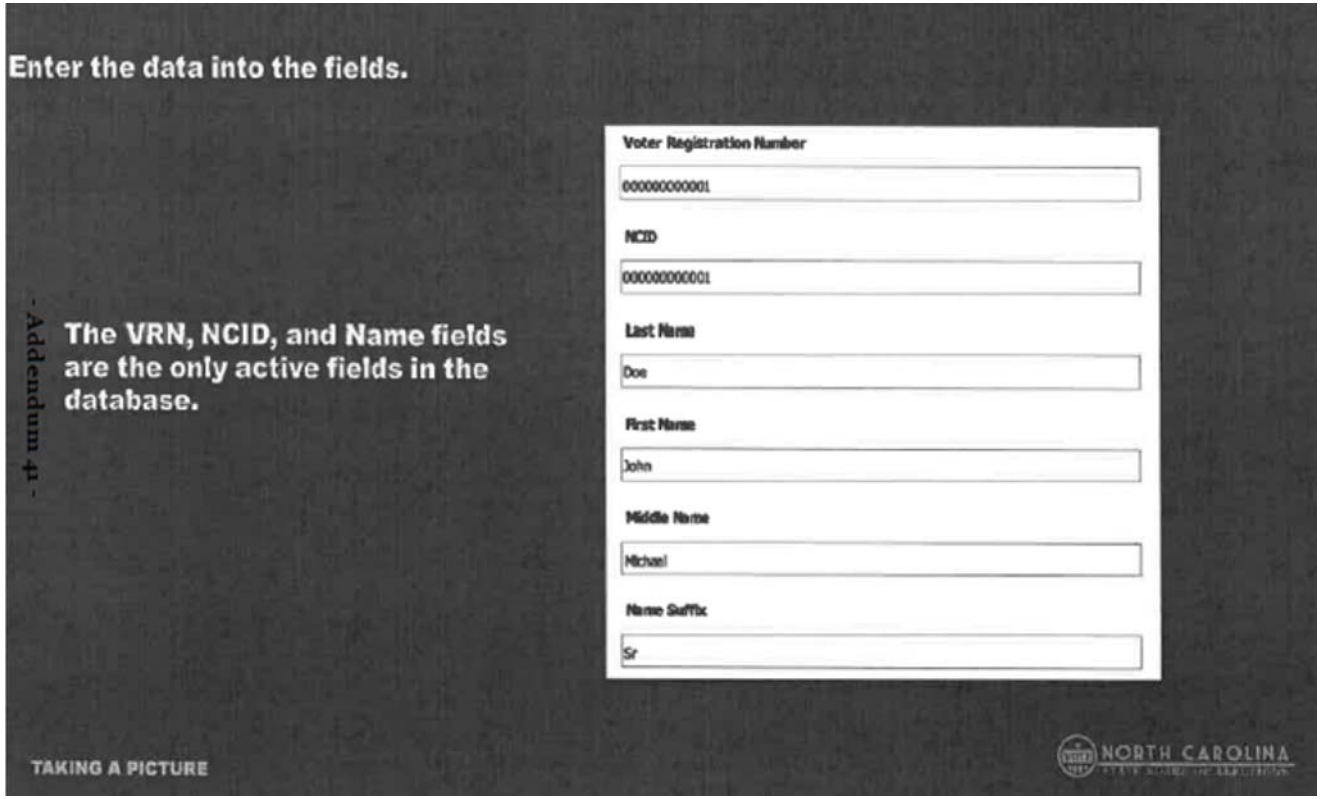
TAKING A PICTURE

NORTH CAROLINA

- Addendum 38 -

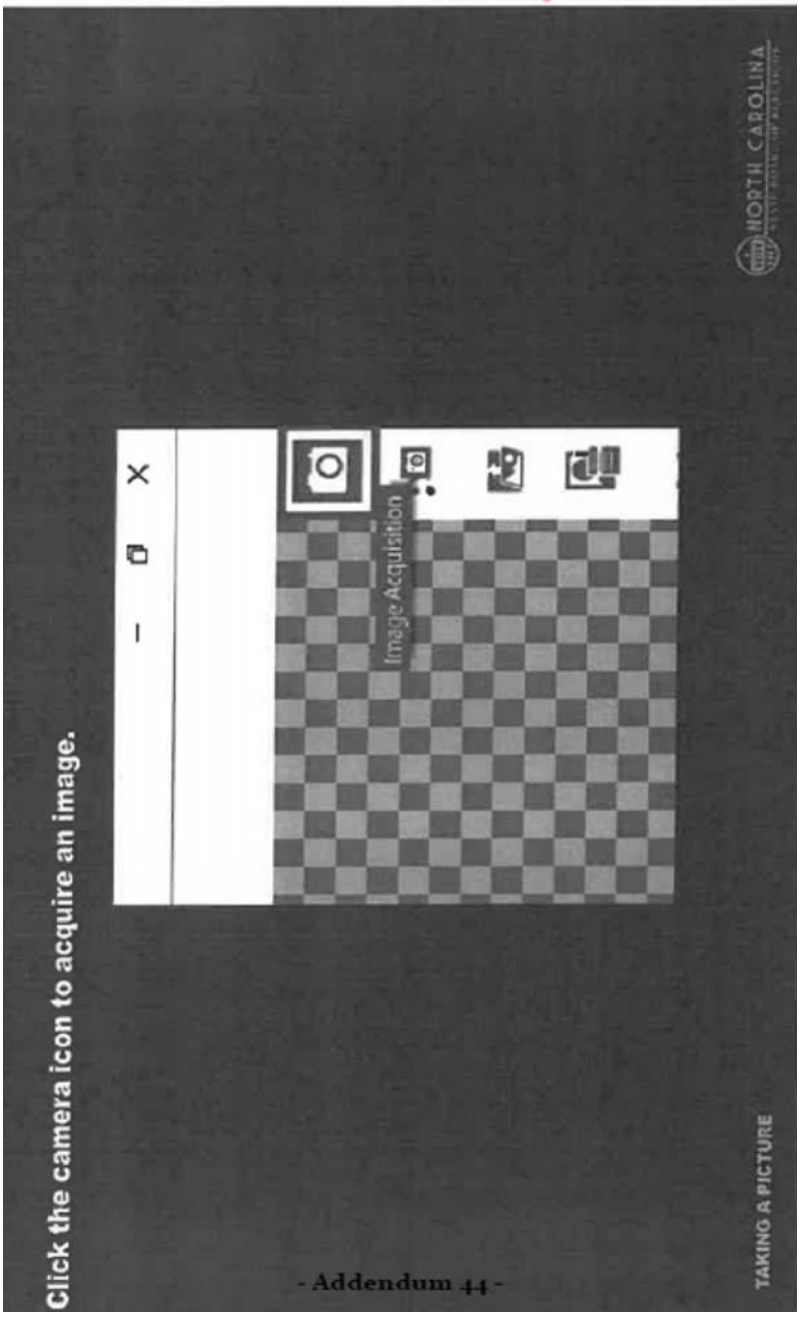
The full interface will appear as shown. You are now ready to make a card.
Bodno
- Addendum 39 -
TAKING A PICTURE
NORTH CAROLINA

To begin creating a card, click Insert Record.
creativity and security
Edit Records
Insert Record
ID
County ID
TAKING A PICTURE
NORTH CAROLINA
- Addendum 40 -


Enter the data into the fields.
The VRN, NCID, and Name fields are the only active fields in the database.
Voter Registration Number
000000000001
NCID
000000000001
Last Name
Doe
First Name
John
Middle Name
Michael
Name Suffix
Sr
TAKING A PICTURE
NORTH CAROLINA

NORTH CAROLINA
TAKING A PICTURE
- Addendum 42 -

TAKING A PICTURE
NORTH CAROLINA
urce:
Select Image Acquisition Source
- Addendum 43 -


Click the camera icon to acquire an image.
Image Acquisition
TAKING A PICTURE
NORTH CAROLINA

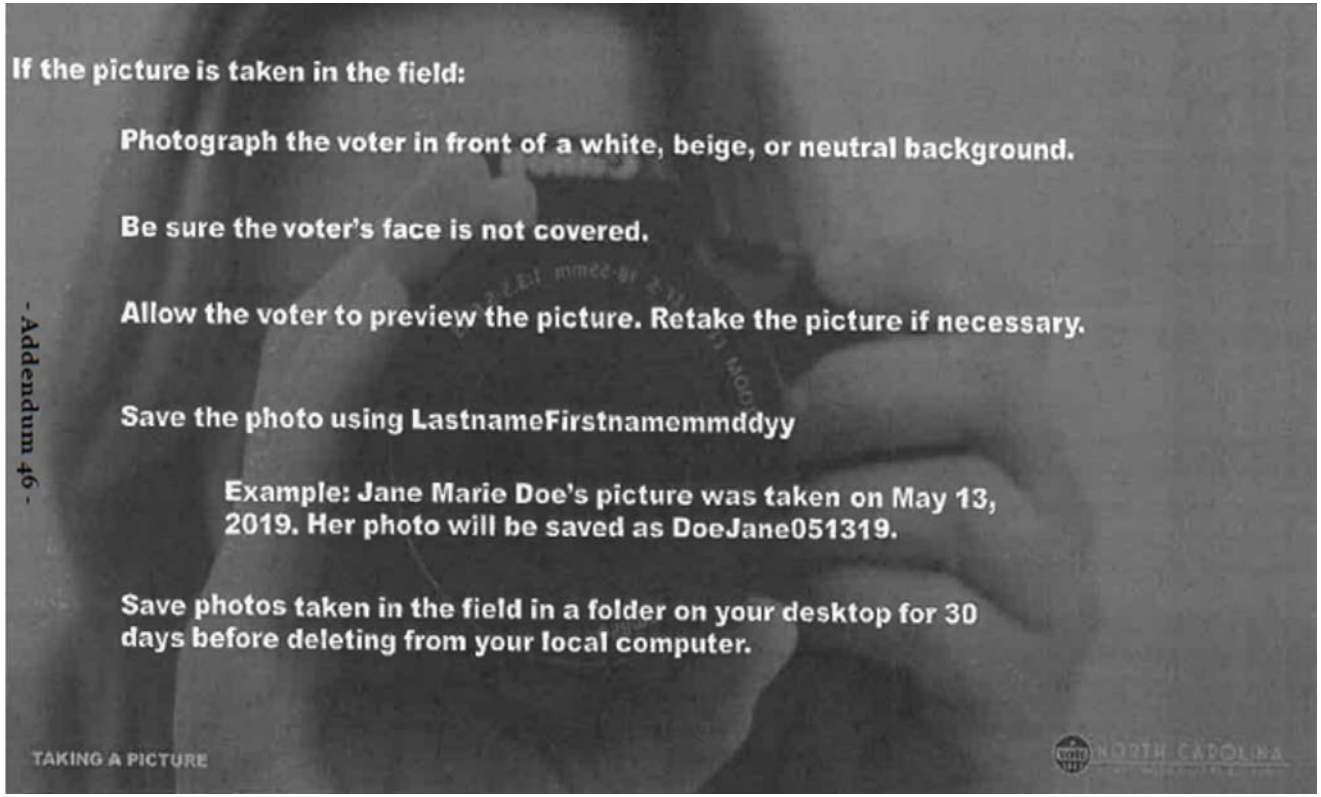
Photograph the voter in front of a white, beige, or neutral background.

- Be sure the voter's face is not covered.
- Allow the voter to preview the picture. Retake the picture if necessary. Press the check icon to accept the picture.

You can see a preview of the card by clicking Print Preview.

TAKING A PICTURE

NORTH CAROLINA

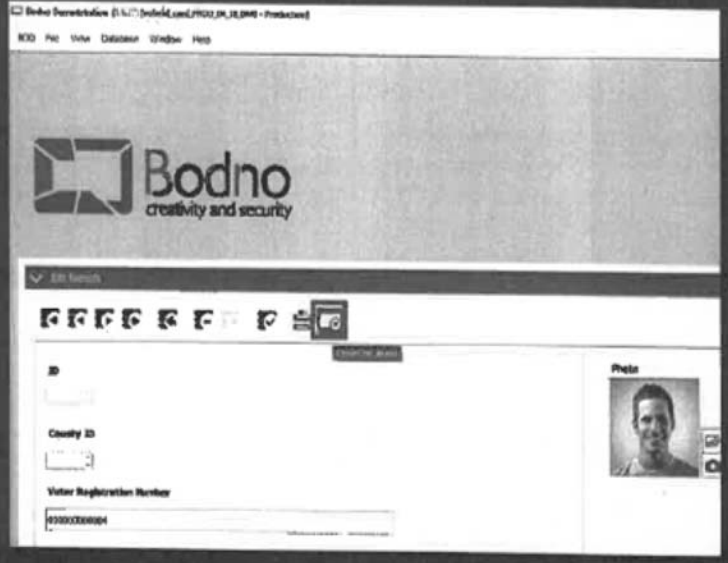

If the picture is taken in the field:
Photograph the voter in front of a white, beige, or neutral background.
Be sure the voter's face is not covered.
Allow the voter to preview the picture. Retake the picture if necessary.
Save the photo using LastnameFirstnamemmddyy
Example: Jane Marie Doe's picture was taken on May 13, 2019. Her photo will be saved as DoeJane051319.
Save photos taken in the field in a folder on your desktop for 30 days before deleting from your local computer.
TAKING A PICTURE
NORTH CAROLINA

An image can be added from a file by clicking on the folder icon in the Photo Editor.
- Addendum 47 -
TAKING A PICTURE
NORTH CAROLINA

If needed, click the zoom icon to zoom in on the face.
NORTH CAROLINA
TAKING A PICTURE
- Addendum 48 -

After filling the fields and adding a photo, save the record.
- Addendum 49 -
The card will not have the expiration date and barcode if you do not save the record before printing.
TAKING A PICTURE
NORTH CAROLINA

Once you save and print, you cannot delete the record from the database. If you enter a record and do not need to keep the record, you can choose "close document" rather than save.



TAKING A PICTURE

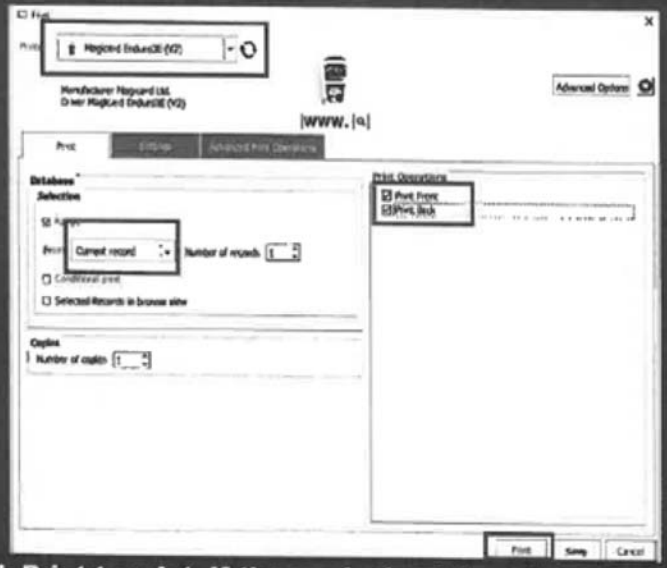
NORTH CAROLINA

- Addendum 50 -

Printing an ID Card
Print Record
Select Print Record.
- Addendum 51 -
NORTH CAROLINA

Ensure the Magicard Enduro is the selected printer.

Ensure the database range is from current record.

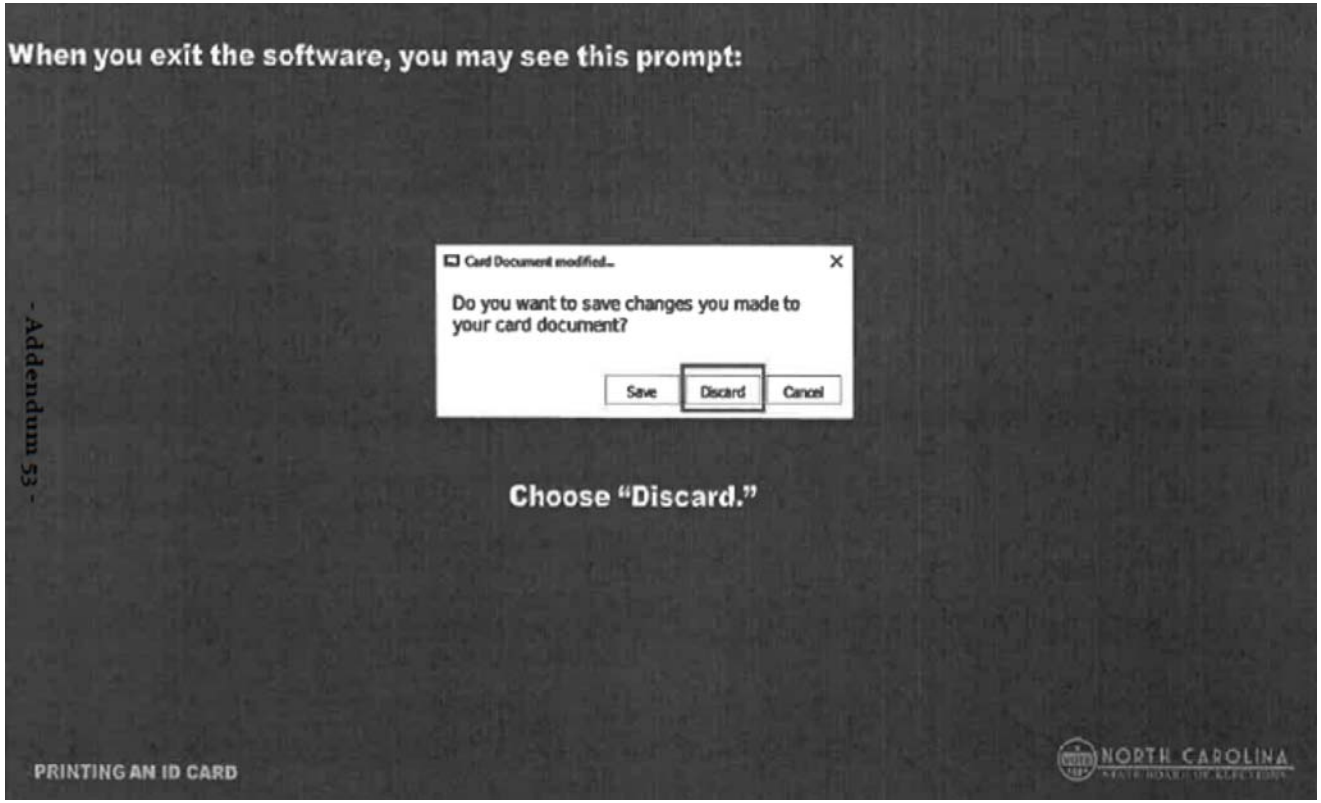


Ensure the "print front" and "print back" boxes are checked.

Click Print to print. If the card misprints, print a new card. All misprints should be destroyed.

PRINTING AN ID CARD

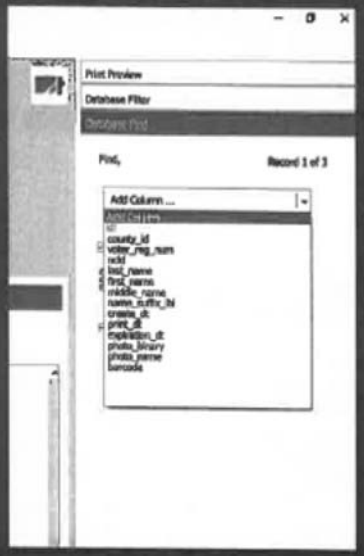
NORTH CAROLINA


When you exit the software, you may see this prompt:
Card Document modified...
Do you want to save changes you made to your card document?
Save
Discard
Cancel
Choose "Discard."
PRINTING AN ID CARD
NORTH CAROLINA

Searching the Database

To search the database for a record, use the Database Find in the upper right corner.

Choose the column type to search



Then choose the conditions

NORTH CAROLINA

Use the icons under Edit Records to view:
Edit Records
SEARCHING THE DATABASE
NORTH CAROLINA

Troubleshooting

The user manual is built into the software and can be accessed from the Help menu.

NORTH CAROLINA

Addendum 56 -

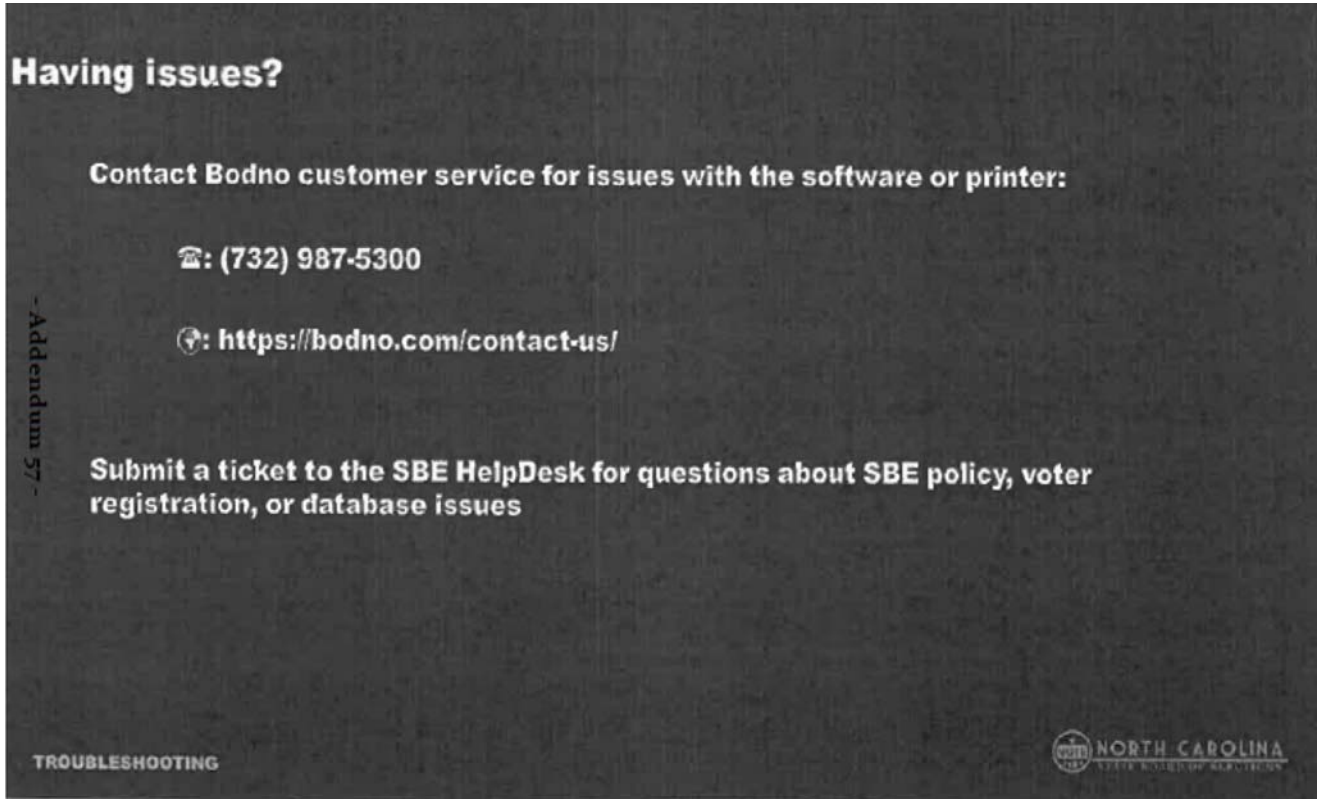

Having issues?
Contact Bodno customer service for issues with the software or printer:
☎: (732) 987-5300
: https://bodno.com/contact-us/
Submit a ticket to the SBE HelpDesk for questions about SBE policy, voter registration, or database issues
TROUBLESHOOTING
NORTH CAROLINA

Exhibit D

NORTH CAROLINA
STATE BOARD OF ELECTIONS

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

(919) 814-0700 or
(866) 522-4728

Fax (919) 715-0185

Pursuant to N.C.G.S. §§ 163A-1145.2(a), 163A-1145.3(a) and 2018 N.C. Sess. Laws 144. sec. 1.2.(f) the following student identification cards, employee identification cards and tribal enrollment cards are **approved** for use as photo identification to vote under N.C.G.S. § 163A-1145.1 for the primaries and general election to be held in 2020:

1. Anderson Creek Academy: Employee
2 Appalachian State University: **Student** and Employee
3. Beaufort County Community College: **Student** and Employee
4. Bennett College: **Student**
5. Brevard Academy: Employee
6. Brevard College: **Student**
7. Burke County: Employee
8. Central Piedmont Community College: **Student** and Employee
9. City of Clinton: Employee
10. City of Elizabeth City: Employee

11. City of Greensboro: Employee
12. Coharie Tribe
13. County of Warren: Employee
14. Davidson College: **Student**
15. Duke University: **Student**
16. Edgecombe Community College: **Student** and Employee
17. Elizabeth City State University: **Student** and Employee
18. Elon University: **Student**
19. Envision Science Academy: Employee
20. Falls Lake Academy: Employee
21. Fayetteville State University: Employee
22. Guilford Preparatory Academy: Employee
23. Halifax Community College: **Student** and Employee
24. Halifax County: Employee
25. Haliwa-Saponi Tribe
26. Healthy Start Academy: Employee
27. Isothermal Community College: **Student** and Employee
28. Johnson C. Smith University: **Student**
29. Kestrel Heights Charter School: Employee
30. Kipp Durham: Employee
31. Lake Norman Charter: Employee
32. Livingstone College: **Student**
33. Lumbee Tribe of North Carolina
34. Meredith College: **Student**
35. NC Central University: **Student** and Employee
36. NC Connections Academy: Employee
37. NC Department of Administration: Employee
38. NC Department of Health and Human Services: Employee

39. NC Department of Information Technology: Employee
40. NC Department of Justice: Employee
41. NC Department of Public Safety: Employee
42. NC Department of Revenue: Employee
43. NC Department of Transportation: Employee
44. NC General Assembly: Employee
45. NC Housing Finance Agency: Employee
46. NC Lottery Education Lottery: Employee
47. NC School of Science and Math: Employee
48. NC State University: **Student** and Employee
49. North East Carolina Preparatory: Employee
50. Onslow County Government: Employee
51. Orange County: Employee
52. Peak Charter Academy: Employee
53. Pender County: Employee
54. Pfeiffer University: **Student**
55. Piedmont Community College: **Student** and Employee
56. Roanoke-Chowan Community College: **Student**
57. Rowan-Cabarrus Community College: **Student** and Employee
58. Sappony Tribe
59. Shaw University: **Student**
60. St. Augustine University: **Student**
61. The Expedition School: Employee
62. Town of Fuquay-Varina: Employee
63. Town of Jamestown: Employee
64. U.N.C. Asheville: **Students** and Employee
65. U .N.C. Wilmington: Employee
66. Vance Charter School: Employee
67. Waccamaw Siouan Tribe
68. Warren Wilson College: **Student**

69. Washington Montessori Public Charter School: Employee
70. Wayne Community College: **Student**
71. Winston-Salem State University: Employee
72. Western Piedmont Council of Governments: Employee

The following student identification cards and employee identification cards are **not approved** for use as photo identification to vote for the primaries and general election to be held in 2020:

1. East Carolina University: Student and Employee
   Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
   G.S. § 163A-1145.3(a)(1)(a)

2. Fayetteville State University: Student
   Nonconformity: G.S. § 163A-1145.2(a)(1)(b)

3. NC A&T State University: Student and Employee
   Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
   G.S. § 163A-1145.2(a)(1)(b)
   G.S. § 163A-1145.3(a)(1)(a)

4. NC School of Science and Math: Student
   Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
   G.S. § 163A-1145.2(a)(1)(b)

5. U.N.C. Chapel Hill: Student and Employee
   Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
   G.S. § 163A-1145.3(a)(1)(a)

6. U.N.C. Charlotte: Student and Employee Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
G.S. § 163A-1145.2(a)(1)(b)
G.S. § 163A-1145.3(a)(1)(a)

7. U.N.C. Greensboro: Student and Employee Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
G.S. § 163A-1145.2(a)(1)(b)
G.S. § 163A-1145.5(a)(1)(a)

8. U.N.C. Healthcare: Employee Nonconformity: G.S. § 163A-1145.3(a)(1)(a)

9. U.N.C. Pembroke: Student and Employee Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
G.S. § 163A-1145.3(a)(1)(a)

10. U.N.C. School of the Arts: Student and Employee Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
G.S. § 163A-1145.3(a)(1)(a)

11. U.N.C. Wilmington: Student Nonconformity: G.S. § 163A-1145.2(a)(1)(a)

12. Winston-Salem State University: Student Nonconformity: G.S. § 163A-1145.2(a)(1)(b)

13. Western Carolina University: Student and Employee Nonconformity: G.S. § 163A-1145.2(a)(1)(a)
G.S. § 163A-1145.3(a)(1)(a)

On behalf of the North Carolina State Board of Elections:

/s/ Kim Westbrook Strach March 15, 2019
Kim Westbook Strach Date
Executive Director
North Carolina State Board of Elections

Exhibit E

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-22
HOUSE BILL 646

AN ACT TO CLARIFY THE APPROVAL PROCESS FOR STUDENT AND EMPLOYEE IDENTIFICATION CARDS FOR VOTING PURPOSES; TO PROVIDE AN ADDITIONAL WINDOW FOR APPROVAL OF STUDENT AND EMPLOYEE IDENTIFICATION CARDS FOR THE 2020 ELECTIONS; AND TO PROVIDE FLEXIBILITY IN THE NUMBER OF HOURS OF EARLY ONE-STOP VOTING IN ODD-NUMBERED YEAR ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163A-1145.1(a)(1)e. is recodified as G.S. 163A-1145.1(a)(2)c.

SECTION 2. G.S. 163A-1145.2, as amended by S.L. 2019-4, reads as rewritten:

"**§ 163A-1145.2. Approval of student identification cards for voting identification.**

(a) The State Board shall approve the use of student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The chancellor, president, or registrar of the university or college submits ~~a signed letter to the Executive Director of~~ documentation satisfactory to the State Board ~~under penalty of perjury~~ that the following ~~are true~~: have been met and will not knowingly be violated with regard to student identification cards issued during the approval period:

a. The identification cards that are issued by the university or college contain photographs of students ~~taken~~ obtained by the university or college or its agents or ~~contractors~~. contractors, provided the photograph obtained (i) is a frontal image that includes the student's face and (ii) represents a clear, accurate likeness of the student to whom the identification card is issued. If the photograph is one not produced by the university or college or its agents, the university or college shall certify in detail the process used by the university or college to ensure the photograph is that of the student to whom the identification card is issued and shall certify that the process is designed to confirm the identity of the student to whom the identification card is issued.

b. The identification cards are issued after an enrollment or other process that includes one or more methods of confirming the identity of the student using information that may include, but are not limited to, the social security number, citizenship status, and birthdate of the student.

c. ~~The~~ Access to the equipment for producing the identification cards is ~~kept in a secure location~~. restricted through security measures.

d. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.

e. University or college officials would report any misuse of student identification card equipment they have knowledge of to law enforcement if G.S. 163A-1389(19) was potentially violated.

f. The cards issued by the university or college on or after January 1, 2021 contain a date of ~~expiration, effective January 1, 2021.~~ expiration.

g. The university or college ~~provides~~ will provide copies of ~~standard student~~ identification cards to the

State Board to assist with training purposes.

h. The college or university will provide ~~a copy~~ to ~~students, when issuing~~ students who are issued the student identification ~~card, of the documentation~~ card a copy of or an electronic link to, a document developed by the State Board ~~on~~ that details the requirements related to identification for voting; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs; and the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.

(2) The university or college complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the student identification process.

(b) ~~The~~ The State Board shall establish a schedule for such submissions and approvals. The State Board shall permit a university or college with no changes to the prior election cycle's approval to submit a statement indicating no changes have been made by the university or college. When the State Board ~~shall approve the~~ approves for use ~~of~~ the student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in ~~G.S 116-280(3) every four years~~. G.S. 116-280(3), for voting identification purposes under G.S. 163A-1145.1, such approval shall be valid for the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(c) The State Board shall produce a list of participating universities and colleges every ~~four~~ two years. The list shall be published on the State Board's Web site and distributed to every county board of elections. The State Board shall publish sample student identification cards for each participating university and college.

(d) If a participating college or university with a student identification card approved for use by the State Board as provided in subsection (b) of this section changes the design of the student identification card, that college or university shall provide copies of the new design of the student identification cards to the State Board to assist with training purposes."

SECTION 3. G.S. 163A-1145.3, as amended by S.L. 2019-4, reads as rewritten:

"**§ 163A-1145.3. Approval of employee identification cards for voting identification.**

(a) The State Board shall approve the use of employee identification ~~card~~ cards issued by a state or local government entity, including a charter school, for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The head elected official or lead human resources employee of the state or local government entity or charter school submits ~~a signed letter to the Executive Director of~~ documentation satisfactory to the State Board ~~under penalty of perjury~~ that the following ~~are~~ have been met and will not knowingly be violated with regard to employee identification cards issued during the approval period:

a. The identification cards that are issued by the ~~university or college~~ state or local government entity or charter school contain photographs of ~~students taken~~ employees obtained by the ~~university or college~~ state or local government entity or charter school or its agents or ~~contractors~~. contractors, provided the photograph obtained (i) is a frontal image that includes the employee's face and (ii) represents a clear, accurate likeness of the employee to whom the identification card is issued. If the photograph is one not produced by the state or local government entity or charter school, the state

or local government entity or charter school shall certify in detail the process used by the state or local government entity or charter school to ensure the photograph is that of the employee to whom the identification card is issued and shall certify that the process is designed to confirm the identity of the employee to whom the identification card is issued.

b. The identification cards are issued after an employment application or other process that includes one or more methods of confirming the identity of the employee using information that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee.

c. ~~The~~ Access to the equipment for producing the identification cards is ~~kept in a secure location~~. restricted through security measures.

d. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.

e. State or local or charter school officials would report any misuse of identification card equipment they have knowledge of to law

enforcement if G.S. 163A-1389(19) was potentially violated.

f. The cards issued by the state or local government entity or charter school on or after January 1, 2021. contain a date of ~~expiration, effective January 1, 2021.~~ expiration.

g. The state or local government entity ~~provides~~ or charter school will provide copies of ~~standard~~ employee identification cards to the State Board to assist with training purposes.

(2) The state or local government entity complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the employee identification process.

(b) ~~The~~ The State Board shall establish a schedule for such submissions and approvals. The State Board shall permit a State or local government entity or charter school with no changes to the prior election cycle's approval to submit a statement indicating no changes have been made by the State or local government entity or charter school. When the State Board ~~shall approve the~~ approves for use ~~of~~ the employee identification cards issued by a state or local government entity, including a charter school, for voting identification under ~~G.S. 163A 1145.1 every four years~~. GS, 163A-1145.1, such approval shall be valid for the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(c) The State Board shall produce a list of participating employing entities every ~~four~~ two years. The list shall be published on the State Board's Web site and distributed to every county board of elections. The State Board shall publish sample employee identification cards for each participating State or local government entity or charter school."

SECTION 4. Section 1.2(f) of S.L. 2018-144, as amended by S.L. 2019-4, reads as rewritten:

"**SECTION 1.2.(f)** Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, the State Board shall approve (i) tribal enrollment cards issued by a tribe recognized by this State under Chapter 71A of the General Statutes; (ii) student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3); and (iii) employee identification cards issued by a state or local government entity, including a charter school, for use as voting identification under G.S. 163A-1145.1 no later than ~~March 15, 2019~~, November 1, 2019, for use in primaries and elections held in ~~2019 and 2020, and again no later than May 15, 2021, for elections held on or after that date~~. 2020. The State Board shall adopt temporary rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than ~~February 1, 2019.~~ September 15, 2019. The State Board shall adopt permanent rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than May 15, 2021. The State

Board shall produce the ~~initial~~ list of participating institutions and employing entities ~~no later than April 1, 2019~~. for use in primaries and elections held in 2020."

SECTION 5. Section 1.2(g) of S.L. 2018-144, as amended by S.L. 2019-4, reads as rewritten:

"**SECTION 1.2.(g)** ~~Notwithstanding G.S. 163A 1145.1, l63A 1145.2, and 163A 1145.3~~, For elections held in 2020 only, a student identification card issued by a constituent institution of The University of North Carolina, a community ~~college~~, college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) or an employee identification card issued by state or local government ~~entity that does not contain an~~ entity, including a charter school, may not be denied approval under G.S. 163A-1145.2 or G.S. 163A-1145.3 solely due to a lack of a printed expiration ~~date~~ date. Notwithstanding G.S. 163A-1145.1, an approved student identification card or employee identification card without a printed expiration date shall be eligible for use in any election held before January 1, 2021."

SECTION 6.(a) Any student identification card issued by a constituent institution of The University of North Carolina, a community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or an employee identification card issued by a State or local government entity or charter school approved by the State Board of Elections on or before March 15, 2019, for use in elections held on or after January 1, 2019, until December 31, 2022, shall continue to be eligible for use in an election prior to December 31, 2022, without further submission by the constituent

institution of The University of North Carolina, community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or State or local government entity or charter school.

SECTION 6.(b) Any constituent institution of The University of North Carolina, a community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or State or local government entity or charter school denied approval by the State Board of Elections on or before March 15, 2019, shall be granted until November 15, 2019, to submit a revised application for approval. The State Board shall approve the identification cards for use as voting identification under G.S. 163A-1145.1 no later than December 1, 2019, for use in primaries and elections held in 2020.

SECTION 7. G.S. 163A-1303 is amended by adding a new subsection to read:

"(e) Notwithstanding G.S. 163A-1300 and subdivisions (c)(2) and (c)(3) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for sites in that county for absentee ballots to be applied for and cast in elections conducted in odd-numbered years. The proposed Plan for Implementation shall specify the hours of operation for the county board of elections for an election conducted in that county for that odd-numbered year. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation for that odd-numbered year, a member or members of the county board of elections may petition the State Board to adopt a Plan for Implementation for the county, and the State Board

may adopt a Plan for Implementation for that county. However, throughout the period required by G.S. 163A-1300(b), any Plan of Implementation approved under this subsection shall provide for a minimum of regular business hours consistent with daily hours presently observed by the county board of elections for the county board of elections, or its alternate, and for uniform locations, days, and hours for all other additional one-stop sites in that county."

SECTION 7.5.(a) G.S. 163A-1303(d)(1), (2), (3), and (4) are recodified as G.S. 163A-1303(d)(1)a., b., c., and d.

SECTION 7.5.(b) G.S. 163A-1303(d), as amended by this section, reads as rewritten:

"(d) Notwithstanding subsection (c) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for ~~a site~~ the number of sites set out below in that county for absentee ballots to be applied for and cast with days and hours that vary from the county board of elections, or its alternate, and other additional one-stop sites in that county. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation, a member or members of the county board of elections may petition the State Board to adopt a plan for the county and the State Board may adopt a Plan for Implementation for that county. However, any Plan of Implementation approved under this subsection shall provide for uniform location, days, and hours for that one site throughout the period required by ~~subsection (a) of this section~~. G.S. 163A-1300(b). This subsection applies only to a county ~~which includes a barrier island~~ that meets any of the ~~following conditions~~: following:

(1) One site in a county that includes a barrier island, which barrier island meets all of the following conditions:

a. It has permanent inhabitation of residents residing in an unincorporated area.

b. It is bounded on the east by the Atlantic Ocean and on the west by a coastal sound.

c. It contains either a National Wildlife Refuge or a portion of a National Seashore.

d. It has no bridge access to the mainland of the county and is only accessible by marine vessel.

(2) Up to two sites in a county that is bounded by the largest sound on the East Coast and the county seat is located at the intersection of two rivers, which divide the county.

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:30 a.m. this 3rd day of June, 2019

Exhibit F

APRIL 2019

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
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MAY 2019

JUNE 2019

S	M	T	W	T	F	S
						1
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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
28	29	30	1	2	3	4
5	6 Mitchell: 6p	7 Clay: 1p, 6:30p	8 Graham: 1p, 5:30p	9 Polk: 2p, 6p	10	11
12 Mother's Day	13 Edgecombe: 3p	14	15 Warren: 11a	16 Alexander: 6:30p	17	18
19	20 Chatham 10a, 6p	21 Greene: 7p	22	23 Pender: 2p, 6p	24	25
26	27 Memorial Day	28 Jones: 10a, 6p	29	30 Wilkes: 2p, 6p Durham: 6p	31	1

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MAY 2019
S M T W T F S
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12 13 14 15 16 17 18
19 20 21 22 23 24 25
26 27 28 29 30 31
JUNE 2019
JULY 2019
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14 15 16 17 18 19 20
21 22 23 24 25 26 27
28 29 30 31
Sunday
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
26
27
Memorial Day
28
29
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31
1
2
Local Org: 3p
3
Surry: 10a, 6p
Yadkin: 6p
4
Yadkin: 6p
Hyde: 6p
5
Lee: 6p
Caswell: 10a
6
Halifax: 6p
Johnston: 2p, 6p
7
8
9
10
Richmond: 2p, 6p
Yancey: 10a, 6p
Guilford (CF) 11
Mitchell: 6p
Wilson: 2p, 5:30p
Tyrrell: 10a, 5p 12
Wayne: 3p, 6p
Northampton: 10a, 5:30p
13
Lenoir: 10a, 6p
Hertford: 10a, 6p
14
15
16
Father's Day
17
Haywood: 2p, 7p
Granville: 2p, 7p 18
Swain: 11a, 5p
Cumberland 2p, 6p
19
Rockingham: 3p
Gates: 12pm
Durham: 6p 20
Catawba: 6p
Franklin: 6p
21
22
23
24
Burke: 1pm, 6pm
Rowan: 9:30a, 5p
25
Rutherford: 1p, 6p
Hoke: 6:30p
26
Craven: 6p
Robeson: 6p
Dare 104, 5:30pm 27
Rockingham: 6p
Hoke: 6:30p
28
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1
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Independence Day
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6
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JUNE 2019
S M T W T F S
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JULY 2019
AUGUST 2019
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Sunday
Monday
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Thursday
Friday
Saturday
30
1
Camden: 1p, 5p
Mecklenburg:
Mecklenburg: 2
Currituck: 2pm, 7pm
Warren: 6:30pm
3
4
Independence Day
5
6
7
8
9
Gates: 6pm
10
11
Pamlico: 1p, 6p
12
13
14
Pitt: 2p, 7p
15
Orange: 5:30
Beaufort: 2p,6p
Hyde: 6p
16
Bertie: 10am
Alamance: 10a, 6p
Cumberland (CF)
17
Scotland: 10:30am, 6pm
Nash: Ellen
Durham: 6p
18
Bladen: 10a, 6p
Davidson: 10a, 7p
19
20
21
Chowan: 6p
22
New Hanover: 2p
Craven: 6p & CF
23
Alleghany: 6p
New Hanover: 6p
Chowan: 10a
24
Randolph: 2pm, 6pm
Onslow: 3p, 6p
Wake (CF)
25
Carteret: 2pm, 6pm
Perquimans:
26
Carteret -CF
27
28
29
CONFERENCE
30
CONFERENCE
31
Forsyth: 6pm
1
2
3
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JULY 2019
S M T W T F S
1 2 3 4 5 6
7 8 9 10 11 12 13
14 15 16 17 18 19 20
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28 29 30 31
AUGUST 2019
SEPTEMBER 2019
S M T W T F S
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8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30
Sunday
Monday
Tuesday
Wednesday
Thursday
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Saturday
28
29
30
31
Sampson: 6p 1
Transylvania: 6p
Forsyth: 6p & CF
2
Buncombe (CF)
3
Transylvania: 10a
4
Person: 10a, 6p 5
Cleveland: 10a, 6p
Anson: 6:30p
Greene: 7p 6
Anson: 6:30p
Martin: 2p, 6p
Moore: 6p 7
Washington: 2p, 6p
Caswell: 6p
Union: 2p, 7p
Union (CF) 8
Orange: 1:30p
Madison: 2p, 6p
Iredell: 10a, 5:30p
Stanly: 7p
9
10
Sampson: 11a
11
Pasquotank: 12p, 7p 12
Caldwell: 3p, 6p
Cabarrus: 2p, 6p
13
Alexander: 6:30p
Vance 6p
Lee: 6p
Gaston 2p
Moore: 6p & CF 14
Mecklenburg (CF)
Duplin: 9a, 6:30p
Franklin: 6p
Vance: 6p 15
Gaston: 6p & CF
16
Jackson: 6pm
17
Halifax: 11a
Jackson: 10:30a
18
19
Wautaga: 2p
Avery: 10a, 6p
Davie: 10a, 6p
Alleghany: 6p 20
Wake: 6:30p
Harnett: 6p
Cherokee: 21
Lincoln: 1p, 6p
Montgomery: 10a, 6p
Catawba: 6p & CF 22
Harnett: 6p
Dorrton: 6p
Macon: 10a, 6p
23
Caldwell - CF
24
Wake: 2p
25
26
Ashe: 2p, 6p
Bertie: 6pm & CF
Edgecombe: 6pm & CF 27
Watauga: 6p
Stanly: 7p
28
Buncombe: 2p, 6p
McDowell: 10a, 6p
Brunswick: 1p,6p
Columbus: 1p, 6p 29
Henderson: 1p, 6p
Brunswick-CF
Stokes: 2p, 6:30p
30
31
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AUGUST 2019

S	M	T	W	T	F	S
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER 2019

OCTOBER 2019

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Labor Day	3	4	5	6	7
8	9 Stanly: 6p	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26 Stanly: 2p	27	28
29	30	1	2	3	4	5

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SEPTEMBER 2019

S	M	T	W	T	F	S
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29	30					

OCTOBER 2019

NOVEMBER 2019

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17	18	19	20	21	22	23
24	25	26	27	28	29	30

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
29	30	1	2	3 Stanly: 7p	4	5
6	7	8	9	10	11	12
13	14 Columbus Day	15	16 Stanly: 7p	17	18	19
20	21	22	23	24	25	26
27	28	29 Stanly: 7p	30	31 Halloween	1	2

[*Voter ID Seminar Locations Tables*
see fold-outs next 5 pages]

Date	County	Time	Location	Address	# of Attendees
5/23/2019	Pender	2:00pm	Hampstead Branch Library	75 Library Drive Hampstead, NC 28443	15
5/23/2019	Pender	6:00pm	Pender County Library	103 S Cowan St Burgaw, NC 28425	12
5/30/2019	Wilkes	2:00pm	Wilkes Agricultural Center	416 Executive Dr, Wilkesboro, NC 28697	31
5/30/2019	Wilkes	6:00pm	Wilkes Agricultural Center	416 Executive Dr, Wilkesboro, NC 28697	22
6/1/2019	LOCAL ORG	3:00pm	Gethsemane SDA Church	2525 Sanderford Rd Raleigh 27601	10
6/4/2019	Hyde	6:00pm	Ocracoke Community Center	999 Irvin Garrish Hwy Ocracoke, NC	3
6/6/2019	Johnston	2:00pm	Johnston County Ag Center	2736 NC 210 Hwy Smithfield, NC	3
6/6/2019	Johnston	6:00pm	Johnston County Ag.Center	2737 NC 210 Hwy Smithfield, NC	4
6/10/2019	Richmond	2:00pm	Richmond Community College, Cole Auditorium	1042 West Hamlet Avenue Hamlet, NC 28345	4
6/10/2019	Richmond	6:00pm	NC Cooperative Extension	123 Caroline St, Rockingham, NC 28379	2
6/11/2019	Wilson	2:00pm	Wilson CBE	112 DOUGLAS ST. EAST WILSON, NC 27893	34
6/11/2019	Wilson	6:00pm	Wilson CBE	112 DOUGLAS ST. EAST WILSON, NC 27893	17
6/18/2019	Cumberland	2:00pm	North Branch Regional Library	855 McArthur Rd, Fayetteville, NC 28311	
6/18/2019	Cumberland	6:00pm	Crown Coliseum Ballroom	1960 Coliseum Dr, Fayetteville, NC 28306	
6/19/2019	Rockingham	3:00pm	Governmental Center	371 NC 65 Reidsville, NC 27320	
6/26/2019	Robeson	6:00pm	OP Owens Building	455 Canton Rd Lumberton, NC 28360	
6/27/2019	Rockingham	6:00pm	Governmental Center	371 NC 65 Reidsville, NC 27320	
7/2/2019	Warren	6:30pm	Warren County Amory	501 US Hwy 158 Bus E Warrenton, NC 27589	
7/9/2019	Gates	6:00pm	New Hope Missionary Baptist Church	94 NC-37, Gates, NC 27937	
7/15/2019	Pitt	2:00pm	Pitt County Ag Center	403 Government Cir, Greenville, NC 27834	
7/15/2019	Pitt	6:00pm	Alice Keene Center	4561 County Home Rd, Greenville, NC 27858	
7/16/2019	Hyde	6:00pm	Hyde County Government Center	30 Oyster Creek Road Swan Quarter, NC	
7/23/2019	Alleghany	6:00pm	Alleghany County Administration Building	348 S Main St. Sparta, NC 28675	
7/25/2019	Perquimans	2:00pm	Perquimans County BOE	601A S EDENTON RD ST HERTFORD, NC 27944	
7/25/2019	Perquimans	6:00pm	Perquimans County BOE	601A S EDENTON RD ST HERTFORD, NC 27945	
8/5/2019	Anson	6:30pm	South Piedmont Community College	514 N. Washington St, Wadesboro, NC 28170	
8/6/2019	Greene	7:00pm	Greene County BOE	110 SE First Street, Snow Hill, NC 28580	
8/8/2019	Iredell	10:00am	Iredell County Agricultural Center	444 Bristol Drive, Statesville, NC 28677	
8/8/2019	Iredell	5:30pm	Iredell County Agricultural Center	444 Bristol Drive, Statesville, NC 28677	
8/13/2019	Vance	6:00pm	Vance-Granville Community College - Civic Center Room	200 Community College Rd, Henderson, NC 27536	
8/14/2019	Franklin	6:00pm	Terrell Lane Middle School	101 Terrell Ln Louisburg, NC 27549	
8/15/2019	Vance	6:00pm	E. M. Rollins Elementary School	1600 S Garnett Saint Ext, Henderson, NC 27536	
8/19/2019	Avery	10:00am	Avery County Senior Center	165 Shultz Circle Newland, NC 28657	
8/19/2019	Avery	6:00pm	County Commissioner Room	175 LINVILLE STREET NEWLAND, N.C. 28657	
8/19/2019	Watauga	2:00pm	Watauga County Administration Building	814 West King Street Boone, NC 28607	
8/20/2019	Alleghany	6:00pm	Alleghany County Administration Building	348 S Main St. Sparta, NC 28675	
8/24/2019	Wake	2:00pm	NCSBE		
8/28/2019	McDowell	10:00am	McDowell County BOE	2458 US Hwy 226 South Marion, NC 28752	
8/28/2019	McDowell	6:00pm	McDowell County BOE	2458 US Hwy 226 South Marion, NC 28752	
8/29/2019	Henderson	1:00pm	Henderson County BOE	75 E. CENTRAL ST. HENDERSONVILLE, NC 28792	
8/29/2019	Henderson	6:00pm	Henderson County BOE	75 E. CENTRAL ST. HENDERSONVILLE, NC 28792	

Voter ID Seminar Locations

Date	County	Time	Location	Address	# of Attendees
5/6/2019	Mitchell	6:00pm	Mitchell County BOE	11 N MITCHELL AVE ROOM 108 BAKERSVILLE, NC 28705	8
5/7/2019	Clay	1:00pm	Community Services Building	1 Riverdale Circle Hayesville, NC 28904	6
5/7/2019	Clay	6:30pm	Community Services Building	1 Riverdale Circle Hayesville, NC 28904	10
5/8/2019	Graham	1:00pm	Graham County Old DSS	196 Knight St. Robbinsville, NC 28771	7
5/8/2019	Graham	5:30pm	Graham County Old DSS	196 Knight St. Robbinsville, NC 28771	5
5/9/2019	Polk	2:00pm	Womack Admin Bldg	40 Courthouse St Columbus, NC 28722	12
5/9/2019	Polk	6:00pm	Womack Admin Bldg	40 Courthouse St Columbus, NC 28722	16
6/3/2019	Yadkin	6:00pm	Agriculture and Educational Building	2051 Agricultural Way Yadkinville, NC 27055	9
6/4/2019	Yadkin	6:00pm	Agriculture and Educational Building	2051 Agricultural Way Yadkinville, NC 27055	16
6/10/2019	Yancey	10:00am	Yancey Senior Center	503 Medical Campus Dr, Burnsville, NC 28714	18
6/10/2019	Yancey	6:00pm	Yancey County Courthouse	110 Town Square, Burnsville, NC 28714	24
6/11/2019	Mitchell	6:00pm	Spruce Pine Fire Department	100 Fire Fighter Way, Spruce Pine, NC 28777	2
6/20/2019	Franklin	6:00pm	Cedar Creek Middle School	2228 Cedar Creek Rd, Youngsville NC 27596	
6/26/2019	Craven	6:00pm	New Beginnings Ministry of Faith	30 Park Lane, Havelock, NC	
6/27/2019	Dare	10:00am	Dare County Administration Building	954 Marshall C.Collins Drive, Manteo NC 27954	
6/27/2019	Dare	5:30pm	Dare County Administration Building	954 Marshall C.Collins Drive, Manteo NC 27954	
7/1/2019	Mecklenburg	6:00pm	Mecklenburg County BOE	741 Kenilworth Ave Suite 202 Charlotte, NC 28204	
7/2/2019	Mecklenburg	12:00pm	Mecklenburg County BOE	742 Kenilworth Ave Suite 202 Charlotte, NC 28204	
7/15/2019	Beaufort	2:00pm	Beaufort County BOE	1308 HIGHLAND DRIVE, SUITE 104 WASHINGTON, NC 27889	
7/15/2019	Beaufort	6:00pm	Beaufort County BOE	1308 HIGHLAND DRIVE, SUITE 104 WASHINGTON, NC 27889	
7/16/2019	Bertie	10:00am	Martin County Community College-Bertie Campus	409 Granville St. Windsor, NC 27983	
7/18/2019	Davidson	1:00pm	Davidson County Senior Services	211 Colonial Dr Thomasville, NC 27360	
7/18/2019	Davidson	7:00pm	Lexington Sr. High School	9 Penry St, Lexington, NC 27292	
7/22/2019	Chowan	6:00pm	Chowan County BOE	730 N GRANVILLE STREET SUITE D EDENTON, NC 27932	
7/23/2019	Chowan	10:00am	Northern Chowan County Community Center	2869 Virginia Rd, Tyner, NC 27980	
8/7/2019	Moore	6:00pm	Pinecrest High School Auditorium	250 Volt Gilmore Ln Southern Pines, NC 28387	
8/8/2019	Orange	1:30pm	Passmore Senior Center	103 Meadowlands Dr, Hillsborough, NC 27278	
8/10/2019	Sampson	11:00am	Sampson County Exposition Center	414 Warsaw Road Clinton, NC 28328	
8/13/2019	Lee	6:00pm	Lee County Library	107 Hawkins Ave, Sanford, NC 27330	
8/14/2019	Duplin	9:00am	Lois G. Britt Building	165 Agriculture Drive Kenansville, NC 28349	
8/14/2019	Duplin	6:30pm	Lois G. Britt Building	165 Agriculture Drive Kenansville, NC 28349	
8/20/2019	Wake	6:30pm	NCSBE		
8/22/2019	Harnett	6:00pm	Governmental Commons	509 W. Cornelius Harnett Blvd. Lillington, NC 27546	
8/26/2019	Ashe	2:00pm	Ashe County Courthouse	150 Government Cir, Jefferson, NC 28640	
8/26/2019	Ashe	6:00pm	Ashe County Courthouse	150 Government Cir, Jefferson, NC 28640	
8/27/2019	Wautauga	6:00pm	Plemmons Student Union	263 Locust Street Boone, NC 28608	
8/28/2019	Buncome	2:00pm	AB-Tech Comm College Conference Center	16 Fernihurst Dr., Asheville, NC 28801	
8/28/2019	Buncome	6:00pm	AB-Tech Comm College Conference Center	16 Fernihurst Dr., Asheville, NC 28801	

Voter ID Seminar Locations

Date	County	Time	Location	Address	# of Attendees
5/15/2019	Warren	11:00am	Warren County Senior Center	435 W Franklin St Warrenton, NC 27589	28
5/20/2019	Chatham	10:00am	Chatham County Agricultural & Conference Center	1192 US Hwy 64 W Business, Pittsboro, NC 27312	38
5/20/2019	Chatham	6:00pm	Chatham County Agricultural & Conference Center	1192 US Hwy 64 W Business, Pittsboro, NC 27312	23
5/30/2019	Durham	6:00pm	North Regional Library	221 Milton Road, Durham NC 27712	24
6/3/2019	Surry	10:00am	Surry County Government Resources Center	1218 State Street Mount Airy, NC 27030	28
6/3/2019	Surry	6:00pm	Surry County Government Resources Center	1218 State Street Mount Airy, NC 27030	22
6/5/2019	Lee	6:00pm	McSwain Agricultural Extension Center	2420 Tramway Rd Sanford, NC 27332	8
6/12/2019	Tyrrell	10:00am	Madge Van Horn Auditorium	902 Main Street, Columbia, NC 27925	11
6/12/2019	Tyrrell	5:00pm	Madge Van Horn Auditorium	902 Main Street, Columbia, NC 27925	5
6/17/2019	Haywood	2:00pm	Canton Senior Center	71 Pendland Street, Canton, NC. 28715	
6/17/2019	Haywood	7:00pm	Historic Courtroom	215 North Main Street, Waynesville, NC. 28786	
6/18/2019	Swain	11:00am	Bryson City Services Center	50 Main St. Bryson City NC 28713	
6/18/2019	Swain	5:00pm	Bryson City Services Center	50 Main St. Bryson City NC 28713	
6/20/2019	Durham	6:00pm	South Regional Library	4505 S Alston Avenue, Durham, NC 27713	
6/24/2019	Rowan	9:30am	Events Center	1935 Jake Alexander Blvd. W., Salisbury, NC 28147	
6/24/2019	Rowan	5:00pm	Civic Center	315 S. Martin Luther King Jr. Ave., Salisbury, NC 28144	
7/16/2019	Alamance	10:00am	Williams High School	1307 S Church St, Burlington, NC 27215	
7/16/2019	Alamance	6:00pm	Williams High School	1307 S Church St, Burlington, NC 27215	
7/18/2019	Bladen	10:00am	Bladen Community College	7418 NC Hwy 41W, Dublin, NC 28332	
7/18/2019	Bladen	6:00pm	Bladen Community College	7419 NC Hwy 41W, Dublin, NC 28332	
7/22/2019	Craven	6:00pm	Craven County BOE	406 Craven Street, New Bern, NC	
7/24/2019	Randolph	2:00pm	Northgate Plaza	1461 N. Fayetteville St. Asheboro, NC 27203	
7/24/2019	Randolph	6:00pm	Northgate Plaza	1461 N. Fayetteville St. Asheboro, NC 27203	
8/1/2019	Transylvania	6:00pm	Transylvania County BOE	150 S. Gaston Street, Brevard, NC 28712	
8/3/2019	Transylvania	10:00am	Transylvania County BOE	150 S. Gaston Street, Brevard, NC 28712	
8/5/2019	Person	10:00am	Person County Office Building Auditorium	304 S. Morgan Street, Roxboro, NC 27573	
8/5/2019	Person	6:00pm	Person County Office Building Auditorium	304 S. Morgan Street, Roxboro, NC 27573	
8/6/2019	Anson	6:30pm	South Piedmont Community College	514 N. Washington St, Wadesboro, NC 28170	
8/7/2019	Union	2:00pm	Union County Agricultural Center	3230-D, Presson Rd, Monroe, NC 28112	
8/7/2019	Union	7:00pm	Union County Agricultural Center	3230-D, Presson Rd, Monroe, NC 28113	
8/8/2019	Stanly	7:00pm	Stanly Commons-Commissioners Meeting Room	1000 N 1st St. Albemarle, NC 28801	
8/12/2019	Cabarrus	2:00pm	Cabarrus County BOE	369 Church St N Concord, NC 28025	
8/12/2019	Cabarrus	6:00pm	Kannapolis Train Station	201 S Main St, Kannapolis, NC 28081	
8/13/2019	Gaston	2:00pm	Gaston College-Dallas Campus	201 Highway U.S. 321 S Dallas, NC 28034	
8/15/2019	Gaston	6:00pm	Gaston County Library		
8/19/2019	Davie	10:00am	Davie County Library	371 N Main St., Mocksville, NC 27028	
8/19/2019	Davie	6:00pm	Davie County Library	371 N Main St., Mocksville, NC 27028	
8/21/2019	Cherokee				
8/21/2019	Cherokee				
8/22/2019	Macon	10:00am	Highlands Civic Center	600 N 4th St Highlands, NC 28741	
8/22/2019	Macon	6:00pm	Macon County Community Building	1288 Georgia Rd. Franklin, NC 28734	
8/29/2019	Columbus	1:00pm	Columbus County Board of Commissioners	112 W Smith St Whiteville, NC 28472	
8/29/2019	Columbus	6:00pm	Columbus County Board of Commissioners	112 W Smith St Whiteville, NC 28472	

Date	County	Time	Location	Address	# of Attendees
5/13/2019	Edgecombe	3:00pm	Edgecombe County Building	201 St Andrew St. Tarboro, NC 27886	10
5/28/2019	Jones	10:00am	Jones County Civic Center	832 NC Hwy 58 Trenton, NC 28585	2
5/28/2019	Jones	6:00pm	Jones County Civic Center	832 NC Hwy 58 Trenton, NC 28585	0
6/6/2019	Halifax	6:00pm	Scotland Neck Auditorium	1310 Main Street Scotland Neck, NC 27874	15
6/12/2019	Northampton	10:00am	NC Cultural and Wellness Center	9536 NC 305 Jackson, NC 27845	
6/12/2019	Northampton	5:30pm	Cool Spring Community Center	101 Cherry Street Gaston, NC 27832.	
6/13/2019	Hertford	10:00am	Roanoke Chowan Community College Auditorium	109 Community College Rd, Ahoskie NC 27910	
6/13/2019	Hertford	6:00pm	Roanoke Chowan Community College Auditorium	109 Community College Rd, Ahoskie NC 27910	
6/18/2019	Granville	2:00pm	Granville County Expo and Convention Center	4185 US Highway 15, Oxford, NC 27565	
6/18/2019	Granville	7:00pm	Granville County Expo and Convention Center	4185 US Highway 15, Oxford, NC 27565	
6/24/2019	Burke	1:00pm	Burke County BOE	2128 S Sterling St Morganton, NC 28655	
6/24/2019	Burke	6:00pm	Burke County BOE	2128 S Sterling St Morganton, NC 28655	
6/25/2019	Rutherford	1:00pm	Rutherford County Administration Building	289 N. Main St Rutherfordton, NC 28139	
6/25/2019	Rutherford	6:00pm	Rutherford County Administration Building	289 N. Main St Rutherfordton, NC 28139	
7/1/2019	Camden	1:00pm	Camden County Library	104 Investors Way, Camden, NC 27921	
7/1/2019	Camden	5:00pm	Camden County Library	104 Investors Way, Camden, NC 27921	
7/2/2019	Currituck	2:00pm	Currituck County Extension Office	120 Community Way, Barco, NC 27917	
7/2/2019	Currituck	7:00pm	Currituck County Extension Office	120 Community Way, Barco, NC 27917	
7/17/2019	Scotland	10:30am	Scotland County Emergency 911 Center	1403 West Blvd., Laurinburg, NC 28352	
7/17/2019	Scotland	6:00pm	Scotland County Emergency 911 Center	1403 West Blvd., Laurinburg, NC 28352	
7/22/2019	New Hanover	2:00pm	New Hanover County Government Center	230 Government Center Wilmington, NC 28403	
7/23/2019	New Hanover	6:00pm	Cape Fear Community College-Downtown Campus	411 N Front St, Wilmington, NC 28401	
7/24/2019	Onslow	3:00pm	Onslow County Government Complex	234 NW Corridor Blvd., Jacksonville, NC	
7/24/2019	Onslow	6:00pm	Onslow County Government Complex	234 NW Corridor Blvd., Jacksonville, NC	
7/25/2019	Carteret	2:00pm	Carteret County Community College	3505 Arendell Street, Morehead City, NC 28557	
7/25/2019	Carteret	6:00pm	Carteret County Community College	3505 Arendell Street, Morehead City, NC 28557	
8/1/2019	Forsyth	6:00pm	Forsyth County BOE	201 N Chestnut St. Winston-Salem, NC 27101	
8/6/2019	Martin	2:00pm	Martin County Governmental Center	305 East Main Street, Williamston, NC 27892	
8/6/2019	Martin	6:00pm	Martin County Governmental Center	305 East Main Street, Williamston, NC 27892	
8/7/2019	Washington	2:00pm	Washington County Roper Annex	100 NC Hwy 32 N, Roper NC, 27970	
8/7/2019	Washington	6:00pm	Washington County Extension Center	128 E. Water Street, Plymouth NC, 27962	
8/12/2019	Pasquotank	12:00pm	College of The Albemarle, Admin Bldg Room 216	1208 N. Road Street Elizabeth City, NC 27906	
8/12/2019	Pasquotank	7:00pm	Elizabeth City State University, Student Center Rm 206	1704 Weeksville Road Elizabeth City, NC 27909	
8/14/2019	Moore	6:00pm	Moore County Agricultural Building	707 Pinehurst Ave Carthage, NC 28327	
8/17/2019	Halifax	11:00am	Halifax County Agricultural Building	359 Ferrell Lane Halifax, NC 27839	
8/21/2019	Lincoln	1:00pm	East Lincoln Recreation Center	8160 Optimist Club Rd Denver, NC 28037	
8/21/2019	Lincoln	6:00pm	James Warren Citizen Center	115 W Main St Lincolnton, NC 28092	
8/22/2019	Catawba	6:00pm	Catawba County Library (Newton)	115 West C Street Newton, NC 28658	
8/26/2019	Bertie	6:00pm	Aulander Community Building	116 S. Commerce St. Aulander, NC 27805	
8/27/2019	Edgecombe	6:00pm	Edgecombe County Building	201 St Andrew St. Tarboro, NC 27886	
8/28/2019	Brunswick	1:00pm	David R. Sandifer Administration Building	30 Government Center Drive NE, Bolivia, NC 28422	
8/28/2019	Brunswick	6:00pm	David R. Sandifer Administration Building	30 Government Center Drive NE, Bolivia, NC 28422	

Voter ID Seminar Locations

Date	County	Time	Location	Address	Hotel/Drive	Travel Time	# of Attendees
5/16/2019	Alexander	6:30pm	Alexander County Administrative Building	621 Liledoun Road Taylorsville NC 28681	Hotel	3	15
5/21/2019	Greene	7:00pm	Greene County BOE	110 SE First Street, Snow Hill, NC 28580	Drive Home	1.5	10
6/5/2019	Caswell	10:00am	Caswell County Senior Service Building	649 Firetower Rd Yanceyville, NC 27379	Drive Home	1.5	24
6/12/2019	Wayne	3:00pm	Wayne Community College	3000 Wayne Memorial Dr, Goldsboro, NC 27534	Hotel	1	6
6/12/2019	Wayne	6:00pm	Wayne Community College	3000 Wayne Memorial Dr, Goldsboro, NC 27534	Hotel (1)	1	9
6/13/2019	Lenoir	10:00am	Lenoir County Cooperative Extension Building	1791 HWY 11-55 Kinston NC 28504	Hotel (1)	(From hotel)	55
6/13/2019	Lenoir	6:00pm	Lenoir County Cooperative Extension Building	1791 HWY 11-55 Kinston NC 28504	Hotel (1)	0.5	18
6/19/2019	Gates	12:00pm	Merchants Millpond State Park	9100-176 Millpond Rd Gatesville, NC	Drive Home	3	
6/25/2019	Hoke	6:30pm	Hoke County Old Amory	423 East Central Avenue, Raeford NC 28376	Drive Home	1.5	
6/27/2019	Hoke	6:30pm	Hoke County Old Amory	423 East Central Avenue, Raeford NC 28376	Drive Home	1.5	
7/11/2019	Pamlico	1:00pm	Pamlico County Courthouse	202 Main St Bayboro, NC 28515	Hotel (1)	3	
7/11/2019	Pamlico	6:00pm	Pamlico County Courthouse	202 Main St Bayboro, NC 28515	Hotel (1)		
7/15/2019	Orange	5:30pm	Seymour Senior Center	2551 Homestead Rd, Chapel Hill, NC 27516	Drive Home		
7/18/2019	Durham	6:00pm	East Regional Library	211 Lick Creek Lane, Durham, NC 27703	Drive Home		
7/23/2019	Durham	10:00am	Durham County HHS Building	414 East Main Street, Durham, NC 2770	Drive Home		
7/23/2019	Durham	4:00pm	Durham County HHS Building	414 East Main Street, Durham, NC 2770	Drive Home		
7/31/2019	Forsyth	6:00pm	Forsyth County BOE	201 N Chestnut St. Winston-Salem, NC 27101	Hotel	2	
8/5/2019	Cleveland	10:00am	Cleveland Community College	137 S. Post Rd. Shelby, NC 28152	Hotel (1)		
8/5/2019	Cleveland	6:00pm	Cleveland Community College	137 S. Post Rd. Shelby, NC 28152	Hotel (1)		
8/7/2019	Caswell	6:00pm	Caswell County Senior Service Building	649 Firetower Rd Yanceyville, NC 27379	Drive Home	1.5	
8/8/2019	Madison	2:00pm	AB-Tech Comm College Conference Center	4646 US Hwy 25-70, Marshall, NC 28753	Hotel (1)	4	
8/8/2019	Madison	6:00pm	AB-Tech Comm College Conference Center	4646 US Hwy 25-70, Marshall, NC 28753	Hotel (1)	4	
8/12/2019	Caldwell	3:00pm	Caldwell County Library	120 Hospital Ave, Lenoir, North Carolina 28645	Hotel (2)	3	
8/12/2019	Caldwell	6:00pm	Caldwell County Library	120 Hospital Ave, Lenoir, North Carolina 28645	Hotel (2)	3	
8/13/2019	Alexander	6:30pm	Alexander County Administrative Building	621 Liledoun Road Taylorsville NC 28681.	Hotel		
8/16/2019	Jackson						
8/17/2019	Jackson		Jackson County BOE	876 SKYLAND DRIVE SUITE 1 SYLVA, NC 28779			
8/20/2019	Harnett	6:00pm	Governmental Commons	309 W. Cornelius Harnett Blvd. Lillington, NC 27546			
8/21/2019	Montgomer	10:00am	James H. Garner Conference Center	210 Burnette St Troy, NC 27371			
8/21/2019	Montgomer	6:00pm	James H. Garner Conference Center	210 Burnette St Troy, NC 27371			
8/22/2019	Durham	6:00pm	Eno River Unitarian Universalist Fellowship	4907 Garrett Road, Durham, NC 27707			
8/27/2019	Stanley	7:00pm	Stanly Commons-Commissioners Meeting Room	1000 N 1st St. Albemarle, NC 28801	Hotel		
8/29/2019	Stokes	2:00pm	Walnut Cove Library	105 5th St, Walnut Cove, NC 27052	Hotel		
8/29/2019	Stokes	6:30pm	King Library	9180, 101 Pilot View Dr, King, NC 27021	Hotel		

Exhibit G

VOTERS WILL BE ASKED TO SHOW PHOTO ID BEGINNING IN 2020*

Photo ID is not required in any election in 2019.

*NO ID?

* When you present to vote, you will be asked to show photo ID.
* If you do not show photo ID, you may vote provisionally. Your provisional ballot will count if you bring acceptable photo ID to your county board of elections office before canvass, or if you sign an affidavit declaring that you have a qualifying exception from the requirement.
* If you vote by mail, you must enclose a copy of your photo ID with your request or when you return the ballot, unless you sign an affidavit declaring that you have a qualifying exception from the requirement.
* "Qualifying exceptions" include: religious objection to being photographed, reasonable impediment, or natural disaster.
* You can obtain a free photo ID at your county board of elections office at any time except during the period between the end of one-stop early voting and Election Day.

ACCEPTABLE PHOTO IDs FOR VOTING IN 2020:

* *Must be valid and unexpired OR expired for one year or less.*
* *May be expired if voter is over the age of 65 and ID was unexpired on their 65th birthday.*

* **Driver License or Non-Operator ID from North Carolina**
* **Driver License or Non-Operator ID from Another State or Commonwealth, District of Columbia or U.S. Territory**
  * *ONLY if voter registered in North Carolina within 90 days of the election.*
* **Approved College/University Student ID**
  * *Must be approved by the State Board of Elections. Visit voterID.NCSBE.gov for a list of approved IDs.*
  * ***In 2020 only:** no expiration date is required*
* **Military ID Card or Veterans ID Card**
  * *May be expired or have no expiration date.*
* **North Carolina Voter ID Card**
* **Tribal Enrollment Card**
  * *Issued by:*
  1. *An approved state tribe. Visit voterID.NCSBE.gov for a list of approved tribes; OR*
  2. *A federal tribe.*
  * *May be expired or have no expiration date.*
* **Approved State or Local Government or Charter School Employee ID**
  * *Must be approved by the State Board of Elections. Visit voterID.NCSBE.gov for a list of approved IDs.*
  * ***In 2020 only:** no expiration date is required.*
* **United States Passport**
  * *Includes U.S. Passport Card.*

voterID.NCSBE.gov

NORTH CAROLINA STATE BOARD OF ELECTIONS

"All registered voters will be allowed to vote with or without a photo ID card. When voting in person, you will be asked to present a valid photo identification card. If you do not have a valid photo ID card, you may obtain one from your county board of elections prior to the election, through the end of the early voting period. If you do not have a valid photo ID card on election day, you may still vote and have your vote counted by signing an affidavit of reasonable impediment as to why you have not presented a valid photo ID" (N.C.G.S. Session Law 2018-144 § 1.5(a)(10)).

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1092

[Filed: December 2, 2020]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; CHAPEL HILL-CARRBORO NAACP; GREENSBORO NAACP; HIGH POINT NAACP; MOORE COUNTY NAACP; STOKES COUNTY BRANCH OF THE NAACP; WINSTON SALEM – FORSYTH COUNTY NAACP,

Plaintiffs - Appellees,

v.

KEN RAYMOND, in his official capacity as a member of the North Carolina State Board of Elections; STELLA E. ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections; JEFFERSON CARMON, in his official capacity as a member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as a member of the North Carolina State Board of Elections,

Defendants - Appellants,

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,

Intervenors.

DEMOCRACY NORTH CAROLINA; ROY COOPER; NATIONAL REDISTRICTING FOUNDATION,

Amici Supporting Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:18-cv-01034-LCB-LPA)

Argued: September 11, 2020

Decided: December 2, 2020

Before HARRIS, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Reversed by published opinion. Judge Richardson wrote the opinion, in which Judge Harris and Judge Quattlebaum joined.

ARGUED: Olga E.V. de Brito, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellants. David Henry Thompson, COOPER & KIRK PLLC, Washington, D.C., for Intervenors. John Charles Ulin, TROYGOULD PC, Los Angeles, California, for Appellees. **ON BRIEF:** Joshua H. Stein, Attorney General, Paul M. Cox, Special Deputy Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellants. Irving Joyner, Cary, North Carolina; Penda D. Hair, Washington, D.C., Caitlin A. Swain, Kathleen Roblez, FORWARD JUSTICE, Durham, North Carolina; Andrew T. Tutt, James W. Cooper, Jeremy C. Karpatkin, Stephen K. Wirth, Jacob Zionce, Thomas La Voy, ARNOLD & PORTER KAYE SCHOLER LLP, Washington, D.C., for Appellees. Peter A. Patterson, Nicole J. Moss, COOPER & KIRK PLLC, Washington, D.C.; Nathan A. Huff, PHELPS DUNBAR LLP, Raleigh, North Carolina, for Intervenors. Marc E. Elias, Aria C. Branch, Washington, D.C., Abha Khanna, PERKINS COIE LLP, Seattle, Washington, for Amicus National Redistricting Foundation. Sean Morales-Doyle, Myrna Pérez, NYU SCHOOL OF LAW, New York, New York; Nathaniel B. Edmonds, Washington, D.C., Aaron Charfoos, Chicago, Illinois, Jane H. Yoon, New York, New York, Steven A. Marenberg, PAUL HASTINGS LLP, Los Angeles, California, for Amicus Democracy North Carolina. Robert E. Harrington, Adam K. Doerr, Erik R. Zimmerman, Travis S. Hinman, ROBINSON, BRADSHAW & HINSON, P.A., Charlotte, North Carolina, for Amicus Governor Roy Cooper.

RICHARDSON, Circuit Judge:

This case challenges the constitutionality of a 2018 North Carolina law requiring voters to present photographic identification ("2018 Voter-ID Law"). This law was passed after this Court found that North Carolina acted with racially discriminatory intent in enacting a 2013 omnibus voting law ("2013 Omnibus Law"), which included a voter-ID requirement. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 215 (4th Cir. 2016). The Challengers allege that the 2018 Voter-ID Law was enacted with the same discriminatory intent as the 2013 Omnibus Law. And the district court preliminarily agreed, finding that the Challengers were likely to succeed on the merits of their constitutional claims and issuing a preliminary injunction against the law's enforcement. *See N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d 15, 54 (M.D.N.C. 2019). We must determine whether this was an abuse of discretion.

The outcome hinges on the answer to a simple question: How much does the past matter? To the district court, the North Carolina General Assembly's recent discriminatory past was effectively dispositive of the Challengers' claims here. But the Supreme Court directs differently. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). A legislature's past acts do not condemn the acts of a later legislature, which we must presume acts in good faith. *Id.* So because we find that the district court improperly disregarded this principle by reversing the burden of proof and failing to apply the presumption of legislative good faith, we reverse.

I. Background

From 1965 until the summer of 2013, North Carolina was one of several states required to obtain federal permission under the Voting Rights Act before enacting any voting law. Obtaining that permission required a state to present persuasive evidence that the proposed state law had neither the purpose nor effect of "diminishing the ability of any citizens" to vote "on account of race or color." 52 U.S.C. § 10304; *see South Carolina v. United States*, 898 F. Supp. 2d 30, 33 (D.D.C. 2012).

While under that preclearance regime, the General Assembly introduced a voter-ID bill in 2011. The bill passed both chambers, but the Governor vetoed it. In the spring of 2013, the General Assembly tried again. In preparation, at various points in 2012 and 2013, the General Assembly requested information on the use of voting practices by race. *See N.C. State Conf. of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 489 (M.D.N.C. 2016). While the General Assembly considered the new voter-ID bill, the Supreme Court rejected the Voting Rights Act's coverage formula that had required that North Carolina obtain preclearance. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013).

Freed of the preclearance requirement, the General Assembly expanded the proposed voter-ID bill into "omnibus legislation" that included a "number of voting restrictions." *McCrory*, 831 F.3d at 216–18. The omnibus bill passed along party lines, and the Governor signed it into law. *Id.* at 218.

In a challenge to this 2013 Omnibus Law, we enjoined five of its voting restrictions: (1) the elimination of preregistration; (2) the elimination of out-of-precinct provisional voting; (3) the elimination of same-day registration; (4) the reduction of the time for early voting; and (5) the requirement of a photo ID to vote. *Id.* at 242. Reversing the district court, we found that each of these restrictions had been unlawfully enacted with racially discriminatory intent. *Id.* at 215. Those five restrictions "unmistakably" reflected the General Assembly's motivation to "entrench itself . . . by targeting voters who, based on race, were unlikely to vote for the majority party," *id.* at 233, and did so with "almost surgical precision" using the data on voting practices, *id.* at 214. We noted that after *Shelby County* the General Assembly expanded the bill's restrictions and amended the voter-ID provision to exclude "many of the alternative photo IDs used by African Americans," retaining "only the kinds of IDs that white North Carolinians were more likely to possess." *Id.* at 216. The Supreme Court denied certiorari. *North Carolina v. N.C. State Conf. of the NAACP*, 137 S. Ct. 1399 (2017).

A. The enactment of the 2018 Voter-ID Law

After we enjoined the 2013 Omnibus Law, legislative leaders called for a new voter-ID law. The General Assembly first asked the voters to approve a voter-ID amendment to the North Carolina Constitution. 2018 N.C. Sess. Laws 128.[1] The

[1] The North Carolina Constitution allows the legislature to place amendments on the ballot by a three-fifths vote of each chamber.

amendment required that all voters in North Carolina "offering to vote in person [] present photographic identification before voting" and directed that the General Assembly "shall enact general laws governing the requirements of such photographic identification, which may include exceptions." N.C. CONST. art VI, § 2(4). Fifty-five percent of the voters approved the constitutional amendment.

In that same election, the Republicans lost their supermajorities in both chambers of the General Assembly. During the lame-duck term following the election, the General Assembly enacted the 2018 Voter-ID Law. Its stated purpose was "to implement the constitutional amendment requiring photographic identification to vote." 2018 N.C. Sess. Laws 144. After the Governor vetoed the law, both chambers voted to override the veto and enact the law.

B. The 2018 Voter-ID Law's provisions

Subject to exceptions, the 2018 Voter-ID Law requires North Carolinian voters to produce photographic identification to vote in person or by absentee ballot. 2018 N.C. Sess. Laws 144, § 1.2(a). The law at first listed ten forms of authorized ID:

1. North Carolina driver's licenses;
2. Other nontemporary IDs issued by the Division of Motor Vehicles;
3. United States passports;
4. North Carolina voter photo ID cards;

N.C. CONST. art. XIII, § 4.

5. Tribal enrollment cards issued by state- or federally recognized tribes;
6. Certain student IDs issued by post-secondary institutions;
7. Certain employee IDs issued by a state or local government entity;
8. Out-of-state driver's licenses and nonoperator IDs (if the voter is newly registered);
9. Military IDs; and
10. Veterans IDs.

Cooper, 430 F. Supp. 3d at 36 (footnote omitted) (citing 2018 N.C. Sess. Laws 144, § 1.2(a)). Military and veteran IDs qualify "regardless of whether the identification contains a printed expiration or issuance date." § 1.2(a). All other forms of ID must be "valid and unexpired" or expired for less than one year (except that voters over the age of sixty-five may use an expired ID so long as it was unexpired on their sixty-fifth birthday). *Id.*

To mitigate any hardships, the 2018 Voter-ID Law establishes three ways to vote for those lacking a qualifying ID. First, registered voters may obtain a free voter-photo-ID card by visiting their county board of elections. § 1.1(a). These IDs are also available during one-stop early voting, where one can get a free ID and vote the same day. *See id.*; N.C. GEN. STAT. §§ 163-227.2(b), 163-227.6(a). No documentation is needed to get the free ID: voters must simply provide their name, date of birth, and last four digits of their social security number. § 1.1(a). Second, if registered voters show up to the polls without a qualifying ID, they may fill out a provisional ballot. § 1.2(a). Their vote will be counted if

they present an ID—including a new voter-photo-ID card—to the elections board no later than the day before the election is canvassed. *Id.* Last, three groups of people are exempted from the photo-ID requirement: (1) people with religious objections; (2) survivors of recent natural disasters who cannot present a qualifying ID because of that natural disaster; and (3) people with a "reasonable impediment" to obtaining or presenting a qualifying ID. *Id.* Voters in these groups may cast a provisional ballot if they complete an affidavit that affirms their identity and gives their reason for not presenting a qualifying ID. *Id.* Their votes must count unless the five-member bipartisan county board of elections unanimously finds that there are "grounds to believe the affidavit is false." *Id.*; *see also Cooper*, 430 F. Supp. 3d at 40 (citing 08 N.C. ADMIN. CODE 17.0101(b)). The law includes a list of qualifying "reasonable impediments," including having lost or stolen identification, having applied for but not yet received proper identification, and being unable to obtain identification because of disability, illness, work schedule, family responsibilities, or a lack of transportation or documentation. § 1.2(a). But the law also includes a catch-all provision that allows voting without a photo ID for any "other reasonable impediment" to obtaining or presenting a qualifying ID. *Id.*

In addition to imposing a voter-ID requirement, the 2018 Voter-ID Law permits each political party in North Carolina "to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State." § 3.3. It also expands the grounds on which ballots can be

challenged to include when "[t]he registered voter does not present photo identification in accordance with [the 2018 Voter-ID Law]." § 3.1(c).

C. The current lawsuit

The day after the 2018 Voter-ID Law was enacted, the Challengers sued the members of the North Carolina State Board of Elections ("Defendants") and the Governor of North Carolina[2] in their official capacities. The complaint challenged three provisions of the law—the voter-ID requirements, the increase in the number of poll observers, and the expansion of reasons for challenging a ballot. According to the Challengers, these provisions violated § 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments because they had been enacted with racially discriminatory intent.

More than nine months after filing suit, the Challengers first requested that the district court enter a preliminary injunction against enforcement of the challenged provisions. After a hearing, the district court granted the preliminary injunction for the voter-ID and ballot-challenge provisions after finding that the Challengers were likely to succeed on their constitutional claims. *Cooper*, 430 F. Supp. 3d at 53–54. Defendants appealed, and we have jurisdiction under 28 U.S.C. § 1292(a)(1).

D. Standing

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[2] Governor Cooper was dismissed from the lawsuit as an improper defendant.

To bring this suit, the Challengers—chapters of the NAACP—require some form of organizational standing. The district court found that the Challenger organizations have standing to sue on their own behalf because "they will need to divert resources away from their planned voter-engagement efforts to respond to S.B. 824's requirements." *Cooper*, 430 F. Supp. 3d at 24 n.3.

When an action "perceptibly impair[s]" an organization's ability to carry out its mission and "consequent[ly] drain[s] . . . the organization's resources," "there can be no question that the organization has suffered injury in fact." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). After the district court ruled in this case, we clarified that the *Havens Realty* standard is not met simply because an organization makes a "unilateral and uncompelled" choice to shift its resources away from its primary objective to address a government action. *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 238 (4th Cir. 2020). We need not consider the effect of that decision on the Challengers' standing to sue on their own behalf, however, because the Challengers in any event have standing on a representational theory. An organizational plaintiff may sue on behalf of its members if: (1) its members would have standing if they sued individually; (2) the interests the lawsuit seeks to raise "are germane to the organization's purpose"; and (3) the claims and type of relief asserted in the complaint do not require the individual members' participation in the lawsuit. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). The Challengers meet those requirements.

Three days before oral argument, however, the Challengers moved to dismiss this appeal as moot based on developments in a parallel case in state court. In early 2020, the North Carolina Court of Appeals reversed a state trial court and ordered that the 2018 Voter-ID Law be preliminarily enjoined. *Holmes v. Moore*, 840 S.E.2d 244, 266–67 (N.C. Ct. App. 2020). The trial court entered that injunction in early August 2020 and set trial for April 2021. Based on this state-court injunction, the Challengers allege "[n]either party can win any effective relief by winning this appeal" because the state-court preliminary injunction restrains the same conduct as the federal preliminary injunction and will remain in place until the federal district court enters a final judgment. Appellants' Motion to Dismiss as Moot 6.

But improbability and impossibility are not the same thing. A suit becomes moot, and we lose jurisdiction, "when it is *impossible* for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added) (internal citations omitted). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* A *final* state-court judgment that the 2018 Voter-ID Law violates the North Carolina state constitution *might* make relief in this federal appeal impossible. *See Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734, 739 (4th Cir. 1990). But neither the federal nor state court has ruled on the merits. *Cf. California v. Azar*, 911 F.3d 558, 569 (9th Cir. 2018).

The federal trial on the merits was recently continued from its originally scheduled date in January 2021, so it is not clear that the federal district court will issue a final judgment before the trial in state court. We decline to presume that the state and federal trial dates will not continue to change or that, even if the federal trial occurs first, the federal court will issue a final ruling on the merits before the state court. Nor do we presume that the state court will find in the Challengers' favor and issue a permanent injunction. So the present appeal may well matter, and the case is not moot. *See Chafin*, 568 U.S. at 172.

II. Discussion

We review the district court's preliminary injunction for an abuse of discretion. *Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 78 (4th Cir. 1989). "A district court abuses its discretion 'by applying an incorrect preliminary injunction standard, by resting its decision on a clearly erroneous finding of a material fact, or by misapprehending the law with respect to underlying issues in litigation.'" *Id.* (quoting *Goldie's Bookstore v. Super. Ct. of State of Cal.*, 739 F.2d 466, 470 (9th Cir. 1984)). We review factual findings for clear error and legal conclusions de novo. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013) (citing *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011)).

Obtaining a preliminary injunction requires the Challengers to establish that (1) they are likely to succeed on the merits of their claim, (2) they are likely to suffer irreparable harm without an injunction, (3) the balance of equities tilts in their favor, and

(4) issuing an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To prevail on the merits of their constitutional challenges, these Challengers had to prove that the 2018 Voter-ID Law was passed with discriminatory intent and has an actual discriminatory impact. *McCrory*, 831 F.3d at 231; *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *Irby v. Va. State Bd. of Elections*, 889 F.2d 1352, 1355 (4th Cir. 1989).

In its only precedent that addresses the constitutionality of a voter-ID law, the Supreme Court held that Indiana's voter-ID law was constitutional. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 194–97, 200–04 (2008) (plurality). It reasoned that the minimal burdens imposed on voters who lacked a qualifying ID to comply with the law were outweighed by the state's legitimate interests in preventing voter fraud, election modernization, and safeguarding voter confidence. *Id.* But the plaintiffs there did not allege that the law had been passed with racially discriminatory intent. So although *Crawford* lays down important principles for evaluating the burdens and benefits of voter-ID laws, it does not directly answer the discriminatory-intent issue before us.

Determining whether a statute was enacted with discriminatory intent is a factual question involving a two-step process. *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999). First, the Challengers bear the burden of showing that racial discrimination was a "'substantial' or 'motivating' factor behind enactment of the law." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

Satisfying that burden requires looking at the four factors from the Supreme Court's *Arlington Heights* decision: (1) historical background; (2) the specific sequence of events leading to the law's enactment, including any departures from the normal legislative process; (3) the law's legislative history; and (4) whether the law "bears more heavily on one race than another." *Arlington Heights*, 429 U.S. at 265–69. And in doing so, the district court *must* afford the state legislature a "presumption" of good faith. *Abbott*, 138 S. Ct. at 2324. For "a finding of past discrimination" neither shifts the "allocation of the burden of proof" nor removes the "presumption of legislative good faith." *Id.*; *see also City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980) ("[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful."); *McCrory*, 831 F.3d at 241 (finding that we cannot "freeze North Carolina election law in place" as it existed before the 2013 Omnibus Law).

Only if the Challengers meet their burden to show discriminatory intent do we turn to the second step. There "the burden shifts to the law's defenders to demonstrate that the law would have been enacted without" racial discrimination. *Hunter*, 471 U.S. at 228. It is only then that judicial deference to the legislature "is no longer justified." *Arlington Heights*, 429 U.S. at 265–66. Without deference and with the burden placed firmly on the legislature, a district court at the second step must "scrutinize the legislature's *actual* nonracial motivations to determine whether they *alone* can justify the legislature's choices." *McCrory*, 831 F.3d at 221.

The district court here considered the General Assembly's discriminatory intent in passing the 2013 Omnibus Law to be effectively dispositive of its intent in passing the 2018 Voter-ID Law. In doing so, it improperly flipped the burden of proof at the first step of its analysis and failed to give effect to the Supreme Court's presumption of legislative good faith. These errors fatally infected its finding of discriminatory intent. And when that finding crumbles, the preliminary injunction falls with it.

A. Burden-shifting and the presumption of good faith

Abbott could not be more clear in allocating the burden of proof and applying the presumption of good faith. Yet the district court failed to hold the Challengers to their burden of proving the General Assembly's discriminatory intent. And it failed to apply—or even mention—the presumption of legislative good faith to which the General Assembly was entitled. *See Abbott*, 138 S. Ct. at 2324–25. Instead, based on our decision in *McCrory*, the court forced the General Assembly to "bear the risk of nonpersuasion with respect to intent." *Cooper*, 430 F. Supp. 3d at 32 (quoting *United States v. Fordice*, 505 U.S. 717, 747 (1992) (Thomas, J., concurring)). This was an unmistakable error.

We first note that this case is much like *Abbott*. There, a three-judge panel found that the 2013 Texas Legislature had acted with discriminatory intent in passing a new redistricting plan after its 2011 plan was denied preclearance under the Voting Rights Act. *Abbott*, 138 S. Ct. at 2318. The panel first stated that

the burden was on the challengers but then flipped it based on *who* passed the 2013 law: a Legislature with "substantially similar" membership and the "same leadership" that passed the flawed 2011 plan. *Perez v. Abbott*, 274 F. Supp. 3d 624, 645–46, 648 n.37 (W.D. Tex. 2017). Because *who* passed both plans remained the same, the court "flip[ped] the evidentiary burden on its head," requiring Texas to show that the 2013 Legislature had "purged the 'taint'" of the unlawful 2011 plan. *Abbott*, 138 S. Ct. at 2324–25. The Supreme Court reversed this "fundamentally flawed" analysis. *Id.* at 2326. The district court had erred because it had "reversed the burden of proof [and] [] imposed on the State the obligation of proving that the 2013 Legislature had experienced a true 'change of heart.'" *Id.* at 2325 (quoting *Perez*, 274 F. Supp. 3d at 649). Its finding of discriminatory intent had "relied overwhelmingly on what it perceived to be the 2013 Legislature's duty to show that it had purged the bad intent of its predecessor." *Id.* at 2326 n.18. What was relevant was "the intent of the 2013 Legislature." *Id.* at 2327. And that legislature was to be afforded "the presumption of legislative good faith" and not condemned based on prior bad acts. *Id.* at 2324. Turning to the evidence presented, the Supreme Court found it "plainly insufficient" to overcome this presumption and meet the plaintiffs' burden. *Id.* at 2327.

The district court here made the same mistake as the panel in *Abbott* without even trying to distinguish the Supreme Court's holding. Explaining that it is "'eminently reasonable to make the State bear the risk of non-persuasion with respect to intent' when the very

same people who passed the old, unconstitutional law passed the new," *Cooper*, 430 F. Supp. 3d at 32, the district court noted that the General Assembly did not "try[] to cleanse the discriminatory taint," *id.* at 43, or "tak[e] steps to purge the taint of discriminatory intent," *id.* at 35. *See Veasey v. Abbott*, 888 F.3d 792, 801 (5th Cir. 2018) (reversing the district court for presuming that a new voter-ID law was "fatally infected" by the unconstitutional discrimination of a past voter-ID law that had been struck down). These were not merely "stray comments." *Abbott*, 138 S. Ct. at 2325. "On the contrary, they were central to the court's analysis," *id.*, for they made explicit the burden-shifting that the court engaged in while assessing the *Arlington Heights* factors.

The district court penalized the General Assembly because of who they were, instead of what they did. When discussing the sequence of events leading to the 2018 Voter-ID Law's enactment, the district court discounted the normalcy of the legislative process to focus on *who* drafted and passed the law. *Cooper*, 430 F. Supp. 3d at 31. "[W]ho" drafted the 2018 Voter-ID Law was "many of the same legislative leaders who championed [the 2013 Omnibus Law]." *Id.* at 31–32 (citing the record). And *who* passed the 2018 Voter-ID Law was many of the same legislators who "had previously voted for [the 2013 Omnibus Law]." *Id.* at 31.

The question of *who* reared its head again in the court's discussion of the 2018 Voter-ID Law's legislative history. In that section, the district court emphasized that the General Assembly's positions had

"remained virtually unchanged" between *McCrory* and the enactment of the 2018 Voter-ID Law. *Id.* at 33. And the court assumed that the racial data remained in the minds of the legislators: "[T]hey need not have had racial data in hand to still have it in mind." *Id.* at 34–35. By focusing on *who* passed the 2018 Voter-ID Law and requiring the General Assembly to purge the taint of the prior law, the district court flipped the burden and disregarded *Abbott*'s presumption.

The district court's *who* argument also overlooked the state constitutional amendment. Fifty-five percent of North Carolinian voters constitutionally required the enactment of a voter-ID law and designated to the General Assembly the task of enacting the law. N.C. CONST. art. VI, § 2(4). That constitutional amendment served as an independent intervening event between the General Assembly's passage of the 2013 Omnibus Law and its enactment of the 2018 Voter-ID Law. *See Abbott*, 138 S. Ct. at 2325 (noting that the plans the 2013 Texas Legislature had enacted "had been developed by the Texas court pursuant to instructions" from the Supreme Court). This constitutional amendment undercuts the district court's tenuous "who" argument. For after the constitutional amendment, the people of North Carolina had interjected their voice into the process, mandating that the General Assembly pass a voter-ID law.

None of this suggests that the 2013 General Assembly's discriminatory intent in enacting the 2013 Omnibus Law is irrelevant. *See Abbott*, 138 S. Ct. at 2327. But the appropriate place to consider the 2013 Omnibus Law is under the "historical background"

factor. *See Arlington Heights*, 429 U.S. at 267; *see also Abbott*, 138 S. Ct. at 2325 (finding that the historical background leading to the law's enactment is but "'one evidentiary source' relevant to the question of intent" (quoting *Arlington Heights*, 429 U.S. at 267)). And yet the "historical background" section is the one part of the district court's discriminatory-intent analysis where the court did not discuss the 2013 Omnibus Law.

B. The remaining evidence

Once the proper burden and the presumption of good faith are applied, the Challengers fail to meet their burden of showing that the General Assembly acted with discriminatory intent in passing the 2018 Voter-ID Law. *See Abbott*, 138 S. Ct. at 2327. While North Carolina's historical background favors finding discriminatory intent, *Cooper*, 430 F. Supp. 3d at 25 ("No one disputes that North Carolina 'has a long history of race discrimination generally and race-based vote suppression in particular.'" (quoting *McCrory*, 831 F.3d at 223)), the facts considered under the remaining *Arlington Heights* factors—the sequence of events leading to enactment, legislative history, and disparate impact—cannot support finding discriminatory intent. We discuss each factor in turn.

1. Sequence of events leading to enactment

The district court acknowledged that there were no procedural irregularities in the sequence of events leading to the enactment of the 2018 Voter-ID Law. *Cooper*, 430 F. Supp. 3d at 30. "[O]f course, a legislature need not break its own rules to engage in unusual procedures." *McCrory*, 831 F.3d at 228. But

the remaining evidence of the legislative process otherwise fails to "spark suspicion" of impropriety in the 2018 Voter-ID Law's passage. *Arlington Heights*, 429 U.S. at 269.

The 2018 Voter-ID Law underwent five days of legislative debate and was permitted time for public comment. *Cooper*, 430 F. Supp. 3d at 31 (citing the record); *see Abbott*, 138 S. Ct. at 2328–29 ("[W]e do not see how the brevity of the legislative process can give rise to an inference of bad faith—and certainly not an inference that is strong enough to overcome the presumption of legislative good faith."). Twenty-four amendments were offered and thirteen, including several proposed by the law's opponents, were adopted. J.A. 2008–09, 2092–97. In all, the enactment was not the "abrupt" or "hurried" process that characterized the passage of the 2013 Omnibus Law. *See McCrory*, 831 F.3d at 228–29 (finding "compelling" evidence of discriminatory intent in the passage of omnibus legislation that was "the most restrictive voting law North Carolina has seen since the era of Jim Crow" because it was enacted right after *Shelby County* invalidated the preclearance regime, passed both chambers in three days, received only two hours of debate in the House, and provided House members with no chance to propose amendments); *see also Abbott*, 138 S. Ct. at 2329 (finding no suspicion of discriminatory intent from the use of a legislative special session, which eliminated the need to comply with certain legislative rules).

The 2018 Voter-ID Law also enjoyed bipartisan support: four Democratic legislators joined their

Republican colleagues in voting for the 2018 Voter-ID Law. J.A. 2081–89. One of those legislators—Senator Joel Ford, a Black Democrat—sponsored the bill. *Cooper*, 430 F. Supp. 3d at 31. But the district court discounted this bipartisanship in general, failing to even mention two of the Democrats who first voted for the bill. *See id.* Senator Ford, the district court explained, had later admitted that he considered switching parties while the 2018 Voter-ID Law was being drafted. *Id.* Relying on this "admission," the district court found it was "a bit misleading" to say that the 2018 Voter-ID Law had bipartisan support. *Id.*[3] But regardless of his unacted-upon musings, Senator Ford was a Black Democrat who sponsored the 2018 Voter-ID Law. His input in its drafting and his votes to pass the bill deserve at least the same weight as those of any other legislator—including the three other Democrats that voted for the bill—in the General Assembly in 2018. *See Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 603 (4th Cir. 2016) (relying favorably on the votes of two non-Republicans—one Democrat and one Independent); *McCrory*, 831 F.3d at 227 (crediting the votes of five House Democrats that voted for the pre-*Shelby County* version of the 2013 Omnibus Law); *cf. South Carolina*, 898 F. Supp. 2d at 44 (commenting favorably that changes to the law were led by two Republicans and one Democrat). Whatever one thinks

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[3] One might question the relevance of bipartisanship in a discriminatory-intent analysis. Is political affiliation a reliable indicator of discriminatory intent? Is a minority legislator's support for a law irrelevant if he is a Republican or merely considered becoming a Republican? But, as both *McCrory* and *Lee* did before us, we consider bipartisanship.

of the weight of bipartisanship, the district court erred in discounting Senator Ford and ignoring the other supporting Democrats.

And finally, the district court again overlooked the state constitutional amendment as part of the sequence of events leading to the 2018 Voter-ID Law's enactment. There is no question that the voters of North Carolina constitutionally mandated that the legislature enact a voter-ID law. At the very least, this intervening event undermined the district court's inappropriate linking of the 2013 Omnibus Law and the 2018 Voter-ID Law.[4]

2. Legislative history

The district court also concluded that the 2018 Voter-ID Law's legislative history supported finding discriminatory intent. *Cooper*, 430 F. Supp. 3d at 35. In making that determination, the district court noted that Republican legislative leaders strongly opposed *McCrory*, remained committed to passing a voter-ID law that would withstand future court challenges, and did not change their positions, goals, or motivations

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[4] The Governor's veto was overridden by supermajorities elected under racially gerrymandered maps. But this sheds little light on the motivations of those overriding legislators. At most the racially gerrymandered maps tell us about the motivations of the mapmakers and the legislators to whom they answered. They do not dictate a later General Assembly's intent in passing different legislation. *Cf. Greater Birmingham Ministries v. Sec'y of State for the State of Ala.*, 966 F.3d 1202, 1227 (11th Cir. 2020) ("[T]he statements Plaintiffs identify were not made about the law at issue in this case and thus do not evidence discriminatory intent behind it.").

between the passage of the 2013 Omnibus Law and the 2018 Voter-ID Law. *Id.* at 33.[5] But these findings impermissibly stemmed from the comments of a few individual legislators, *see McCrory*, 831 F.3d at 229, and relied too heavily on comments made by the bill's opponents, *see Fieger v. U.S. Att'y Gen.*, 542 F.3d 1111, 1119 (6th Cir. 2008). They also go against inferring "good faith" on the part of the legislature, which we are required to do: decrying a court opinion holding that you acted improperly in the past is not evidence that you have acted improperly again. *See Abbott*, 138 S. Ct. at 2324, 2327 (explaining that the legislature's stated objective of quickly bringing the litigation to a close "is entirely reasonable and certainly legitimate" when there "is no evidence that the Legislature's aim was to gain acceptance of plans that it knew were unlawful").

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[5] With respect to the 2013 Omnibus Law that was so critical to the district court's analysis, the court stated that the General Assembly requested and received racial voting data "[f]ollowing" the issuance of *Shelby County* in June 2013. *Cooper*, 430 F. Supp. 3d at 26. To support this timing, it cites our prior decision in *McCrory*, which we do not read as taking a position on the data receipt's timing. *See McCrory*, 831 F.3d at 216. Our review of the record suggests, at least preliminarily, that most of the racial voting data was requested and received by the General Assembly while North Carolina was subject to the preclearance regime. *See McCrory*, 182 F. Supp. 3d at 489; *see also* J.A. 52, 53. The *McCrory* district court only noted one email containing racial data about same-day voter registration—the subject of one of five voting restrictions enacted as part of the 2013 Omnibus Law—that a member of the General Assembly received after *Shelby County*, on the same day the House voted to pass the bill in July 2013. 182 F. Supp. 3d at 490.

The district court makes hay out of the fact that a proposed amendment to include public-assistance IDs failed. *Cooper*, 430 F. Supp. 3d at 34 ("The decision not to include this form of identification in [the 2018 Voter-ID Law], despite the attention given to it in *McCrory*, is, as it was with [the 2013 Omnibus Law], particularly suspect.").[6] But the district court did not consider the context in which that amendment failed. While the 2018 Voter-ID Law was in the House, Representative Richardson introduced an amendment to include public-assistances IDs that were "issued by a branch, department, agency, or entity of the [] United States or this State for a government program of public assistance." J.A. 2302. Representative Lewis spoke in opposition. J.A. 1761–63. He articulated concerns that "we have no way to impose our standards on the Federal Government" and that "[t]here is no provision of this amendment that would even require the ID to have a picture." J.A. 1761–62. Representative Richardson "accept[ed] the justification [he] gave" for opposing the bill[7] and asked if he would be amendable to considering an amendment that only included public-assistance IDs issued by state agencies. J.A. 1763. Representative Lewis said that he would, and the two agreed to collaborate on such an amendment

[6] Several months after the district court's decision, the General Assembly amended the 2018 Voter-ID Law to include federal and state public-assistance IDs. 2020 N.C. Sess. 17.

[7] With the benefit of hindsight, we might conclude that while the amendment itself does not mention a photograph, its placement within the bill would have required public-assistance IDs to have a photograph. But no legislator challenged Representative Lewis's contention. *See* J.A. 1761–64.

(though it never came to fruition). J.A. 1763. The House then voted, and the amendment failed. J.A. 1764. But this dialogue does nothing to suggest that the amendment failed due to discriminatory intent.

In any case, the district court erred in focusing on the public-assistance amendment. For even if it passed, the proposed amendment seems to cover a null set. As it would not have added any actual IDs to the list of qualifying IDs, it cannot be evidence of discriminatory intent. Recall that each of the qualifying IDs must include a photograph. *See* J.A. 1761–64. The parties put forth evidence about the types of public-assistance IDs that do and do not have photographs. The Defendants provided evidence that state public-assistance IDs do not include photographs. *See* J.A. 2106–09. The Challengers' lone counter was that several North Carolina housing authorities issue photo IDs to their residents. *See* J.A. 2318–27. But in North Carolina it appears that housing authorities are local government agencies—not state government agencies. *See Huntley v. Pandya*, 534 S.E.2d 238, 239 (N.C. Ct. App. 2000). And the proposed amendment only included public-assistance IDs issued by a federal or state entity. J.A. 2302 ("An identification card issued by a branch, department, agency, or entity of the [] United States or this State for a government program of public assistance."). Thus, as far as this record reveals, this proposed amendment would not cover any existing public-assistance IDs. And the failure to adopt a meaningless amendment cannot support finding discriminatory intent.

The other amendment that the district court focused on—and discounted— addressed a concern we had with the 2013 Omnibus Law: voter-ID for absentee ballots. *Cooper*, 430 F. Supp. 3d at 33–34. In *McCrory*, we found the lack of an ID requirement for absentee voting suspect since absentee voting is disproportionately used by white voters and evidence of voting fraud is primarily related to absentee voting. 831 F.3d at 230, 235. Although the district court acknowledged that the 2018 Voter-ID Law "correct[s] this discrepancy," the court largely discounted the amendment and characterized the law's proponents as "reluctant" and "unconcerned about absentee voter fraud." *Cooper*, 430 F. Supp. 3d at 34. This is because, according to the district court, the initial law did not require an ID to vote absentee and the amendment was added after a significant absentee voting scandal and in response to "intensifying public pressure." *Id*. Much like the district court's analysis of bipartisanship, the court acknowledges a significant difference between this law and the one in *McCrory* but then quickly discounts it. Again, the district court seems to be presuming bad faith by noting that the legislature was unconcerned with absentee-voting fraud in *McCrory* and surmising that they remained "unconcerned" here until a scandal forced their hand. That the legislature made this change should at least count for something.

The 2018 Voter-ID Law's legislative history is otherwise unremarkable. Nothing here suggests that the General Assembly used racial voting data to disproportionately target minority voters "with surgical precision." *McCrory*, 831 F.3d at 214, 216–17. And neither party nor the district court has brought to our

attention any discriminatory remarks made by legislators during or about the legislation's passage.

3. Impact of the official action

The district court also erred in evaluating the racial impact of the 2018 Voter-ID Law. *See Arlington Heights*, 429 U.S. at 564 (considering whether "[t]he impact of the official action[s] . . . 'bears more heavily on one race than another'" (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976))). In evaluating the impact of the 2018 Voter-ID Law, the district court failed to adequately consider its mitigating provisions.

We accept the district court's finding that minority voters disproportionately lack the types of ID required by the 2018 Voter-ID Law. But the 2018 Voter-ID Law contains three provisions that go "out of [their] way to make its impact as burden-free as possible." *Lee*, 843 F.3d at 603. First, the law provides for registered voters to receive free voter-ID cards without the need for corroborating documentation. 2018 N.C. Sess. Laws 144, § 1.1(a). Second, registered voters who arrive to the polls without a qualifying ID may fill out a provisional ballot and their votes will be counted if they later produce a qualifying ID at the county elections board. § 1.2(a). Third, people with religious objections, survivors of recent natural disasters, and those with reasonable impediments may cast a provisional ballot after completing an affidavit that affirms their identity and their reason for not producing an ID. *Id.* Their votes must be counted unless the county board of elections "has grounds to believe the affidavit is false." *Id.*

The district court discounted the first of these mitigating features—free voter-ID cards—out of concern that minority voters would be more likely to have to spend time and money (though the IDs are free and require no documentation) to procure this alternative form of ID. *Cooper*, 430 F. Supp. 3d at 39. This argument suffers from two flaws. First, as the Supreme Court noted in *Crawford*, where it addressed a more restrictive voter-ID law,[8] "[f]or most voters who need them, the inconvenience of making a trip to the [DMV], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. at 198. And while the district court found that "the evidence in this case suggests otherwise," *Cooper*, 430 F. Supp. 3d at 39, at most, what the cited evidence "suggests" is the same kind of minimal burden associated with obtaining a voter ID that the Supreme Court held insufficient to sustain a facial challenge in *Crawford*.

Second, eligible voters may engage in one-stop early voting (at their county board of elections office or an approved alternate site). N.C. GEN. STAT. §§ 163-227.2(b), 163- 227.6(a). And the 2018 Voter-ID Law obligates each county board of elections to issue free photo-ID cards during one-stop early voting. 2018 N.C. Sess. Laws 144, § 1.1(a). So for those who vote early at their county board of elections, the marginal cost of

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[8] Indiana's voter-ID law required documentation to obtain a voter ID and did not include a reasonable impediment provision. *Crawford*, 553 U.S. at 185–86.

obtaining a qualifying ID is negligible because they can obtain a free voter ID and vote in a single trip. Those voters must do no more than they did previously—show up to vote. *See Crawford*, 553 U.S. at 198.

The district court gave no weight to the 2018 Voter-ID Law's second mitigating provision—provisional voting that is 'cured' by later presenting a qualifying ID, including a newly obtained voter-ID card, to the county elections board. And the district court discounted the 2018 Voter-ID Law's third mitigating feature—the reasonable impediment exemption—as unlikely to be the "panacea[]" it is claimed to be. *Cooper*, 430 F. Supp. 3d at 41. The district court seemingly believed that even if every eligible voter in North Carolina should be able to vote under the letter of the 2018 Voter-ID Law, in practicality, poor enforcement of the law would prevent eligible voters from doing so. *Id.* But an inquiry into the legislature's intent in *enacting* a law should not credit disparate impact that may result from poor *enforcement* of that law. *See United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926) ("The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties."); *cf. South Carolina*, 898 F. Supp. 2d at 44 (accepting that a reasonable-impediment provision would function as intended).

Indeed, the 2018 Voter-ID Law is more protective of the right to vote than other states' voter-ID laws that courts have approved. In *Lee v. Virginia State Board of Elections*, we upheld Virginia's voter-ID law that only

included two of these mitigating features—free voter IDs available without corroborating documentation and provisional voting subject to 'cure.' 843 F.3d at 594. Likewise, in *South Carolina v. United States*, the District Court of the District of Columbia precleared South Carolina's voter-ID law that included a different combination of two mitigating features—free voter IDs available without corroborating documentation and a reasonable impediment procedure. 898 F. Supp. 2d at 32. And recently, the Eleventh Circuit, in *Greater Birmingham Ministries v. Secretary of State for the State of Alabama*, upheld Alabama's voter-ID law that included versions of two of the 2018 Voter-ID Law's mitigating features—free voter IDs that require corroborating documentation and provisional voting subject to 'cure.' 966 F.3d at 1213–14. Given these cases, it is hard to say that the 2018 Voter-ID Law does not sufficiently go "out of its way to make its impact as burden-free as possible." *Lee*, 843 F.3d at 603.

Considering the evidence presented to the district court with the burden properly applied to the Challengers and the presumption of good faith afforded to the General Assembly, we cannot agree that the Challengers would likely carry their burden of proving that the General Assembly acted with discriminatory intent in passing the 2018 Voter-ID Law.[9] We do not

[9] Because our decision rests on the Challengers' failure to show a likelihood of success on the merits of their claims, we decline to consider the remaining preliminary injunction requirements. We do, however, find it prudent to mention two concerns about the district court's analysis of those factors. First, because the district court found that the Challenger organizations had standing to bring this case on their own behalf, it analyzed the irreparable

reverse the district court because it weighed the evidence before it differently than we would. Instead, we reverse because of the fundamental legal errors that permeate the opinion—the flipping of the burden of proof and the failure to provide the presumption of legislative good faith—that irrevocably affected its outcome. We therefore hold that the district court abused its discretion in issuing the preliminary injunction.

* * *

We do not doubt, as we held in *McCrory* and as the State expressly acknowledges in this case, that there is a long and shameful history of race-based voter suppression in North Carolina. *See McCrory*, 831 F.3d at 223. But we made clear in *McCrory* that our holding did not "freeze North Carolina election law in place." 831 F.3d at 241. The district court failed to adhere to our admonishment and the Supreme Court's unmistakable commands in *Abbott*. Instead, it considered the North Carolina General Assembly's past conduct to bear so heavily on its later acts that it was

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harm requirement with an eye towards whether the organizations themselves would suffer irreparable harm in the absence of an injunction. *Cooper*, 430 F. Supp. 3d at 51. Because we rest our standing holding on a representational theory, this factor should instead consider whether the voting members of the organizations would suffer irreparable harm in the absence of an injunction.

Second, the district court ignored the Challengers' nine-month delay in moving for a preliminary injunction after filing their complaint. No matter if this delay would have been dispositive, the district court erred by ignoring it entirely. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018); *Quince Orchard Valley Citizens Ass'n*, 872 F.2d at 80.

virtually impossible for it to pass a voter-ID law that meets constitutional muster. In doing so, the district court improperly reversed the burden of proof and disregarded the presumption of legislative good faith. And the remaining evidence in the record fails to meet the Challengers' burden. For these reasons, the district court abused its discretion in issuing the preliminary injunction.[10] The judgment below is

REVERSED.

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[10] The district court's opinion devotes little analysis to the 2018 Voter-ID Law's ballot-challenge provision, which it also enjoined. *See Cooper*, 430 F. Supp. 3d at 42, 54. Upon reviewing the record, we do not find adequate grounds on which that portion of the injunction can stand independent of the photo-ID injunction.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1092

[Filed: July 20, 2020]

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; CHAPEL HILL – CARRBORO NAACP; GREENSBORO NAACP; HIGH POINT NAACP; MOORE COUNTY NAACP; STOKES COUNTY BRANCH OF THE Naacp; WINSTON SALEM – FORSYTH NAACP,

Plaintiffs-Appellees,

v.

KEN RAYMOND, in his official capacity as a member of the North Carolina State Board of Elections; STELLA E. ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections; JEFFERSON CARMON, in his official capacity as a member of the North Carolina State Board of Elections; DAVID C. BLACK, in his official capacity as a member of the North Carolina State Board of Elections,

Defendants-Appellants,

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

Intervenors.

On Appeal from the United States District Court for the Middle District of North Carolina

BRIEF OF GOVERNOR ROY COOPER AS *AMICUS CURIAE* SUPPORTING PLAINTIFFS-APPELLEES AND AFFIRMANCE

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[*** tables omitted in this appendix ***]

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

As the chief executive of North Carolina, Governor Cooper has a self-evident interest in ensuring a safe and orderly election and protecting the public health. He writes to ensure that the Court is advised of the significant elections administration, voting rights, and public health issues implicated by this appeal that may not be fully addressed by the parties.

SUMMARY OF ARGUMENT

"To make it hard, to make it difficult almost impossible for people to cast a vote is not in keeping with the democratic process."

– John Lewis[2]

Governor Cooper vetoed S.B. 824. As he explained in his veto statement, the photo ID requirement in S.B. 824 is a solution in search of a problem, erects barriers that will confuse citizens and discourage them from voting, and was enacted with discriminatory intent. J.A. 2061. A lame-duck legislative supermajority—itself the product of an extreme racial gerrymander, *see*

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[1] Under Rule 29(a) of the Federal Rules of Appellate Procedure, *amicus* states that all parties consented to the filing of this brief, no party's counsel authored this brief in whole or in part, neither any party nor any party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than *amicus* or his counsel contributed money intended to fund preparing or submitting this brief.

[2] Interview by Andrew Cohen, *Rep. John Lewis: 'Make Some Noise' on New Voting Restrictions*, The Atlantic (Aug. 26, 2012).

Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017)—overrode the Governor's veto and enacted S.B. 824. Both the district court and the North Carolina Court of Appeals have since vindicated the Governor's assessment by entering or ordering the entry of preliminary injunctions barring North Carolina from implementing or enforcing S.B. 824. Dist. Ct. Order Entering Prelim. Inj. ("PI Order"), J.A. 2621; *Holmes v. Moore*, 840 S.E.2d 244, 266-67 (N.C. Ct. App. 2020). The Governor wholeheartedly agrees with these decisions. He also believes that these preliminary injunctions should be made permanent, and that this unconstitutional law should never go into effect.

But the purpose of this brief is not to address the future. It is to address the present—more specifically, the request by Senate President Pro Tem Philip Berger and House Speaker Tim Moore (the "Legislators") to this Court to lift the preliminary injunction before the November 2020 election. Int. Br. 53. They have requested the same relief in *Holmes*, the parallel state court challenge to S.B. 824. *See* Add. 12. The Legislators thus seek to impose S.B. 824's photo ID requirement on North Carolina voters in the approaching election.

Settled law precludes this result. The Supreme Court has held that, to prevent confusion and avoid disenfranchising voters, federal courts should rarely change the election rules on the eve of an election. *See, e.g.*, *RNC v. DNC*, 140 S. Ct. 1205, 1207 (2020); *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

We are already on the eve of the 2020 general election here. The State Board of Elections recently announced that state and local elections officials "are already well underway with actively preparing to conduct the November 3, 2020 general election in accordance with state and federal law," and that county boards must submit early voting plans to the State Board by July 31. *See* State Bd., *Emergency Order: Administering the November 3, 2020 General Election During the Global COVID-19 Pandemic & Public Health Emergency* at 5 (July 17, 2020), https://s3.amazonaws.com /dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20 Orders /Emergency%20Order_2020-07- 17.pdf ("Emergency Order"). Tens of thousands of voters have already requested absentee ballots, and the State must fulfill those requests by early September. *See* Def. Br. 17-18 (noting that absentee ballots must be sent out by September 4 under North Carolina law). In-person voting will then begin in October. *See* State Bd., *Agency Calendar: October 2020*, https://www.ncsbe.gov/Elections /Agency-Calendar (showing One-Stop Early Voting Period beginning October 15, 2020).

There is not enough time remaining to educate the public and implement the photo ID requirement in S.B. 824 before voting begins. The law itself calls for an extended outreach and planning process that would have lasted more than a year—a process that, according to the Legislators, differentiates S.B. 824 from H.B. 589, its unconstitutional predecessor. *See* Int. Br. 12. But that process has not occurred. In pushing to reinstate S.B. 824 just before the election, the Legislators seek to short-circuit the education and

implementation process they themselves designed and rely on to defend the law.

The voter outreach and implementation process was far from complete when the law was enjoined, and it cannot be completed in the midst of the upcoming election. Indeed, the State Board of Elections acknowledged that it needed to restart implementation efforts *by early July* to have any hope of enforcing the photo ID requirement in 2020, Add. 16, and it conceded in the district court that informing voters about photo ID might not be possible if the law was enjoined and later reinstated, J.A. 809. Even in ordinary circumstances, therefore, it would already be too late to roll out S.B. 824 without sowing confusion and disenfranchising voters whom the new photo ID requirement would catch by surprise.

But today's circumstances are far worse than ordinary. We are in the midst of a deadly pandemic, the likes of which have not been seen for more than a century. Attempting to implement a new photo ID requirement in this environment would not only be unwise, but dangerous. The pandemic presents an enormous challenge for voters and election officials, particularly at the local level. The Governor is committed to ensuring that North Carolinians can cast their votes safely, but it will not be easy.

The risk COVID-19 presents to the election process would be compounded by adding photo ID to the mix at the last minute. Together, these issues would present the largest election administration challenges the State has ever faced—and during a general election with the

presidency, a senate seat, and state-government races on the ballot.

Requiring elections officials to shift their focus toward implementing a new photo ID requirement will leave them stuck betwixt and between, undermining the public health effort and exacerbating confusion about S.B. 824. Officials would scramble to train poll workers willing to work in a pandemic on S.B. 824's complex set of rules and procedures. Once voting begins in October, public health measures like social distancing would run headlong into confusion created by trying to cram photo ID education and implementation into a few short weeks.

Voters would be hopelessly confused. Some would rush to the DMV or county boards of elections to obtain IDs before the election—multiplying the person-to-person interactions that public health experts are urging the public to avoid. Others would likely be deterred from voting altogether, especially without the extended outreach effort the Legislators claimed would inform voters about the "reasonable impediment" process for voting without acceptable ID. When the election arrives, voters would face long lines at the polls—particularly those voters who lack IDs and would need to complete reasonable impediment forms—exposing them to increased risks from COVID-19 and accelerating the spread of the virus.

In short, lifting the injunction now would be disastrous. And the brunt would be borne by the same voters whom S.B. 824 targeted for disenfranchisement in the first place: minority voters who are both least likely to possess photo IDs that satisfy S.B. 824 and

most vulnerable to COVID-19. Many minority voters would therefore face an intolerable choice: forgo the right to vote, or subject themselves to the prospect of illness or death by attempting to navigate the photo ID requirement in a pandemic.

This year, of all years, is not the year to make it harder to vote. Instead, North Carolina must maintain a single-minded focus on safely conducting a major election in a pandemic, not have its attention diverted by attempting to roll out a new voter ID law at the last minute, and without time to complete the groundwork the law itself requires. As the old adage puts it, he who chases two rabbits catches none. To preserve the voting rights of North Carolinians, prevent irreparable harm, and protect the public interest, this Court should affirm the preliminary injunction entered by the district court.

ARGUMENT

I. Lifting the injunction this close to the election would disorient and disenfranchise North Carolina voters.

The Legislators ask for S.B. 824 to be implemented for the November 2020 election. Int. Br. 53. But that request conflicts with the "*Purcell* principle." Under this principle, "lower federal courts should ordinarily not alter the election rules," including photo ID rules, "on the eve of an election." *RNC*, 140 S. Ct. at 1207 (citing *Purcell*, 549 U.S. 1).

The *Purcell* principle rests on concerns about "judicially created confusion" and the resulting threat that voters will be disenfranchised. *Id*. As the Supreme

Court has explained, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. "As an election draws closer," the Court has observed, "that risk will increase." *Id.* at 5.

Although *Purcell* itself addressed whether to *impose* an injunction shortly before an election, *see* 549 U.S. at 4-5, the *Purcell* principle also applies when, as here, the question is whether to *lift* an injunction shortly before an election. That conclusion follows from *Frank v. Walker*, 574 U.S. 929 (2014). In *Frank*, a federal district court entered 10 an order in April 2014 enjoining the enforcement of a Wisconsin photo ID law. *See Frank v. Walker*, 17 F. Supp. 3d 837, 842-43, 880 (E.D. Wis. 2014). About five months later, in September 2014, the Seventh Circuit stayed the injunction. *See Frank v. Walker*, 766 F.3d 755, 756 (7th Cir. 2014). That stay would have permitted the photo ID law to be enforced in the November 2014 election. *Id.*

The Supreme Court vacated the stay and reinstated the injunction against enforcing the photo ID law in the upcoming election based on the *Purcell* principle. *Frank*, 574 U.S. at 929; *see RNC*, 140 S. Ct. at 1207 (identifying *Frank* as applying *Purcell*). Even the dissent observed that "the proximity of the upcoming general election" supplied a basis for the Court's decision, and that it was "particularly troubling" that absentee ballots had already been "sent out without any notation that proof of photo identification must be submitted." *Frank*, 574 U.S. at 929 (Alito, J.,

dissenting); *see also, e.g.*, *Veasey v. Perry*, 769 F.3d 890, 892-95 (5th Cir. 2014) (discussing *Purcell*'s application in decisions such as *Frank*).

Frank demonstrates that, under the *Purcell* principle, a court of appeals should not disrupt the status quo by lifting a months-old injunction against a photo ID requirement when an election is imminent—particularly if absentee ballots have already gone out.

It follows that this Court should not lift the preliminary injunction in this case before the upcoming election. There is very little time remaining before the election, and certainly not enough to attempt to roll out a new photo ID law that remains unfamiliar to North Carolina voters and poll workers. Indeed, election preparations are already "well underway," and county boards' voting plans are due on July 31. Emergency Order at 5. Absentee ballots will also have already been mailed out by the time the Court holds oral argument in September. *See* Def. Br. 17-18 (stating that North Carolina law requires the State Board to begin distributing ballots on September 4 and citing N.C. Gen. Stat. § 163-227.10(a)); Dkt. 68.

Additional circumstances of this case confirm that, even now, it is already too late to change to North Carolina's rules on photo ID for the approaching election. Even if this Court disagrees with the district court's injunction, or would have made different findings on these facts, the practical effect of the injunction was to stop all efforts to implement S.B. 824. In fact, North Carolina voters have been told—multiple

times, in a variety of ways—that photo ID would *not* be required to vote.

For the past seven months, North Carolina voters visiting the State Board of Elections' website (https://www.ncsbe.gov) have seen a prominent link: "Photo ID NOT REQUIRED." Clicking this link leads to a statement that "Voters are not required to show photo ID until further order of the courts." State Bd., https://www.ncsbe.gov/Voter-ID. This page also contains links to posters displayed at polling places in the March primary election, which stated, in all caps, in English and Spanish, that a court blocked the photo ID requirement from taking effect and the injunction will remain until further order. The injunction and the state court injunction in *Holmes* also received media coverage across the state, from the Cherokee Scout in Murphy to the Coastland Times in Manteo.[3] Finally, *every residential household in the state* received a postcard in January 2020 explaining the injunction and stating that photo ID would not be required to vote pending further court order. Jodie Valade, *NC Board Of Elections: Don't Forget, No Photo ID Required In Primary*, WFAE (Jan. 24, 2020), https://www.wfae.org/post/nc-board-elections-don't-forget-no-photo-idrequired-primary#stream/0.

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[3] *See, e.g.,* Gary Robertson, *Extraordinary North Carolina court review on voter ID sought*, Coastland Times (Mar. 1, 2020), https://www.thecoastlandtimes.com/2020/03/01/extraordinary-northcarolina-court-review-on-voter-id-sought/; Samantha Sinclair, *Photo ID not needed to vote in the primary*, Cherokee Scout (Jan. 9, 2020), https://www.cherokeescout.com/local-news/photo-id-not-needed-voteprimary.

Attempting to reverse this expectation so near the election would cause widespread confusion. The State Board conceded in January that it would be "detrimental to voters" and "extremely difficult, if not impossible, and confusing to the public" to lift the injunction and implement the photo ID requirement so close to the primary in March. Dist. Ct. Dkt. 127 at 2-4. The same timing problem applies here, but in even more serious form.

The Legislators have similarly all but acknowledged that triggering the implementation of S.B. 824 so late in the day would violate the *Purcell* principle. They argue that *Purcell* precluded a change to the law on photo ID in late 2019 because the primary election was approaching. Int. Br. 52. Assuming that argument is correct,[4] it follows even more strongly that *Purcell* precludes another change to the law on photo ID now, with the general election imminent. Indeed, the Legislators admit that reinstating S.B. 824 as the general election approaches would create "voter confusion," *id.* at 51, which is what the *Purcell* principle is designed to prevent.

There is also the matter of the injunction against S.B. 824 that the North Carolina Court of Appeals ordered to be entered in *Holmes*. The preceding

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[4] The Legislators argue that this Court should reverse based on *Purcell* because the preliminary injunction may have created confusion in the primary. Int. Br. 52. But that ship has sailed—there is no way to undo any confusion in the primary now. Overturning the preliminary injunction at this point would instead *create* confusion in the general election still to come. In seeking reversal on this ground, the Legislators turn *Purcell* on its head.

discussion assumed for purposes of argument that the North Carolina courts would grant the Legislators' recent request to forgo or dissolve that injunction, Add. 1-14, and that lifting the preliminary injunction in this case would therefore cause S.B. 824 to go into effect for the November election. But even on the opposite (and more likely) assumption—that the North Carolina courts will block the implementation of S.B. 824 in the upcoming election no matter what this Court does—it would still conflict with *Purcell* for this Court to undo the district court's preliminary injunction before that election.

As *Purcell* explained, "conflicting orders" in the run-up to elections threaten to confuse voters. 549 U.S. at 4-5. Here, that threat would be acute. Voters would be confused by a decision from this Court *lifting* an injunction against the photo ID requirement in S.B. 824 at the same time North Carolina courts were *imposing* an injunction against the same requirement in the same law.

This confusion would disenfranchise voters by giving them an "incentive to remain away from the polls." *Id.* at 5. That incentive would arise among (1) voters who lack qualifying photo IDs and mistakenly conclude that they will be unable to vote, and (2) voters who are simply discouraged from voting by the confusion itself. *See id.* at 4-5. Thus, even in the likely event that the North Carolina courts enjoin the implementation of S.B. 824, it would inflict irreparable harm and contravene the public interest for this Court to lift the injunction in this case before the November 2020 election.

In sum, the *Purcell* principle serves to protect the settled expectations of the voters. North Carolina voters do not expect that photo ID will be required to vote in the upcoming election. Lifting the preliminary injunction would therefore contravene the *Purcell* principle and confuse and disenfranchise voters.

II. The Legislators seek to implement S.B. 824 without the voter education and assistance efforts that the law requires and that the Legislators rely on to defend its constitutionality.

In addition to violating *Purcell*, implementing S.B. 824 at the last minute would violate S.B. 824 itself. S.B. 824 prescribes numerous measures that must be taken over an extended time period to educate voters and help them comply with the photo ID requirement before it is enforced. These include efforts to publicize the reasonable impediment process to ensure that voters know they can still vote without ID, programs to educate voters about the law, and mechanisms to ensure that voters without an acceptable form of ID can obtain one. But it is now too late to carry out those measures before the approaching election.

Enforcing the photo ID requirement without these measures would also compound the discriminatory impact of the law on minority voters. The Legislators argue that S.B. 824 will not have any discriminatory effects. But that argument is premised on the steps that were supposed to be completed before the law went into effect. Int. Br. 24-27. For example, in response to the district court's factual finding that the photo ID requirement in S.B. 824 would deter

minorities from voting, the Legislators argue that minorities would not be deterred from voting "because the General Assembly required that ***every voter in the State*** be told that they could vote ***with or without ID***" by submitting a reasonable impediment affidavit. Int. Br. 27 (emphasis in original).

The problem with this argument is that every voter in the State has *not* been told they can vote under the new law with or without ID. Indeed, there is no reason to think voters even know this reasonable impediment process exists, because the "aggressive voter education program" required by Section 1.5 of S.B. 824 never happened.

By its own terms, S.B. 824 required a public education and outreach effort that was to include:

- four separate mailings to every residential address in North Carolina, two in 2019 and two in 2020, S.B. 824 § 1.5.(a);
- posting information in conspicuous locations, *id.* § 1.5.(a)(1);
- training officials to answer voter questions, *id.* § 1.5.(a)(2);
- disseminating information regarding changes to elections before the law went into effect, *id.* § 1.5.(a)(3);
- coordinating with local and service organizations to put on information seminars at a local or statewide level, *id.* § 1.5.(a)(6);

- posting information on the State Board's website, *id.* § 1.5.(a)(7a); and
- placing prominent notices on all voter education materials regarding the photo ID requirement and reasonable impediment process, *id.* § 1.5.(a)(10).

This outreach process has not been completed; in fact it had barely started when the district court enjoined S.B. 824. *See* PI Order, J.A. 2675-76 (finding no evidence of some crucial outreach efforts required by the law). For example, only one 2019 mailing went out, and neither 2020 mailing has been sent.[5] It may be possible for elections officials to scramble to implement some of these steps, but any rushed, last-minute effort could not approach what S.B. 824 requires: repeated outreach to voters over an extended period of time.

The State Board and the Legislators are well aware that it is too late to begin educating voters now. Indeed, the difficulty of putting voter education and outreach processes back in place at the last minute was made clear last October. In an affidavit submitted to oppose Plaintiffs' preliminary injunction motion, the executive director of the State Board stated that, "[i]f the injunction was later lifted, it might not be possible to

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[5] *See* J.A. 35 (docket entry advising that the district court would be entering an injunction before the "very large statewide mailing" planned for December 31, 2019); State Bd., Numbered Memo 2020-01 at 1 (Jan. 3, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-01_Preliminary%20Injunction%20of%20Photo%20ID.pdf (stating that the State Board has "stopped the statewide mailing scheduled for delivery to all North Carolina households").

complete all educational and outreach activities that were required by the Photo ID Law." Affidavit of Kristen Brinson Bell ¶ 41 (Oct. 30, 2019), J.A. 809. This statement was made in the context of a potential injunction, with the March primary four months away. It is even clearer now that voters would not receive the education the law promised to provide if the injunction were lifted.

Without these outreach efforts, the argument that provisions such as the reasonable impediment process will prevent disparate impact becomes nonsensical. If this Court reverses the district court's injunction, it will generate headlines and public conversation about enforcing the new "photo ID law" in the 2020 election. Many voters without ID (a disproportionate number of whom are minority voters) will hear these reports and reasonably conclude they cannot vote. Even if the "aggressive voter education program" promised by the law's drafters *would* have been effective, it could not happen before the general election, and these voters will remain unaware of the process the Legislators claim will prevent them from being stripped of their right to vote.

The Legislators also rely on provisions making free photo IDs available under certain conditions. Int. Br. 2, 24-25. The district court was not persuaded that these and other efforts were on track. But regardless of whether implementation efforts prior to the injunction were "lackluster," PI Order, J.A. 2676, it is undisputed they have now stopped entirely. Indeed, the State Board acknowledged in a state court filing this spring that it needed to restart implementation efforts by

early July to have any hope of enforcing the photo ID requirement in the general election, Add. 16.

Since the entry of the injunction, the situation has therefore gone from one where "the bulk of the work still remains undone," PI Order, J.A. 2677, to a scenario where it *cannot* all be done. For example:

- S.B. 824 requires county boards of elections to issue free voter ID cards. But the State Board ordered county boards to stop issuing these cards on January 3, 2020. State Bd., Numbered Memo 2020-01. Accordingly, most of the lengthy period the law required to allow voters to obtain free ID has been lost, and very few voters will have obtained free IDs before the election. *See* J.A. 800-01 (stating that only 1,720 voters had gotten voter ID cards as of October 2019).

- The planned implementation of S.B. 824 was supposed to include information about photo ID on absentee ballot request forms. *See* State Bd., Numbered Memo 2019-08 at 2-3 (Nov. 8, 2019), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2019/Numbered%20Memo%202019-08%20Photo%20ID%20Implementation%20Preparations.pdf. But the State's forms do not currently include that information—and voters had filled out nearly 70,000 of the requests by July 13. *See* Dr. Michael Bitzer, *An Estimate of Where NC Stands in Absenteeby- Mail Ballot Requests*, Old N. State Politics (July 13, 2020), www.oldnorthstatepolitics.com/2020/07/NC-july-ABM-requestsestimates. html.

- S.B. 824 required the State to provide people who lost their drivers' licenses with free ID cards. S.B. 824 § 1.3.(a). The district court found no evidence this process had begun, PI Order, J.A. 2677, and there is no indication in the record that the DMV could instantly provide these cards to every North Carolinian with a driver's license seized or surrendered since May 1, 2019.

- As written, S.B. 824's photo ID requirement would have been applied in municipal elections in 2019 and in the primary elections in 2020, giving the State two test drives before the 2020 general election. But those test drives never happened. If the injunction is lifted now, S.B. 824 would be implemented in a general election with millions more voters, and under a national spotlight focused on North Carolina's role as a potential swing state for the Senate and the presidency.

The Legislators have argued that S.B. 824 was "carefully crafted" to avoid barring or deterring minority voters from voting. Int. Br. 7; *see also id.* at 7-9, 20-27. But even assuming that any of the tools within the law could have prevented those results, they have not been implemented, and Legislators would leave them by the wayside in their rush to foist a photo ID requirement on unsuspecting North Carolinians in the November 2020 election.

In pushing to implement the photo ID law despite the fact that their own voter education and implementation plans are in tatters, the Legislators

would forgo the process ostensibly aimed at ensuring voters without ID can vote, enabling a smooth implementation of the law, or instilling voter confidence in the electoral system. They would implement the law without the "aggressive voter education effort," without the alternative IDs, without the changes to absentee ballot forms, without the repeated mailings to every residence, and in conflict with consistent and widespread statements by the State that photo ID will not be required. And they would do so in a presidential election, in the midst of the worst pandemic in living memory. Far from instilling voter confidence in the elections process, the purported nondiscriminatory justification for the law, this approach would leave voters more confused and skeptical than ever before.

III. It would be particularly problematic to trigger a complicated implementation process for photo ID in the midst of COVID-19.

The confusion caused by attempting to roll out S.B. 824 at the last minute, without the outreach and planning efforts that the law itself requires, would be aggravated by the COVID-19 pandemic. State officials are now focused on safely conducting the 2020 general election during a public health emergency, and they must maintain that focus. If they are forced to divert attention and resources to implementing S.B. 824 at the same time, both efforts will suffer. The consequences would fall most heavily on minority voters who are doubly vulnerable—most at risk of

being impacted by S.B. 824's photo ID requirement, and most susceptible to the dangers of the pandemic.

A. A rushed and inadequate implementation of S.B. 824's photo ID requirement would cause even more problems in the context of the COVID-19 pandemic.

As explained above, there is not enough time before the 2020 election for North Carolina to implement S.B. 824's photo ID requirement. Doing so would create confusion among voters about whether they need a photo ID, how to get one, and whether they can vote without one, discouraging them from voting altogether and potentially leading to thousands of votes being rejected for failure to fully comply with S.B. 824's complex and technical provisions. The COVID-19 pandemic exacerbates these problems.

First, the pandemic would make it harder for voters who lack photo ID to get an ID from a county board of elections or DMV office in time to cast a ballot. Some DMV offices have closed during the pandemic. N.C. Dep't of Motor Vehicles, *NCDMV Services in Response to COVID-19*, https://www.ncdot.gov/dmv/offices-services/locate-dmvoffice/Pages/dmv-offices-closed.aspx. Others have implemented appointment-only visits and limited building capacity. *Id.* County boards across the state have also limited citizens' access. *E.g.*, Caldwell Cty. Bd. of Elec., https://www.caldwellcountync.org/elections; Dare Cty. Bd. of Elec., https://www.darenc.com/departments /board-of-elections/. These efforts to protect State and county employees and reduce the spread of COVID-19 limit when and where voters can get an ID.

Second, requiring individuals to travel and enter public spaces to obtain an ID would undermine the State's efforts to mitigate the spread of COVID-19. If voters hurry to their local DMV or county board to get IDs before the election, it could create crowds and long waits in confined spaces, increasing the risk of COVID-19 transmission.

Third, requiring compliance with S.B. 824's technical requirements for absentee voters would further complicate absentee voting during the pandemic. The State Board anticipates a 30-40% increase in the number of voters who cast their ballots by mail in November 2020. State Bd., *CARES Act Request & Clarification to Recommendations to Address Election-Related Issues Affected by COVID-19* (Apr. 22, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf. Many absentee voters will be voting by mail for the first time and may be unfamiliar with the processes for doing so—particularly with the complex processes for which S.B. 824 provides, such as including a copy of the voter's photo ID with the absentee ballot. S.B. 824 § 1.2(d). And delays in mail delivery during the pandemic may result in voters' absentee ballots not being received on time and, therefore, not being counted. *E.g.*, Alexa Corse, *D.C. Lets Voters Submit Ballots by Email After Mail Problems*, Wall St. J. (June 3, 2020), https://www.wsj.com/articles/d-c-letsvoters-submit-ballots-by-emailafter-mail-problems-11591211518.

Fourth, S.B. 824's voter ID requirement would expose voters to greater risk of contracting the virus. As noted above, S.B. 824 requires absentee voters to submit copies of their photo IDs along with their ballots. J.A. 642. Some voters may not have access to photocopiers or similar technology at home and may have to venture out to make copies. Additionally, voters would likely face longer lines and wait-times at the polls—made even longer by the anticipated shortage of poll workers and insufficient time to train them regarding acceptable ID and the reasonable impediment process. State Bd., *Recommendations to Address Election-Related Issues Affected by COVID-19* at 4 (Mar. 26, 2020),https:// s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20 Legislative%20Recommendations _COVID-19.pdf. And once voters are inside their polling places, S.B. 824 would require them to remove their face coverings (which are required in public spaces where social distancing is not possible, Exec. Order No. 147, § 2 (June 24, 2020)) to allow poll officials to confirm their identities.

In these ways, COVID-19 would make it more difficult for voters to comply with S.B. 824, and would increase their risk of contracting the virus in the process. Faced with that prospect, many voters may conclude that the risk is not worth it, and thus be deterred from voting at all.

B. The State must remain focused on successfully and safely conducting a major election during a pandemic.

Mitigating the risk of voting during the pandemic is an issue that requires the State's sustained attention.

Elections in other states have highlighted the unique challenges of voting during a pandemic. Poll workers—many of whom are elderly and at higher risk from COVID- 19—have declined to work, leading to poll closures and long lines. Michael Wines, *From 47 Primaries, 4 Warning Signs About the 2020 Vote,* N.Y. Times (June 27, 2020), https://www.nytimes.com/2020/06/27/us/2020-primary-election-voting.html (recounting poll worker shortages in Kentucky, where nearly 9 in 10 poll workers refused to work, and Washington, D.C., where numbers dropped from around 2,000 to 300). As a result, voters have faced lengthy wait times at the polls. Nick Corasaniti & Michael Wines, *Beyond Georgia: A Warning for November as States Scramble to Expand Vote-by-Mail*, N.Y. Times (June 10, 2020), https://www.nytimes.com/2020/06/10/us/politics/ voting-by-mail-georgia.html.

In light of these and other challenges, North Carolina is modifying ordinary voting practices to safely achieve the "public interest [in] permitting as many qualified voters to vote as possible." *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012). The State's efforts have included increasing funding for early and absentee voting, broadening the mechanisms for requesting and submitting absentee ballots, loosening restrictions on assisting voters with absentee ballot requests, and reducing the number of witnesses required for absentee ballots. N.C. Sess. L. 2020-17. The State has also increased funding for pollworker recruitment efforts and incentive compensation. *Id.*

This work is not finished. North Carolina districts that have conducted elections during the pandemic

have called for increased funding "for sanitation supplies, cleaning crews, curtains and plexiglass shields, masks, signage," and similar materials, as well as "to educate voters about all the ways they can register and vote in these challenging times"—just a few of the countless issues that local elections officials of both parties agree must be addressed to promote 29 voter confidence in casting ballots during a pandemic. Joey Miller & Julia Tipton, *June runoff election in western NC previews voting problems the state will face in November*, Raleigh News & Observer (May 18, 2020), https://www.newsobserver.com/ article242767616 .html.

As the State Board recently observed, "the COVID-19 pandemic is disrupting and will continue to disrupt the normal schedule for this election cycle in every county in the state, and has impaired critical components of election administration." Emergency Order at 5. Overcoming those disruptions and conducting the election safely and efficiently in the midst of the pandemic demand the full attention of the responsible public officials. Rushing to implement a photo ID requirement would unjustifiably divert valuable time and resources from this critical effort.

C. Minority voters—the same voters who bear the discriminatory brunt of S.B. 824's photo ID requirement—are most likely to be harmed by implementing voter ID during the pandemic.

Finally, implementing S.B. 824 during the pandemic would exacerbate the disparate impact that,

as the district court concluded, the law would have on minority voters.

Other states' elections have shown that the pandemic poses a particular threat to minority voters' ability to vote safely and effectively. The pandemic has already decreased minority voters' inperson turnout. Poll worker shortages in Wisconsin necessitated a reduction in the number of polling places for the state's April primary. Kevin Morris, *Did Consolidating Polling Places in Milwaukee Depress Turnout?*, Brennan Ctr. for Justice (June 24, 2020), https:// www.brennancenter.org/ourwork/research-reports/didconsolidating-polling-places-milwaukee-depress-turnout. The reduction was particularly extreme in Milwaukee, where the number plummeted from 182 in November 2016 to 5 in April 2020. *Id.* These closures contributed to a 10% reduction in black voter turnout, as compared to an 8.5% decline in white voter turnout. *Id.*

Voters who have chosen to vote by mail during the pandemic have also faced confusion and delay as states work rapidly to expand mail-in voting. For example, some voters in Pennsylvania received the wrong party's primary ballot, and certain Georgia voters never received their requested mail-in ballots. Corasaniti & Wines, *supra* at 27. Mail-in voting during the pandemic also poses unique challenges for minority voters, who have traditionally preferred in-person voting, may be casting an absentee ballot for the first time, and may be unfamiliar with absentee voting requirements. *See* Enrijeta Shino, Mara Suttmann-Lea & Daniel A. Smith, *Here's the problem with mail-in ballots: They might not be counted.*, Wash. Post (May 21, 2020),

https://www.washingtonpost.com/politics/2020/05/21/heres-problemwith- mail-in-ballots-they-might-not-be-counted/. Their ballots, therefore, may be deemed defective and go uncounted.

As these issues demonstrate, minority voters are already disproportionately likely to be dissuaded from or to encounter issues while voting during the pandemic. If North Carolina were to implement a photo ID requirement before November 2020, minority voters—the very voters whose rights S.B. 824 "was designed to suppress," J.A. 2061—would face even greater obstacles.

These disparate effects would begin before the election. S.B. 824, like its predecessor, "primarily [allows voters to use those] IDs which minority voters disproportionately lack, and leaves out those which minority voters are more likely to have." PI Order, J.A. 2649. These voters are disproportionately likely to need to obtain a "free ID" from a county board or DMV. Even outside the context of the present pandemic, "these forms of ID are not entirely 'free' to those who need them most," PI Order, J.A. 2651, and the costs have increased during the pandemic. Many poor and minority voters are dependent on public transportation or obtaining rides from others, which may increase their risk of COVID-19 exposure. And once they arrive at a county board or DMV (if that office is even open), they face the obstacles and risks noted above. *Supra* at 23-26.

S.B. 824's photo ID requirement would also impose special burdens on minority voters at the polls. Because minority voters are more likely to vote in person, *N.C.*

State Conf. of NAACP v. McCrory, 831 F.3d 204, 230 (4th Cir. 2016), they are disproportionately likely to experience the delays and long lines that would result from poll officials' hurried implementation of the photo ID requirement and the resulting increased potential for exposure to COVID-19. *Supra* at 23-26.

Poor and minority voters who lack photo ID are also more likely to be required to go through S.B. 824's reasonable impediment process, PI Order, J.A. 2654-55, which would require them to remain in extended close contact with other voters and election officials while waiting in long lines and completing a written declaration. *Supra* at 26. And at the end of the day, despite facing increased risks in an effort to exercise their right to vote, these voters still face a disproportionate likelihood that their provisional ballots will go uncounted. PI Order, J.A. 2654-55.

These discriminatory effects are further compounded by the disparate impact COVID-19 has on communities of color, which face an outsized risk of becoming infected with, being hospitalized for, and dying from COVID-19. CDC, *Who Is at Increased Risk for Severe Illness?* (June 25, 2020), https:// www.cdc.gov /coronavirus/2019- ncov/need-extra-precautions/people-at-increased-risk.html; CDC, *Coronavirus Disease 2019, Racial & Ethnic Minority Groups* (June 25, 2020), https:// www.cdc.gov/coronavirus/2019-ncov/need -extraprecautions/ racial-ethnic-minorities.html.

North Carolina has experienced this unfortunate reality firsthand. As of June 5, 2020, African Americans made up 22% of North Carolina's population, yet accounted for 30% of positive COVID-19

cases and 34% of COVID-19 deaths. Exec. Order No. 143 at 2 (June 4, 2020), https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf. Latino and Hispanic people represented about 10% of the State's population, but accounted for 39% of COVID-19 infections. *Id.* The Governor has taken strong public health measures to combat these disparities. *See id.* But the fact remains that the pandemic presents unique challenges to voters of color. The new risks posed by COVID-19—combined with the "distrust, mistrust and apathy" that "the frequent alterations to North Carolina's voting requirements over the past decade" have created among minority voters—are likely to further dissuade minority voters "from even *attempting* to vote" in November. PI Order, J.A. 2656-57.

CONCLUSION

If S.B. 824 is allowed to go into effect now—despite Supreme Court precedent, without the voter education and outreach the law itself promised, and in the midst of a pandemic—it will write another chapter in North Carolina's regrettable history of failing to protect the voting rights of its African-American and minority citizens. To ensure that the "right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude," U.S. Const. amend. XV, this Court should affirm the district court's preliminary injunction against S.B. 824.

Dated: July 20, 2020

Respectfully submitted,

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[*** certificate omitted in this appendix ***]

ADDENDUM

Page

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CASE NO. 18 CVS 15292

STATE OF NORTH CAROLINA	)
	)
COUNTY OF WAKE	)
	)
JABARI HOLMES, FRED CULP, DANIELE. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, AND PAUL KEARNEY, SR.,	)
	)
PLAINTIFFS,	)
	)
vs.	)
	)
TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;* PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;* RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	)

DEFENDANTS.)

LEGISLATIVE DEFENDANTS' MOTION TO REFFRAIN FROM ENTERING OR, ALTERNATIVELY, DISSOLVE THE PRELIMINARY INJUNCTION
N.C. R. Civ. P. 7, 54(b)

Legislative Defendants, pursuant to Rules 7 and 54(b) of the Rules of Civil Procedure, hereby move the Court to refrain from entering a preliminary injunction in this case or, alternatively, to dissolve that injunction if entered by the time the Court decides this motion.[1] In support of this motion, Legislative Defendants state as follows.

INTRODUCTION

Regardless of the outcome of this lawsuit, there will be a photo voter ID requirement in the State of North Carolina. That is because the State's Constitution requires that "voters offering to vote in person shall present photographic identification before voting." N.C. CONST. art. VI, §§ 2(4), 3(2). To be sure, the Constitution also directs the General Assembly to "enact general laws governing the requirements of such

[1] As of the date of this motion, the Court has not yet entered a preliminary injunction following the Court of Appeals' decision. But whether the Court has done so by the time it decides this motion should not affect the analysis. For convenience this motion generally discusses dissolving the injunction, but that is meant to encompass both dissolving the injunction and not entering it in the first place for the same reasons.

photographic identification, which may include exceptions." *Id.* And S.B. 824, the implementing legislation the General Assembly enacted in December of 2018 to satisfy this mandate, currently is set to be preliminarily enjoined following the decision of the Court of Appeals. *See Holmes v. Moore,* 840 S.E.2d 244 (Ct. App. 2020).

But the rationale for the Court of Appeals' judgment has now been undermined. Key to the court's decision was the General Assembly's rejection of public assistance IDs as valid voter ID in S.B. 824. Indeed, the General Assembly's rejection of public assistance IDs pervaded the *Arlington Heights* analysis the Court of Appeals performed to find that S.B. 824 likely was motivated by racial discrimination. While Legislative Defendants disagree with the Court of Appeals' decision, even taken on its own terms that decision requires that the preliminary injunction in this case be dissolved for one compelling reason: the General Assembly has now passed by a 142-26 margin, and the Governor signed into law, H.B. 1169, which adds to the list of qualifying voter ID "an identification card issued by a department, agency, or entity of the United States government or this State for a government program of public assistance." 2020 N.C. Sess. Laws 17 § 10. With the enactment of H.B. 1169, the General Assembly has adopted nearly every "ameliorative" amendment proposed by S.B. 824's opponents during the legislative process, and it also has addressed the key shortcoming identified by the Court of Appeals.

Under North Carolina law, the decision whether to dissolve a preliminary injunction "is addressed to the

discretion of the trial court." *Barr-Mullin, Inc. v. Browning,* l 08 N.C. App. 590, 598 (1993). The Court should exercise that discretion to dissolve the preliminary injunction (or not enter it in the first place) now that the law has been amended to address the Court of Appeals' chief concern.

BACKGROUND

1. In 2013, the General Assembly passed, and former Governor McCrory signed into law, H.B. 589, an omnibus bill that changed numerous aspects of North Carolina election law, including: (1) shortening the early voting period; (2) eliminating same-day registration; (3) eliminating out-of-precinct voting; (4) eliminating pre-registration for 16 and 17-year-olds; and (5) adding a voter ID requirement. The United States Court of Appeals for the Fourth Circuit struck down these provisions of H.B. 589, reasoning that the General Assembly had acted with racially discriminatory intent by "restrict[ing] voting and registration in five different ways, all of which disproportionately affected African Americans." *North Carolina State Conference of NAACP v. McCrory,* 831 F.3d 204, 214 (4th Cir. 2016). The Fourth Circuit did not hold that the voter ID provision would have been unconstitutional had it been enacted as a standalone bill. It did, however, reason that the failure to include "public assistance IDs" in the list of qualifying voter ID "in particular was suspect, because a reasonable legislator would be aware of the socioeconomic disparities endured by African Americans and could have surmised that African Americans would be more

likely to possess this form of ID." *Id.* at 227-28 (quotation marks omitted, brackets deleted).

The State initially sought Supreme Court review of the *McCrory* decision, but while the cert petition was pending Governor Cooper and Attorney General Stein took office and sought to dismiss the petition. *See North Carolina v. North Carolina State Coriference of NAACP,* 137 S. Ct. 1399 (2017) (Roberts, C.J., respecting denial of certiorari). The Supreme Court thereafter denied certiorari, and the Fourth Circuit's decision therefore escaped review and remained undisturbed.

2. Following the *McCrory* decision, the General Assembly once again took up voter ID. But it did not simply enact new voter ID legislation. Instead, it sought the views of the People of North Carolina, placing a constitutional amendment relating to photo voter ID on the November 2018 ballot. *See* 2018 N. C. Sess. Laws 128. The measure passed with 55% of the vote, *see Official General Election Results – Statewide,* N.C. STATE BOARD OF ELECTIONS (Nov. 6, 2018), https://bit.ly/3iKqUcC, and as a result the North Carolina Constitution now provides: "Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." N.C. CONST. art. VI, §§ 2(4), 3(2).

On November 27, 2018, in accord with this constitutional mandate, S.B. 824 was introduced in the Senate. Its primary sponsors were Senators Ford, Krawiec, and Daniel, a Democrat and two Republicans.

During the legislative process, twenty-four proposed amendments were introduced, two of which were withdrawn before they could be acted on. Of the twenty-two remaining amendments, thirteen were adopted, seven of which were proposed by Democrats. Nine amendments either were tabled or failed. Six of those were introduced by Democrats. Thus, a majority of the amendments (7 of 13) proposed by Democrats were accepted. The details of the six Democratic amendments that failed are as follows:

First, Senator Clark sought to strike the requirement that free county board of elections IDs be used only for voting purposes and to add them to the list of items that could be used to show residency for purposes of obtaining a DMV ID. *See* North Carolina General Assembly Amendment A6, Senate Bill 824, https://bit.ly/3eRCkJq.

Second, Senator Van Duyn sought to (a) delay the date on which free county board of elections IDs would be available from May 1 to July 1, 2019, and (b) extend the provision expressly providing that not knowing about the voter ID requirement or failing to bring photo ID to the polling place would be a reasonable impediment for elections held in 2019 to also cover elections held in 2020. *See* North Carolina General Assembly Amendment A7, Senate Bill 824, https://bit.ly/3gh5vFV.

Third, Senator Lowe sought to extend the one-stop early voting period to include the last Saturday before an election. *See* North Carolina General Assembly Amendment A8, Senate Bill 824, https://bit.ly/3dTCi2B. While this amendment was tabled, in November 2019

the Governor signed into a law a bill that passed the General Assembly by a 160-1 margin extending one-stop early voting to include the last Saturday before an election. *See* 2019 N.C. Sess. Law. 239 § 2(a).

Fourth, Senator Woodard sought to expand the list of voter ID by amending the provision allowing qualifying state or local government employee ID to instead allow qualifying federal, state, or local government ID. *See* North Carolina General Assembly Amendment A9, Senate Bill 824, https://bit.ly/38mp7pG.

Fifth, Representative Fisher sought to add qualifying K-12 ID to the list of voter ID. *See* North Carolina General Assembly Amendment A9, Senate Bill 824, https://bit.ly/2BPVSPK.

Sixth, Representative Richardson sought to add to the list of voter ID "an identification card issued by a branch, department, agency, or entity of the United States or this State for a government program for public assistance." *See* North Carolina General Assembly Amendment A13, Senate Bill 824, https://bit.ly/3ePUPOg. H.B. 1169, which passed the General Assembly by a vote of 142-26, adopted this proposal almost verbatim, adding in the same statutory location "an identification card issued by a department, agency, or entity of the United States Government or this State for a government program of public assistance." 2020 N.C. Sess. Laws 17 § 10. Governor Cooper signed the bill into law on June 12, 2020.

The General Assembly passed S.B. 824 on December 6, 2018. The Governor vetoed the bill

December 14, and the General Assembly overrode the veto on December 19.

3. Plaintiffs filed this lawsuit on December 19, 2018, the same day the General Assembly enacted S.B. 824 into law. Plaintiffs' complaint included six claims for relief, alleging that S.B. 824 violated the North Carolina Constitution by: (1) intentionally discriminating on the basis of race in violation of Article I, § 19; (2) unduly burdening the right to vote, in violation of Article I, § 19; (3) creating unlawful classifications with respect to the right to vote, in violation of Article I, § 19; (4) infringing on the right to participate in free elections, in violation of Article I, § 10; (5) conditioning the right to vote on the possession of property, in violation of Article I, § 10; and (6) infringing on the rights of petition, assembly, and free speech, in violation of Article I, §§ 12 and 14.

Plaintiffs moved for a preliminary injunction, and Legislative Defendants moved to dismiss. On July 19, 2019, this Court denied Plaintiffs' preliminary injunction motion and granted Legislative Defendants' motion to dismiss as to all claims except the racial discrimination claim.

Plaintiffs appealed the denial of the preliminary injunction on their racial discrimination claim, and the Court of Appeals reversed. The court reasoned that, given the "initially tainted policy" of H.B. 589, the General Assembly should "bear the risk of nonpersuasion with respect to [the General Assembly's] intent" in enacting S.B. 824. *Holmes v. Moore*, 804 S.E.2d 244, 261 (N.C. Ct. App. 2020). And the court further concluded that the General Assembly had not

done enough to sever the link between H.B. 589 and S.B. 824. Key to this conclusion was the General Assembly's failure to include public assistance ID in the list of valid voter ID, despite being criticized for the same exclusion in the H.B. 589 litigation. Indeed, the Court of Appeals relied on this failure at every step of the intentional discrimination analysis under *Arlington Heights v. Metro. Haus. Corp.*, 429 U.S. 252 (1977).

The Court of Appeals' reliance on the failure to include public assistance IDs is particularly pronounced in its discussion of S.B. 824's legislative history, one of the four *Arlington Heights* factors. *"McCrory* recognized," the Court of Appeals reasoned, "as particularly relevant to its discriminatory-intent analysis, the removal of public assistance IDs in particular was suspect, because a reasonable legislator could have surmised that African Americans would be more likely to possess this form of ID." *Holmes,* 840 S.E.2d at 261 (quotation marks omitted, brackets and ellipsis deleted). "[A]n amendment to S.B.824 that would have enabled the recipients of federal and state public assistance to use their public assistance IDs for voting purposes," the court continued, "was also rejected." *Id.* (quotation marks omitted, brackets and ellipsis deleted). "In light of the express language in *McCrory* and at this stage of the proceeding," the court concluded, "the inference remains the failure to include public-assistance IDs was motivated in paii by the fact that these types of IDs were disproportionately possessed by African American voters." *Id.*

Discussion of the exclusion of public assistance IDs also pervaded the court's discussion of the other three

Arlington Heights factors. First, with respect to S.B. 824's historical background, the Court of Appeals explained that a pre-*Shelby County* version of H.B. 589 included "public-assistance IDs," while those IDs were absent from the "final versions of both H.B. 589 and S.B. 824." *Holmes,* 840 S.E.2d at 258. Second, with respect to the sequence of events leading to S.B. 824, the Court of Appeals stated that "Plaintiffs' forecasted evidence demonstrates a number of amendments seeking to ameliorate the impacts of S.B. 824 were . . . rejected." *Id.* at 261. Of course, the rejection of public assistance IDs was a key part of Plaintiffs' "forecasted evidence." *See id.* (discussing affidavit of Representative Harrison regarding amendment to add public assistance IDs). Third, with respect to the impact of S.B. 824, the Court of Appeals reasoned that "the General Assembly's decision to exclude public-assistance and federal-government-issued IDs will likely have a negative effect on African Americans because such types of IDs are disproportionately held by African Americans." *Id.* at 262 (quotation marks omitted).

As a result of its *Arlington Heights* analysis the Court of Appeals held that Plaintiffs were likely to succeed on the merits, and as a result of this holding the court further held that Plaintiffs had established a threat of irreparable harm from "the denial of equal treatment in voting . .. based on a law allegedly motivated by discriminatory intent." *Id.* at 266. The Court of Appeals therefore remanded the case to this Court with instructions to enter a preliminary injunction against the voter ID provisions of S.B. 824. *Id.* at 266-67.

ARGUMENT

Under settled equitable principles, the preliminary injunction issued in this case should be dissolved (or not entered in the first place). As an interlocutory ruling, a preliminary injunction "is subject to revision at any time before the entry of final judgment." N.C. GEN. STAT. § 1A-1, 54. "The question presented by the motion to dissolve is whether the injunction should continue in effect," *Shishko v. Whitley,* 64 N.C. App. 668, 672 (1983), and the decision whether "to dissolve a temporary injunction is addressed to the discretion of the trial court," *Barr-Mullin, Inc. v. Browning,* 108 N.C. App. 590, 598 (1993). As courts sitting in equity have recognized, "an injunctive order may be modified or dissolved in the discretion of the court when conditions have so changed that it is no longer needed or as to render it inequitable." *Tobin v. Alma Mills,* 192 F.2d 133, 136 (4th Cir. 1951). Indeed "a court errs when it refuses to modify an injunction . . . in light of such changes." *Agostini v. Felton,* 521 U.S. 203, 215 (1997).

1. The amendment of North Carolina law to include public assistance IDs in the list of valid voter ID severs the final thread tying *McCrory*'s holding of racial discrimination to S.B. 824, and it undermines the Court of Appeals' holding that Plaintiffs are likely to succeed on the merits of their claim that S.B. 824 was enacted with racially discriminatory intent. This is demonstrated by a review of the *Arlington Heights* factors in light of the addition of public assistance IDs.

Historical Background. The Court of Appeals emphasized the General Assembly's decision to drop

public assistance IDs from the list of approved voter ID in H.B. 589 in the wake of the Supreme Court's decision in *Shelby County* and the continued exclusion of public assistance IDs in S.B. 824. *See Holmes,* 840 S.E.2d at 258. To the extent these decisions evinced an intention to discriminate on the basis of race (which, to be clear, Legislative Defendants dispute), the decision to *add* public assistance IDs must evince a *lack* of racially discriminatory intent.

Sequence of Events. The Court of Appeals' analysis of the sequence of events leading to S.B. 824 led it to flip the burden of persuasion to the General Assembly, relying on the fact that "sixty-one of the legislators who voted in favor of S.B. 824 had previously voted to enact H.B. 589." *Id.* at 260. The Court of Appeals further reasoned that the "Plaintiffs' forecasted evidence demonstrates a number of amendments seeking to ameliorate the impacts of S.B. 824 were also summarily rejected." *Id.* at 261.

The Court of Appeals' conclusion that a finding of past discrimination required the General Assembly to disprove present discrimination was wrong. *See Abbott v. Perez,* 138 S. Ct. 2305, 2325 (2018). But even if that were not the case, the enactment of H.B. 1169 decisively broke from H.B. 589. The Court of Appeals found it significant that sixty-one legislators voted for both H.B. 589 and S.B. 824. If that fact is significant, it must also be significant that *every single legislator* who voted for S.B. 824 and was present for the vote on H.B. 1169 voted for the bill and its addition of public assistance IDs. On the Court of Appeals' reasoning, the votes of these legislators to add public assistance IDs

are strong evidence against racially discriminatory intent.

The passage of H.B. 1169 also means that North Carolina's voter ID law now incorporates *nearly every amendment offered* to "ameliorate the impacts of S.B. 824." *Holmes,* 840 S.E.2d at 261. As recounted above, Democrats offered thirteen non-withdrawn amendments during the legislative debates over S.B. 824. Seven were adopted into S.B. 824 and included in the bill as originally enacted. Several of the non-adopted amendments would have done nothing to "ameliorate the impacts" of S.B. 824's voter ID provisions on voting-or would have done the opposite. Senator Clark's proposed amendment dealt with the use of free county board of elections voter IDs for non-voting purposes. Senator Van Duyn's amendment would have *delayed* the date on which free county board IDs were available, making things worse for voters. It also would have specified that not knowing about the voter ID requirement or failing to bring photo ID to the polling place would be a reasonable impediment for elections held in 2020, but that amendment would not have changed the impact of S.B. 824 because a declared reasonable impediment must be accepted unless *it is false. See* N.C. GEN. STAT. § 163-166.16(f). Elections officials have no authority to second-guess the reasonableness of the claimed impediment.

Others of the proposed amendments have now been adopted into North Carolina law. Senator Lowe sought to extend one-stop early voting to include the last Saturday before an election, and that has now been

accomplished. *See* 2019 N.C. Sess. Law 239 § 2(a). And Representative Richardson's public assistance ID amendment was adopted nearly verbatim in H.B. 1169.

That leaves only the amendments proposed by Senator Woodard and Representative Fisher. Both dealt with the types of IDs that could be used as valid voter ID after going through a legislatively prescribed qualification procedure. Senator Woodard's amendment would have expanded the category of state or local government employee IDs to include all federal, state, or local government IDs. And Representative Fisher would have expanded the category of student IDs to include K-12 in addition to college IDs. Apart from federal and state public assistance Ids–which now are included *without having to go through a qualifying process*-it is unclear what types of additional IDs would have been included under Senator Woodard's amendment. Federal employee IDs are one possibility, but there is no evidence that federal agencies would submit to the qualification process Senator Woodard proposed that they would need to satisfy. There also is no reason to believe that a substantial proportion of federal employees lack other qualifying ID such as a drivers' license, or at a minimum the ready means to obtain such ID. There also is a dearth of evidence that Representative Fisher's amendment to add K-12 IDs would have harm. In the view of the Court of Appeals, the key harm Plaintiffs were threatened with was being subject to a voter ID law that was motivated by racially discriminatory intent. *See id.* at 266. If Plaintiffs are unlikely to succeed on the merits of their racial discrimination claim, that threatened harm evaporates.

On the other hand, because Plaintiffs are unlikely to succeed on the merits the harm threatened by entering and continuing the preliminary injunction is magnified. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) (quotation marks omitted). The irreparable injury inflicted on North Carolina is particularly grave here, because the preliminary injunction prohibits state officials from giving effect not only to S.B. 824 but also to the constitutional voter ID mandate that statute seeks to implement. Every election in which S.B. 824 continues to be enjoined is one in which the North Carolina Constitution's requirement that "[v]oters offering to vote in person shall present photographic identification before voting" is frustrated. N.C. CONST. art. VI, §§ 2(4), 3(2). Now that the Court of Appeals' principal concern with S.B. 824 has been remedied, equity demands that the preliminary injunction in this case be dissolved.

CONCLUSION

For the foregoing reasons, this Court should refrain from issuing or dissolve the preliminary injunction.

Dated: July 9, 2020

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[*** certificate omitted in this appendix ***]

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CASE NO. 18 CVS 15292

STATE OF NORTH CAROLINA)
)
WAKE COUNTY)
)
JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR.,)
)
Plaintiffs,)
)
v.)
)
TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,)
)
Defendants.)
)

STATE DEFENDANTS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER

Defendants the State of North Carolina and the North Carolina State Board of Elections (the "tate Defendants" hereby respond to the Legislative Defendants' Motion for Entry of a Case Management Order, which was served on the parties and emailed to the Trial Court Administrator on April 10, 2020.

The State Defendants defer to the Court' discretion as to whether an expedited pretrial schedule is appropriate. Below, the State Defendants highlight a number of considerations that impact the potential implementation of S.B. 824 and its photo ID requirement before the 2020 general election, including considerations arising from the current public health emergency. The State Defendants have discussed these considerations with counsel for the Legislative Defendants and the Plaintiffs.

The Legislative Defendants propose a trial schedule with the hope of allowing enough time after final decision—if S.B. 824 is upheld and the current injunction is lifted—to apply its provisions to the November 2020 general election, for which voting is scheduled to begin on September 4, 2020, less than 5 months from now.

As the Legislative Defendants note (Mot. at 6), in early March 2020, in the federal case challenging the photo ID requirement, the State Defendants informed the Fourth Circuit Court of Appeals that the elections boards would need to restart photo ID implementation

activities—which had been suspended in December 2019 pursuant to the federal court' order—well in advance of the start of absentee voting on September 4, 2020. The State Defendants have since determined with more specificity that, without factoring in the likelihood of additional delays resulting from the effects of the pandemic, which are discussed below, implementation activities would need to begin by early July. This estimate is based solely on accommodating the State Board' activities in logistically preparing to administer an election with the new photo ID requirement. It does not take into account voter-education activities that would also need to take place to inform voters that the photo ID law that was enjoined for the primary election in March would be enforced in the general election in November.

The early July estimate also does not take into account any measures that may be necessary to deal with the reality that the State now faces in trying to prepare for and carry out an election amid the disruption to regular activities that the COVID-19 pandemic has caused. At present, it is unclear how long the social distancing requirements, limits on mass gatherings, and other public health-related restrictions ordered or recommended by state, local, and federal authorities will last, or in what ways they might be reduced over time. Agencies involved in election administration, including the State and county boards and the Division of Motor Vehicles (DMV), must begin consideration and planning now for administering the upcoming general election consistent with some or all of these public health restrictions, while allowing for the possibility of new or modified restrictions over time.

One challenge for local elections boards is ensuring that they will have enough poll workers. The average age of poll workers in the state is 70, meaning that most poll workers are in the category of individuals most at risk from the COVID-19 virus. Because of this and because of the uncertainty associated with the ongoing public health emergency, elections boards must work to identify and train alternate poll workers in the event that some poll workers opt out or are directed to avoid the potential exposure that could come from working at polling sites. The State Board must begin now to plan to reconfigure thousands of polling sites statewide to allow for adequate distancing, sanitization, and minimal contact with surfaces that would increase the chances of virus transmission, to protect both poll workers and voters. This will require significant preparation, training of employees and volunteers, and procurement of supplies to support these procedures.

State and county elections boards must also plan now for an expected massive increase in the number of voters who may cast their votes by absentee ballot. The State Board estimates that 40% or more of the state's voters may cast their vote by absentee ballot—in comparison to the approximately 4% of voters who have done so in election cycles in the recent past. To prepare for an increase in absentee ballots of this magnitude, State and county elections boards need to ensure the availability of absentee ballots, coordinate with postal services, including by potentially establishing designated drop-off points for ballots to be mailed, and create new processes to open, count, audit, and report election results for this volume of absentee ballots.

Implementing a photo ID requirement in the midst of the evolving public health emergency would require the State and county boards to undertake additional measures. Restarting implementation of S.B. 824 would require meeting voters' requests for free IDs and documentation needed to obtain those IDs. However, the State Board, many county boards, and other federal, state, and local government agencies are currently closed to the public or are operating with reduced hours and staff. The same is true for DMV offices, which issue the most common form of photo identification in the state.

In addition, public health requirements that may be in place would compel State and county boards to undertake extra planning and training to implement the photo ID requirement during in-person voting, which begins in mid-October. For example, if social-distancing and face-mask requirements are in effect during in-person voting, State and county boards of elections will need to have planned and trained for effective procedures to verify photo IDs, provide assistance to voters lacking photo IDs, and assist voters in filling out provisional voting applications and reasonable impediment affidavits, while abiding by the public health requirements.

Prior to the public health emergency, the State Board had been planning to conduct in-person training for county boards and staff during its August conference. The county boards and their staff would then provide in-person training to their poll workers in the weeks following the State Board's conference. This kind of in-person training will be particularly critical if

S.B. 824 is in effect because it imposes administratively complex requirements on poll workers and elections-board staff. The State Board is not aware of poll worker training having been conducted remotely by any county board before, and is unsure of the efficacy of such remote training—particularly in light of the fact that many communities and poll workers will face technical hurdles to remote training. If social-distancing guidelines are in effect in the summer and fall, the State Board will not be able to conduct in-person training during its August conference and county staff will not be able to train poll workers in-person in September and October.

In sum, the State and local boards are working to address a number of uncertainties and logistical challenges associated with administering the November 2020 elections amidst the COVID-19 pandemic. Implementing a photo ID requirement would add to these. The State Defendants defer to the Court' discretion on the trial schedule and stand ready to continue to update the Court with any additional information requested.

If the Court orders an accelerated discovery and trial schedule similar to the one proposed by the Legislative Defendants, the State Defendants request that the Court's order provide flexibility to account for the current and any subsequent orders of the North Carolina courts that govern the use of remote hearings, depositions, and testimony.

Respectfully submitted this the 14th of April, 2020.

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[*** certificate omitted in this appendix ***]