NO. _____

In the

Supreme Court of the United States

PATSY J. WISE; REGIS CLIFFORD; SAMUEL GRAYSON BAUM; DONALD J. TRUMP FOR PRESIDENT, INC.; GREGORY J. MURPHY, U.S. Congressman; DANIEL BISHOP, U.S. Congressman; REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; NORTH CAROLINA REPUBLICAN PARTY; C MILLE ANNETTE BAMBINI; GREGORY F. MURPHY, U.S. Congressman,

APPLICANTS,

v.

DAMON CIRCOSTA, in his official capacity as Chair of the State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the State Board of Elections; JEFF CARMON, in his official capacity as Member of the NC State Board of Elections; KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections; NORTH CAROLINA STATE BOARD OF ELECTIONS,

RESPONDENTS.

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit

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October 22, 2020

QUESTION PRESENTED

This case involves an extraordinary attempt by an unelected state board of elections to rewrite the unambiguous terms of a statute enacted in June by a bipartisan state legislature to set time, place, and manner requirements for absentee voting in response to the COVID-19 pandemic. Instead of enforcing the General Assembly's carefully considered requirements, the state board entered a settlement with advocacy groups that, just days before the general election, rewrites the election code to achieve its own preferred policy goals. This administrative rewrite of the election code usurps the authority delegated to the General Assembly under the United States Constitution, undermines the equal protection rights of voters, and is already causing the voter confusion and chaos that this Court warned about in *Purcell v. Gonzalez*, 549 U.S. 1 (2006). The question presented is:

Is an emergency injunction warranted to stop a state board of elections from usurping the constitutional authority of the state legislature by unlawfully changing the requirements of a state election code on the eve of an election?

PARTIES TO THE PROCEEDING

All parties listed in the caption and Intervenor/Defendants - Appellees, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, North Carolina Alliance For Retired Americans, and Caren Rabinowitz.

CORPORATE DISCLOSURE STATEMENT

The Applicants have no parent corporation and no publicly held corporation owns any of their stock. No other publicly held corporation has a direct financial interest in the outcome of this litigation by reason of a franchise, lease, other profit-sharing agreement, insurance, or indemnity agreement.

RELATED PROCEEDINGS BELOW

United States Court of Appeals for the Fourth Circuit:

- *Wise et al. v. Circosta et al.*, No. 20-2104 (4th Cir.) — appeal pending; emergency motion for injunction pending appeal was denied October 20
- This case was consolidated with *Moore et al. v. Circosta et al.*, No. 20-2107 (4th Cir.)

United States District Court for the Middle District of North Carolina:

- *Wise et al. v. Circosta et al.*, No. 1:20-cv-912 (M.D.N.C.) — appeal pending; judgment entered Oct. 14 denying motion to convert temporary restraining order into preliminary injunction
- This case was consolidated with *Moore et al. v. Circosta et al.*, No. 1:20-cv-911 (M.D.N.C.)

United States District Court for the Eastern District of North Carolina:

- *Wise et al. v. Circosta et al.*, No. 5:20-cv-505-D (E.D.N.C.) — judgment entered Oct. 3 granting emergency motion for temporary restraining order and transferring action to Middle District of North Carolina.
- This case was consolidated with *Moore et al. v. Circosta et al.*, No. 5:20-cv-507-D (E.D.N.C.)

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To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court and Circuit Justice for the Fourth Circuit:

Predicting "further intolerable chaos" absent an injunction against the North Carolina State Board of Election's unlawful rewrite of North Carolina's election code, Judge J. Harvie Wilkinson "urge[d] plaintiffs to take this case up to the Supreme Court immediately." App. 023 (Wilkinson, J. and Agee, J., dissenting). Applicants heed that call. Pursuant to Supreme Court Rules 20, 22, and 23, and 28 U.S.C. § 1651, Applicants ("Plaintiffs") respectfully request an immediate, emergency writ of injunction to prevent the North Carolina State Board of Elections (the "Board"), an executive agency, from unlawfully changing North Carolina's statutory election code weeks after voting began and only days before election day. More specifically, Plaintiffs seek an injunction that prohibits the Board from implementing or enforcing several Numbered Memos that rewrite the election code by extending the state's absentee ballot receipt deadline, undermining the postmark requirement, and weakening provisions prohibiting ballot harvesting which were enacted by the North Carolina General Assembly. Plaintiffs also ask the Court to consider this Application as a petition for certiorari, grant certiorari on the questions presented, treat the Application papers as merits briefing, and issue a merits decision as soon as practicable.

INTRODUCTION

In June 2020, an overwhelming bipartisan majority of the North Carolina General Assembly exercised the authority granted to that body by Article I, § 4 of the United States Constitution and enacted the Bipartisan Elections Act of 2020

("HB1169") to address the potential impact of the COVID-19 pandemic on the upcoming general federal election. HB 1169 achieves a delicate balance of objectives by easing restrictions on absentee voting, while maintaining long-established requirements necessary to protect the integrity of the election process. Two weeks into the voting period, after 150,000 absentee ballots had already been submitted, the Board, unsatisfied with the balance struck by HB1169, began issuing a series of Numbered Memos that effectively rewrote much of North Carolina's election code. These Memos far exceed the Board's authority, have upended the delicate balance struck by the legislature, and have sown chaos in North Carolina's federal elections.

Under HB 1169 and other statutes adopted by the General Assembly, North Carolina voters must obtain the signature of a witness when submitting an absentee ballot (the "Witness Requirement"), ensure that the ballot is postmarked and received within three days after election day (the "Receipt Deadline"), and adhere to other requirements (for instance, restrictions on the handling of absentee ballots).

Several advocacy groups challenged these statutory requirements in state and federal court. Those initial challenges were almost entirely rejected as meritless by the courts.

Notwithstanding these initial successes defending the legislation, the Board cut a secret deal with the advocacy groups in an attempt to rewrite the statutory requirements by executive fiat.[1] On September 22, weeks after voting began on

[1] Although the two Republican members of the Board, Ken Raymond and David Black, initially signed off on this agreement, both Raymond and Black resigned from the board in protest shortly afterwards, voicing concerns that they had been gulled into providing their assent by other state

September 4 and after 150,000 absentee ballots were already submitted, the Board issued a series of Numbered Memos that purport to eliminate the Witness Requirement, extend the Receipt Deadline by 6 days, redefine the postmark requirement, and rework other provisions of North Carolina's election code designed to protect the integrity of the federal election. The Board seeks nothing less than to usurp the constitutional authority of the General Assembly by imposing a new statutory scheme in the middle of an election, thereby subjecting North Carolina voters to arbitrary and disparate standards for the receipt and handling of ballots. The Board attempted to justify these changes in part by relying on a federal court order issued on August 4, 2020, but that order actually upheld the Act as a proper exercise of the General Assembly's constitutional authority. That court swiftly admonished the Board for misrepresenting and mischaracterizing its order to gain a state court's approval of the Numbered Memos.

The Board's actions offend the Constitution and pose an immediate threat to the integrity of the federal election process. By rewriting the statute and redefining the requirements for submitting a lawful absentee ballot, the Board violates core separation-of-powers principles, intrudes on the power of the state legislature under the United States Constitution, and offends the guarantee of equal protection. To protect the federal interests at stake and restore the status quo established by the

officials without understanding "all the implications of the settlement." Gary D. Robertson, *GOP elections board members in NC resign over absentee deal*, AP NEWS, Sept. 24, 2020 (available at https://apnews.com/article/state-elections-elections-north-carolina-voting-2020-2e6d7f17bf45de2e52623c1d890541c4).

General Assembly, Plaintiffs urge the Court to prohibit the Board from implementing the Numbered Memos and enjoin it from further interfering with this election.

When a member of the originally-assigned panel at the Fourth Circuit realized that the panel intended to grant Plaintiffs' request for a preliminary injunction, the panel dissenter broke with the traditional process and hastily arranged an en banc vote to remove the case from the assigned panel. *See* App. 048-49 (Niemeyer, J., dissenting). The en banc Fourth Circuit then refused to issue an injunction, downplayed the seriousness of the Board's constitutional violations, relied on its own policy judgments about which restrictions on absentee voting are appropriate, and then concluded that the current pandemic justified the Board's statutory rewrite. And it did all of this while blithely asserting that the serious constitutional concerns raised by the Board's statutory rewrite were "beyond [its] understanding." App. 012. But as this Court has recognized, federal courts must guard against "illegitimate and unconstitutional practices" and "deviations from legal modes of procedure" before they are able to "get their first footing," because even "[s]light encroachments create new boundaries from which legions of power can seek new territory to capture." *Stern v. Marshall*, 564 U.S. 462, 503, (2011) (Roberts, C.J.) (quotation marks omitted).

This is not the first time the Fourth Circuit has failed to protect this federal election based on a misunderstanding of applicable law. This Court recently recognized the importance of adhering to "legal modes of procedure" when the Fourth Circuit failed to do so. In *Andino v. Middleton*, No. 20A55, 592 U.S. ___, 2020 WL 5887393 (Oct. 5, 2020), the district court altered South Carolina's election code, a

three-judge Fourth Circuit panel granted a stay, but the en banc Fourth Circuit vacated the stay so as to allow the changes in the election code to take effect. This Court disagreed with the en banc Fourth Circuit and issued a stay protecting South Carolina's election code from last-minute change.[2]

This case presents the same indisputably clear case for relief: The district court failed to protect North Carolina's election code, a three-judge panel was prepared to grant an injunction pending appeal, *see* App. 048-49 (Niemeyer, J., dissenting), but again the en banc majority stepped in to deny relief, substituting its own policy preferences for those of the North Carolina General Assembly. Plaintiffs urge this Court to grant an emergency injunction to protect the state election code, remedy an egregious violation of separation of powers principles and the unambiguous text of the United States Constitution's Elections and Electors clauses, and stop an ongoing violation of Plaintiffs' constitutional rights.

JURISDICTION

On October 3, 2020, the United States District Court for the Eastern District of North Carolina granted a temporary restraining order, App. 141, holding that Plaintiffs' claims under the Equal Protection Clause were meritorious. In the same order, the court transferred the case to the Middle District of North Carolina. On October 6, Plaintiffs filed a motion to convert the temporary restraining order into a preliminary injunction. On October 14, the United States District Court for the

[2] Just yesterday, this Court stayed another departure from duly-enacted state election statutes. *See Merill v. People First of Ala.*, 592 U.S. ___ (Oct. 21, 2020) (granting a motion to stay pending appeal the district court's order enjoining Alabama's restrictions on curbside voting).

Middle District of North Carolina held that Plaintiffs had standing and were likely to succeed on two of their Equal Protection challenges. Nonetheless, the court denied injunctive relief, App. 140, based solely on its understanding of this Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006). The following day, Plaintiffs filed their notice of appeal under 28 U.S.C. § 1292(a)(1), and an emergency motion for an injunction pending appeal in the Fourth Circuit. Over the dissents of Judges Wilkinson, Agee, and Niemeyer, the en banc Fourth Circuit denied that request for injunctive relief on October 20. App. 001. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651(a).

DECISIONS BELOW

The district court's order granting the temporary restraining order is available at App. 141. The district court's order denying the motion to convert the temporary restraining order into a preliminary injunction pending appeal is available at App. 050. The Fourth Circuit's denial of an injunction pending appeal is available at App. 001.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves U.S. Constitution Article I, § 4, clause 1 ("Elections Clause"), U.S. Constitution Article II, § 1, clause 2 ("Electors Clause"), and the Fourteenth Amendment's Equal Protection Clause, U.S. Constitution amend. XIV ("Equal Protection Clause"), all appended at App. 161 *et seq.*

FACTUAL AND PROCEDURAL BACKGROUND

A. The Consent Judgment and Numbered Memos

In June 2020, exercising the authority granted by Article I, § 4 of the United States Constitution, the North Carolina General Assembly enacted bipartisan legislation ("HB1169") to clarify the time, place, and manner requirements for voting in the upcoming general federal election and to address challenges posed by the COVID-19 pandemic. Passed by a vote of 105-14 in the North Carolina House of Representatives and by a vote of 37-12 in the North Carolina Senate, the General Assembly enacted HB 1169 after weighing competing proposals and input from the Board. *See* House Bill 1169 Voting Record, North Carolina General Assembly, available at https://www.ncleg.gov/BillLookup/2019/H1169 (accessed October 20, 2020). Governor Cooper signed the bill and it became law.

Despite the legislature's bipartisan revision of the state's election code to account for the COVID-19 pandemic, certain advocacy groups and individuals filed lawsuits seeking to change the statutory requirements, urging courts to adopt policies that the bipartisan General Assembly had rejected. For three months, the Board defended HB 1169 against these lawsuits, prevailing in all material respects in a federal court case (*Democracy North Carolina*) and a state court case before a three-judge panel (*Chambers*). *See Democracy N.C.*, 2020 WL 4484063, at *64; Order on Mot. for Prelim. Inj.; *Chambers v. North Carolina*, No. 20 CVS 500124 (Sup. Ct. Wake Cty., N.C.) ("*Chambers* Order"). Both courts—at the Board's urging—denied relief in part because of the imminence of the November 3 election. *See Democracy N.C.*, 2020 WL 4484063, at *130-31; *Chambers* Order, at 7.

On September 22—two weeks after absentee voting had already started, and with approximately 150,000 absentee ballots cast—the Board announced a secretly negotiated "Consent Judgment" with certain advocacy groups and individual plaintiffs. Neither the Plaintiff nor the authorized representatives of the General Assembly consented to this settlement. Six weeks after the federal district court had already found that it was too late to make sweeping changes to North Carolina's election laws, the Board undertook to do just that through a series of "Numbered Memos" issued pursuant to the Consent Judgment. The Numbered Memos rewrite several statutory requirements:

- Revised Numbered Memo 2020-19 effectively eliminated the statutory requirement that another person witness an absentee ballot (the "Witness Requirement") by allowing a voter to cure the omission of a witness certification through the submission of a cure affidavit *executed by the voter*, but without fulfilling the Witness Requirement. *See* App. 164; *see also* N.C.G.S. § 163-231(a).[3]

- Numbered Memo 2020-22 **triples** the statutory deadline for ballots to be received, from three days to nine (the "Receipt Deadline"). *Compare* App. 172 (nine days) *with* N.C.G.S. § 163-231(b)(2)(b) (three days). The Memo also guts the statutory requirement that a ballot be postmarked on or before election day by changing the definition of "postmark" from its understood meaning as "[a]n

[3] The Board defended this action in state court by relying on an order issued by Judge Osteen in the *Democracy North Carolina* case in which he enjoined the Board from rejecting absentee ballots without providing notice of any deficiencies and an opportunity to cure. *See Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 WL 6058048, at *3 (M.D.N.C. Oct. 14, 2020). But when the Revised Numbered Memo 2020-19 was brought to his attention, Judge Osteen found that the Board had seriously mischaracterized his ruling in *Democracy North Carolina*. *See id.* at *7 ("The [Board's] mischaracterization of this court's injunction in order to obtain contradictory relief in another court frustrates and circumvents this court's August Order."); *see also id.* at *9 (referring to the Board's "gross mischaracterization of the relief granted"). Judge Osteen enjoined Revised Numbered Memo 2020-19 insofar as it negated the Witness Requirement, and the Board then issued a revised version (version 3) of this memo which eliminated the contested change. *See* Revised Numbered Memo 2020-19 (version 3, issued Oct. 17, 2020), App. 168.

official mark put *by the post office*" to any number of marks used by other groups. *See* Postmark, Black's Law Dictionary (11th ed. 2019).

- Numbered Memo 2020-23 severely weakens protections against ballot harvesting, an issue of particular concern in North Carolina because the 2018 election in North Carolina's Ninth Congressional District was so fraught with absentee ballot fraud it had to be re-voted. *See* App. 174.

On October 2, Judge G. Bryan Collins of the Wake County Superior Court approved the Consent Judgment to which the contested Memos are appended. In those proceedings, the Board repeatedly represented that the Memos were motivated, and even required, by the federal court's previous ruling in *Democracy North Carolina*. *See Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 WL 6058048, at *3 (M.D.N.C. Oct. 14, 2020) (stating that the Board "cited this court's August Order" from Democracy North Carolina in "arguing that the North Carolina Superior Court should approve and enter the Consent Judgment"). But as the federal court recognized, the Board "grossly mischaracterize[ed]" that ruling. *See Democracy N.C.*, 2020 WL 6058048, at *9; *see also id. at* *7 ("The [Board's] mischaracterization of this court's injunction in order to obtain contradictory relief in another court frustrates and circumvents this court's August Order.").

B. Plaintiffs' Federal Action

On September 26—*before* the state court judge considered the proposed Consent Judgment—Plaintiffs filed this case and sought a temporary restraining order against the Numbered Memos in the United States District Court for the Eastern District of North Carolina. *See* Compl., *Wise* App. 181; Mtn. for Temporary Restraining Order, App. 215; *see also Moore v. Circosta*, No. 20-cv-507-D, Compl.,

App. 252 (E.D.N.C. Sept. 26, 2020) (raising similar challenges). On October 2—immediately following the hearing before Judge Collins regarding the Consent Judgment—United States District Judge James C. Dever III held a hearing. The next morning, Judge Dever granted the TRO. App. 159.

By October 3, voters had requested 1,157,606 absentee ballots and returned 340,795 of them under the requirements established by the General Assembly. The TRO was "intended to maintain the status quo"—*i.e.*, the statutory requirements enacted by the General Assembly. On October 4, the Board issued another Numbered Memo placing the challenged Memos on hold based on the TRO. *See* App. 179, Numbered Memo 2020-28 (placing on hold Numbered Memos 2020-19, 2020-22, 2020-23, and 2020-27). The Board's October 4 Memo instructed county boards to "take no action" with respect to deficient absentee-ballot return envelopes. *Id.*

Judge Dever then transferred both cases (*Wise* and *Moore*) to Judge Osteen (M.D.N.C.), who is also handling the *Democracy North Carolina* case, for further proceedings. *Id*. Plaintiffs in the *Wise* and *Moore* cases moved for preliminary injunctions, and Judge Osteen heard those motions on October 8.

On October 14, Judge Osteen issued a 91-page order. *See* App. 050. In that order, the district court held that Plaintiffs had "established a likelihood of success on their Equal Protection challenges with respect to the [Board's] procedures for curing ballots without a witness signature and for the deadline extension for receipt of ballots." App. 052. The court expressed its view that "the unequal treatment of

voters and the resulting Equal Protection violations as found herein should be enjoined." *Id*.

Based on its reading of this Court's decision in *Purcell,* 549 U.S. at 1, however, the district court denied the injunction, "*even in the face of what appear to be clear violations*" of Plaintiffs' constitutional rights. App. 139. The district court concluded that *Purcell* required it to refrain from issuing an injunction so close to an election. Upon expiration of the TRO on October 16, and lifting on October 19 of a later temporary stay issued by the North Carolina Court of Appeals, the Board first officially began instructing local elections officials to implement the Memos, on October 19, 2020.[4]

Plaintiffs immediately sought emergency injunctive relief from the Fourth Circuit. Five days later, on October 20, the Fourth Circuit, sitting *en banc*, denied the injunction, holding that the Numbered Memos do not violate equal protection and *Purcell* weighs against an injunction. Judges Wilkinson, Agee, and Niemeyer dissented. The dissenting judges lamented the "proliferation of pre-election litigation" that is "plagu[ing]" our country and "creat[ing] confusion and turmoil . . . that threatens to undermine public confidence in the federal courts, state agencies, and the elections themselves." App. 021-22 (Wilkinson, J. and Agee, J., dissenting). The dissenting judges believed that *Purcell* required an injunction to prevent the "pernicious pattern" of courts changing election rules at the last minute and to protect

[4] *See* https://www.ncsbe.gov/about-elections/legal-resources/numbered-memos (last accessed October 20, 2020).

the North Carolina legislature's responsibility in U.S. Const. art. 1, § 4, cl. 1, to set the time, place, and manner of federal elections. *Id.* at App. 046.

ARGUMENT

A Circuit Justice may issue an injunction when there is a "significant possibility" that the Court would take the case on appeal and reverse, and where "there is a likelihood that irreparable injury will result if relief is not granted." *Am. Trucking Ass'ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers). Because the issuance of an injunction grants judicial intervention that has been withheld by lower courts, the legal rights at issue must be "indisputably clear." *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (citation omitted).

This Court has granted emergency injunctions pending appeal, including in at least three cases involving elections. *See Lucas v. Townsend*, 486 U.S. 1301 (1988) (enjoining bond referendum election where parties claimed that change in election date required Attorney General's approval); *McCarthy v. Briscoe*, 429 U.S. 1317 (1976) (granting injunction ordering candidate's name to appear on general election ballot in Texas as independent candidate for President); *Williams v. Rhodes*, 89 S. Ct. 1 (1968) (granting temporary injunctive order to compel state authorities to place names of Presidential and Vice Presidential candidates at next election on ballot pending decision on merits).

An injunction in this case is essential to protect the integrity of the federal election. The standards for injunctive relief are satisfied. If this Court does not intervene, the unilateral conduct of the unelected Board will not only deprive Plaintiff

voters of their right to equal protection, but will also make "the promise of the Constitution's Elections and Electors Clauses into a farce." App. 046 (Wilkinson, J. and Agee, J., dissenting). Granting emergency relief is necessary to avoid "making the courts appear partisan, destabilizing federal elections, and undermining the power of the people to choose representatives to set election rules." *Id.*

I. Plaintiffs Have Demonstrated a Clear Entitlement to Injunctive Relief Because the Legal Rights at Issue Are Indisputably Clear.

The Board's unilateral and unlawful revision of North Carolina's election code is intolerable, especially after the General Assembly enacted specific election rules for absentee ballots in response to the COVID-19 pandemic . The Board's attempt to rewrite the rules enacted by the people's elected representatives through a back-door settlement reached in the wake of failed litigation contravenes basic separation-of-powers principles, violates Plaintiffs' equal protection rights, and guarantees significant voter and administrative confusion. This Court's intervention is urgently needed to restore the status quo and to ensure that the rules enacted by the North Carolina General Assembly are properly enforced. Failure to do so will incentivize other rogue actions by election administrators and partisan groups in the future.

A. The Board's Actions Offend Separation of Powers Principles, Violate the Elections Clause, Electors Clause, and the Equal Protection Clause, and Guarantee Election Chaos.

It is indisputably clear that the federal Constitution grants the North Carolina General Assembly exclusive authority to establish the time, place, and manner of federal elections within North Carolina. It is also indisputably clear that the unelected Board has no authority—and certainly no authority on the eve of a federal

election after votes have already been submitted—to impose arbitrary changes in the rules that the General Assembly has enacted. If permitted to stand, the Board's unlawful actions will deprive North Carolina citizens of the right to be treated equally in how their votes are counted, and will undermine the integrity of the federal election.

In declining to grant injunctive relief, the Fourth Circuit saw no problem in allowing the Board to second guess the judgment of the General Assembly by rewriting HB 1169, including undermining the postmark requirement and changing the ballot receipt deadline from 3 to 9 days. According to the Board, whether ballots are "illegally counted if they are received more than three days after Election Day depends on an issue of state law from which we must abstain." App. 013. That is clearly wrong.

The Constitution vests exclusive authority in the State legislature to establish the rules for federal elections within the state. *See* U.S. Const. art. 1, § 4, cl. 1 ("[T]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature therefore"); U.S. Const. art. II, § 1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct," electors for President and Vice President). Because that authority is a power that is "strictly and exclusively legislative," as a matter of federal constitutional law it cannot be transferred to executive branch officials. *Gundy v. United States*, 588 U.S. __, 139 S. Ct. 2116, 2127 (2019) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat) 1, 42–43 (1825)); *see also Cook v. Gralike*, 531 U.S. 510, 523 (2001) (state "may

regulate the incidents of [congressional] elections … only within the exclusive delegation of power under the Elections Clause"); *McPherson v. Blacker*, 146 U.S. 1, 27 (1892) (explaining that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing presidential electors) (emphasis added). As the dissent rightly recognized, "[t]he word 'legislature' was 'not of uncertain meaning when incorporated into the Constitution.'" App. 035 (Wilkinson, J. and Agee, J., dissenting) (quoting *Smiley v. Holm*, 285 U.S. 355, 365 (1932)); *see also Hawke v. Smith*, 253 U.S. 221, 227 (1920)).[5]

This should have been the end of the matter. As the Fourth Circuit dissent explains, nothing in North Carolina law attempts to delegate that authority to the Board. The election code repeatedly circumscribes the Board's role to issuing rules that do *not* conflict with statutes enacted by the General Assembly. *See* N.C. Gen. Stat. § 163-22(a) (providing that the Board's rules cannot "conflict with any provisions … of" North Carolina's election code); *see also id.* § 163-22.2 (providing that any emergency rules promulgated by the Board cannot "conflict with any provisions of . . .Chapter 163 of the General Statutes"). The General Assembly did not intend to grant the unelected Board such a pivotal role in our federal election. *See Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) (noting that a legislature is expected to speak clearly when it delegates power to make "decisions of vast economic and political significance"); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S.

[5] This case law is consistent with the original public meaning of those clauses. *See, e.g.*, The Federalist No. 59 (Alexander Hamilton) (describing how power over federal elections is neither "wholly in the national legislature, [n]or wholly in the State legislatures" but rather "primarily in the latter and ultimately in the former" but referring to no other part of government).

120 (2000). There is no argument that the Board wields general legislative power such that it has the "'power that makes laws'" in North Carolina. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 814 (2015) (quoting 2 A Dictionary of the English Language (1st ed. 1755)).

Indeed, the Board's "emergency powers" are limited to "conduct[ing] an election in a district where the normal schedule is disrupted by" a "natural disaster," "extremely inclement weather," or "an armed conflict." N.C. Gen. Stat. § 163-27.1. Responding to the COVID-19 pandemic does not fit within this narrow authority because the pandemic has not disrupted the "normal schedule"—the election will be held as scheduled on November 3. Moreover, the North Carolina General Assembly, acting in bipartisan fashion, enacted HB 1169 directly in response to the COVID-19 pandemic just a few months ago. The Board cannot now, on the eve of the election, invoke that *same pandemic* as an "emergency" to rewrite the unambiguous statute and upset the balance struck by the General Assembly.

This Court's precedent is clear that, under no circumstances may an executive branch agency "rewrite clear statutory terms to suit its own sense of how the statute should operate." *Utility Air Regulatory Grp.*, 573 U.S. at 328 (holding that federal agency lacks authority to rewrite "unambiguous numerical thresholds"); *see also id.* at 326 ("An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms"). "It is hard to imagine a statutory term less ambiguous than the precise numerical" requirement that ballots be received within three days to be lawfully counted. *Id.* Neither the Board, nor the Fourth

Circuit majority, has any authority "to rewrite clear statutes under the banner of [their] own policy concerns." *Azar v. Allina Health Servs.*, 587 U.S. __, 139 S. Ct. 184, 1815 (2018). And changing the numerical statutory requirement for receiving absentee ballots from 3 to 9 days is precisely the type of arbitrary numerical selection that requires legislative judgment. *Cf. Hoctor v. United States Dep't of Agric.*, 82 F.3d 165, 171 (7th Cir. 1996) (explaining why public notice-and-comment rulemaking is required when an agency makes numerical choices, even when exercising delegated authority).

Because the election code is clear and unambiguous, there is no basis for a federal court to abstain from preventing these alarming rule-of-law violations. *See Wisconsin v. Constantineau*, 400 U.S. 433, (1971) (abstention rules apply only "where 'the issue of state law is uncertain'") (quoting *Harman v. Forssenius*, 380 U.S. 528, 534 (1965)); *see also Stenberg v. Carhart*, 530 U.S. 914, 945 (2000) (same). As the Fourth Circuit dissent correctly recognizes, a "significant departure from [a State's] legislative scheme for appointing presidential electors" or for electing members of the federal Congress "presents a federal constitutional question" that federal courts must answer. *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring). That is because a state legislature's authority to set voting rules in federal elections is granted by the federal Constitution; it is not a residual authority that the states retained when they joined the union. As a result, "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest." *Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983); App. 037 (Wilkinson, J. and

Agee, J., dissenting) (explaining that authority of state legislatures to set time, place, and manner of elections is a federal constitutional power that cannot be usurped by other branches of state government).

As a matter of federal law, federal courts have a plain obligation to intervene in defense of state election statutes. *See Bush*, 531 U.S. at 112–14 (Rehnquist, C.J., concurring) (explaining this point). That is particularly true because the separation-of-powers violations here resulted from the Board's gamesmanship: after successfully defending North Carolina's election code in federal and state court, the Board improperly used a federal court order to justify issuance of the Numbered Memos as part of a state court settlement, and now seeks to prevent the federal judiciary from intervening to stop this lawlessness.

An injunction is also necessary to prevent a clear equal protection violation. Substituting its own policy preferences for those of the General Assembly, the Fourth Circuit majority contends that rewriting the statute, including changing the receipt requirement from 3 to 9 days, makes it easier for more people to vote, and asserts that "no one was hurt by the deadline extension." App. 012. But that line of reasoning cannot be reconciled with the basic separation-of-powers principles discussed above. As this Court has emphasized, "[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam).

The Fourth Circuit's reasoning is also wrongheaded. Through the majority's narrow lens, changing the voting requirements merely "removes burdens on other

citizens exercising their right to vote." App. 019-20 (Motz, J., concurring); *see also* App. 012 (finding no equal protection violation in part because "no voter [would] be treated differently than any other voter"). But the majority's equal protection analysis ignores how the Board's statutory rewrite treats voters differently in an arbitrary and disparate fashion. The Numbered Memos (in their relevant forms), which were first issued on September 22, 2020 are not retroactive, and became effective on October 19. On their face, they do not apply to the 594,727 voters cast their ballots prior to Monday, October 19.[6] *See* https://www.ncsbe.gov/ (providing updated totals). The Numbered Memos treat these otherwise similarly situated 594,727 voters differently than all subsequent voters in North Carolina.

As this Court has recognized, "[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another," because such unlawful action can also deny suffrage "by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Bush*, 531 U.S., at 104–05. The North Carolina Supreme Court has similarly recognized that counting ballots cast in contravention of North Carolina's election code "effectively disenfranchises those voters who cast legal ballots." *James v. Bartlett*, 359 N.C. 260, 270, 607 S.E.2d 638, 644 (2005) (quotation marks omitted). The majority cannot ignore this principle simply by assuming that ballots cast pursuant to the Board's

[6] *See* https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Absentee%20Stats%20for%202020%20General%20Election/Absentee_Stats_2020General_10192020.pdf.

unilateral change are in fact lawful, *see* App. 012, since that is precisely what is in dispute.

Two federal judges recognized that the Board's issuance of the Numbered Memos changes state law in violation of the right to equal protection. Judge Dever of the Eastern District of North Carolina recognized that the Board's actions "raise profound questions concerning arbitrariness and vote dilution." App. 154. As Judge Dever found, over 150,000 North Carolina voters (including Plaintiff Wise) had cast absentee ballots under the General Assembly's statutory scheme as of September 22 when the Board announced the Numbered Memos, and that number increased to 319,209 absentee ballots by the time the state court approved the Numbered Memos on October 2. *Id.* The Memos "materially changed the rules under which the election was taking place" by eliminating the Witness Requirement, extending the Receipt Deadline, and undermining the Assistance Ban. *Id.* at App. 154-55. Judge Dever explained that by issuing Numbered Memos 2020-19, 2020-22, and 2020-23, the Board "*ignored the statutory scheme* and arbitrarily created multiple, disparate regimes under which North Carolina voters cast absentee ballots," thereby violating the Constitution. *Id.* at App. 155 (emphasis added).

Judge Osteen of the Middle District of North Carolina similarly held that Plaintiffs' Equal Protection challenges "to the State Board of Elections' procedures for curing ballots without a witness signature and for the deadline extension for receipt of ballots" were likely to be successful on their merits. App. 052. Specifically, he emphasized that "[a] change in election rules that results in disparate treatment

shifts from constitutional to unconstitutional when these rules are also arbitrary." *Id*. at App. 099. With respect to this case, Judge Osteen found that the Board "engages in arbitrary behavior when it acts in ways that contravene the fixed rules or procedures the *state legislature has established* for voting and that fundamentally alter the definition of a validly voted ballot, creating 'preferred class[es] of voters,'" *id.* at App. 101 (internal citation omitted) (emphasis added). He ruled that the Board had acted in just this way by changing the voting provisions related to the Witness Requirement and the Receipt Deadline, *id.* at App. 102-08. He accordingly found that those violations warranted injunctive relief (though he declined to issue it, as discussed below).

The equal protection violation is clear, and is even more egregious when considered in light of the Board's flagrant disregard for the constitutional province of the state legislature. This type of "clear constitutional infirmity" warrants injunctive relief. *McCarthy v. Briscoe*, 429 U.S. 1317, 1321 (1976) (Powell, J., in chambers) (granting application for injunction in election case involving placement of candidate's name on ballot).

B. *Purcell* Does Not Prohibit Injunctive Relief and Supports Intervention Under These Circumstances.

This Court's intervention is especially warranted because the lower court's failure to grant relief turned on a misinterpretation of this Court's precedent. The district court recognized the need for injunctive relief and would have granted it but for its understanding of *Purcell*. *See* App. 139. The district court interpreted *Purcell* as implicating only federal court intervention, *see id.* at App. 116, and the Fourth

Circuit agreed, *see* App. 009. That misunderstands this Court's precedent. *Purcell* does not bar injunctive relief here and actually encourages it.

Under the district court's reasoning, the only bar to injunctive relief was *Purcell*, meaning that if *Purcell* does not apply then an injunction should have issued. *See* App. 139 ("[U]nder *Purcell* and recent Supreme Court orders relating to *Purcell*, this court is of the opinion that it is required to find that injunctive relief should be denied at this late date, even in the face of what appear to be clear violations."). The Fourth Circuit then ruled that *Purcell* does not cover "action by state courts and state executive agencies acting pursuant to a legislative delegation of authority." App. 010. It reached that conclusion based on its misreading of *Andino v. Middleton*, No. 20A55, 592 U.S. ___, 2020 WL 5887393 (Oct. 5, 2020). According to the Fourth Circuit, *Andino* stands for the proposition that *Purcell* applies only to federal courts. *See* App. 010. If that were so, however, the Fourth Circuit's ruling that *Purcell* does not apply to actions by state agencies should have led it to conclude that the district court abused its discretion when it failed to issue a preliminary injunction against the Numbered Memos. Put differently, if the district court would have issued an injunction absent *Purcell* (and it said that was the case), then the Fourth Circuit's finding that *Purcell* does *not* apply should have led it to reverse the district court and issue an injunction.

If *Purcell does* apply in this context, then an injunction is also required. With less than two weeks until the election, we are within the "sensitive timeframe" under *Purcell*. *See* 549 U.S. at 3 (applying principle where court of appeals granted

injunction on October 5, with election on November 7). Inside this timeframe, *Purcell* instructs that federal courts should "weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures," taking into account how "[c]ourt orders affecting elections, especially conflicting orders, can . . . result in voter confusion." 549 U.S. at 4–5. One of the considerations specific to elections cases, as the dissent recognized, is that the U.S. Constitution "granted state legislatures a new power they did not possess before ratification: the power to set the rules for federal elections." App. 037. Indeed, "States may regulate the incidents of such elections, including balloting, only within the exclusive delegation of power under the Elections Clause." *Gralike*, 531 U.S. at 523. Accordingly, under *Purcell*, federal courts must protect voters from confusion by preserving the status quo of statutes duly enacted by the state legislature. .

The facts of *Purcell* and the recent *Andino* case support this understanding. In *Purcell*, the Supreme Court overruled the court of appeals' injunction of Arizona's voter identification statute in the weeks before the election, allowing the election to proceed under the state's duly-enacted statutes. 549 U.S. at 2. Similarly, in the recent *Andino* case, this Court protected South Carolina's statutory witness requirement by staying a district court injunction that prohibited the state from enforcing that requirement in the upcoming election. *Andino*, 2020 WL 5887393. Justice Kavanaugh emphasized the importance of protecting requirements *adopted by the legislature*, stating in a concurrence that a "*[s]tate legislature's* decision either

to keep or make changes to election rules to address COVID-19 ordinarily should not be subject to" judicial second-guessing.[7] *Id.* at *2 (quotation marks omitted).

This case presents the same concerns that animated *Purcell*, but in more extreme form: the Board implemented significant new election rules several weeks after voting began and only weeks before Election Day; there is a high risk of voter confusion in light of these changes; and administrators will also be confused and subject to additional work in terms of learning the new procedures and processing ballots. The record supports this position. Tripling the extension of the receipt deadline from three days after Election Day to nine days, and undermining the postmark requirement, in addition to blatantly undermining statutes duly enacted by the General Assembly to prevent ballot harvesting, risks giving procrastinating voters another excuse to wait, and perhaps miss the postmark deadline, or even mislead voters if it turns out that the extension is overturned on appeal before Election Day. The election code sets the county canvass date at November 13, N.C. Gen. Stat. Ann. § 163-182.5, meaning the extension of the ballot receipt deadline to November 12 risks imposing significant administrative difficulties on county boards already struggling with a many-fold increase in absentee ballots. The new

[7] Recent decisions from the courts of appeals provide further support for this reading. *See Tully v. Okeson*, No. 20-2605, 2020 WL 5905325, at *1 (7th Cir. Oct. 6, 2020) (relying on *Purcell* to affirm district court's order denying an injunction that would force Indiana to permit unlimited mail-in voting); *Ariz. Democratic Party v. Hobbs*, No. 20-16759, 2020 WL 5903488, at *1 (9th Cir. Oct. 6, 2020) (granting state's emergency motion for stay of district court's order enjoining absentee ballot signature deadline); *New Ga. Project v. Raffensperger*, No. 20-13360-D, 2020 WL 5877588, at *1 (11th Cir. Oct. 2, 2020) (staying district court's injunction because lower court "manufactured its own ballot deadline so that the State [was] required to count any ballot that was both postmarked by and received within three days of Election Day").

requirement that the county boards seek evidence that ballots without a clear postmark may have been sent by election day imposes additional burden. The Board's actions also flout a three-judge state court's finding on September 3 (one day before voting began) that the equities did not support a change to state election laws due to the proximity of the election, the tremendous costs that an injunction would impose on the State, and the confusion such a decision would create for voters. *See Chambers v. North Carolina*, Case No. 20-CVS-500124, Order (Sup. Ct. Wake Cnty. Sept. 3, 2020). All of this is a recipe for the "chaos" that, as the majority concedes, App. 011 n.6, *Purcell* is supposed to prevent. The General Assembly, not the Board or even the Fourth Circuit, is the appropriate body to make these delicate judgments.

If a three-judge state court found on September 3 that it was too late to change North Carolina's statutory election scheme, then it was too late for the Board to do so on October 2, and certainly too late for the Board to do so on October 19 (when the North Carolina Court of Appeals lifted its stay). The majority tries to avoid this obvious conclusion through *ipse dixit*: "The state court issued an order approving the Consent Judgment on October 2. This October 2 order established the relevant status quo for Purcell purposes." App. 006. But the Fourth Circuit cites no support for that assertion, which is factually inaccurate: the Numbered Memos did not become effective until the North Carolina Court of Appeals lifted its temporary stay on October 19.

The Fourth Circuit also fails to account for Judge Dever's correct finding that the status quo for this case is North Carolina's duly-enacted statutory code, not the

Board's unilateral changes. *See, e.g.*, App. 155 ("The [Board] inequitably and materially upset the electoral status quo in the middle of an election by issuing the memoranda and giving the memoranda legal effect via the October 2, 2020 consent judgment."). Contrary to the Fourth Circuit's suggestion, *Andino* supports this position because that case focused on avoiding changes to state *legislative* enactments. *See Andino*, 2020 WL 5887393, at *2 (Kavanaugh, J., concurring), (referring to the "*[s]tate legislature's* decision either to keep or make changes to election rules" in response to the COVID-19 pandemic) (emphasis added). *Andino* confirms that the status quo is what the state legislature enacts, not what the state executive imposes.

The upshot of all this is clear: if the Fourth Circuit is taken at its word that *Purcell* does not apply, then it should have issued an injunction. And if *Purcell* does in fact allow federal courts to enjoin the unconstitutional actions of state executive actors, then there is no case which more clearly qualifies for injunctive relief under *Purcell*. Either way, an injunction should issue.

II. Plaintiffs Satisfy the Remaining Requirements For Injunctive Relief.

Under 28 U.S.C. § 1651, an injunction is appropriate if it is "necessary or appropriate in aid of" the Court's jurisdiction. *See Turner Broad. Sys., Inc.*, 507 U.S. at 1301. This Court has "consistently applied [§ 1651] flexibly and in conformity with" the principle that "a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *United States v. New York Tel. Co.*, 434 U.S. 159, 172–73 (1977) (quotation marks omitted).

For the reasons explained above, only an emergency injunction can stop the Board's rule-of-law violations, protect Plaintiffs' constitutional rights, and prevent electoral chaos. The unique history of this case—including the Board's initial defense of North Carolina's election code, its about-face when negotiating a settlement with advocacy groups, and then its blatant disregard for state law and equal protection through its issuance of the Numbered Memos—compels an injunction. *See Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Sebelius*, 571 U.S. 1171 (2014) (issuing injunction "based on all the circumstances of the case"). No other legal remedy will suffice at this late stage. *See Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999) ("The All Writs Act invests a court with a power essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law."). An injunction is also necessary to protect this Court's power to ensure that it is able to grant full relief necessary to protect Plaintiffs and the integrity of the federal election. *Cf. New York Tel. Co.*, 434 U.S. at 172 ("This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.").

Plaintiffs have also shown that "there is a likelihood that irreparable injury will result if relief is not granted." *Am. Trucking Ass'ns, Inc.*, 483 U.S. at 1308. "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). The violation of Plaintiffs'

equal protection rights is also a form of irreparable injury. *See CBS, Inc. v. Davis*, 510 U.S. 1315 (1994) (Brennan, J., in chambers) (granting stay where irreparable harm would have resulted from First Amendment violation). Plaintiffs would also suffer irreparable harm because Election Day is only days away and they will likely lose any prospect of meaningful relief should the Board continue to implement its Numbered Memos. *See Williams*, 89 S. Ct. at 2 (1968) (Stewart, J., in chambers) (granting injunction in election case where failing to do so would lead to "difficult if not insurmountable practical problems" in terms of the ability to grant later relief). Finally, there is no risk of harm to the public because the public interest strongly favors safeguarding "public confidence in the integrity of the electoral process." *Crawford v. Marion Cty Election Bd.*, 553 U.S. 181, 197 (2008). Changing the voting landscape now would create uncertainty and confusion among voters. In contrast, granting the requested relief ensures that the election laws enacted by the North Carolina General Assembly are carried out appropriately.

III. There Are No Valid Reasons To Deny Injunctive Relief.

The Fourth Circuit cited several additional reasons to deny relief in this case, but as the dissenting judges recognized, none have merit. Nothing prevents this Court from granting the requested relief.

First, with respect to standing, Plaintiff Wise has standing to bring an Equal Protection Clause challenge because she cast an absentee ballot before the Board changed the absentee voting rule regarding the receipt deadline. North Carolina law recognizes that counting invalid ballots constitutes a harm to those who have cast valid ballots. *James*, 359 N.C. at 270. She has therefore alleged the concrete and

particularized injury of being arbitrarily and disparately subject to a different set of procedures than prospective voters who would vote in compliance with the challenged Board provision. *See Bush*, 531 U.S. at 104–05; *see also* App. 033 (Wilkinson, J. and Agee, J., dissenting) (stating that the plaintiffs have standing because the Board's procedural changes "arbitrarily and disparately treats them differently from other voters"). "The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance." *Spokeo, Inc. v. Robins*, 578 U.S. __, 136 S. Ct. 1540, 1548 n.7 (2016); *see also Fed. Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998) ("Often the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found 'injury in fact.' . . . This conclusion seems particularly obvious where (to use a hypothetical example) . . . *large numbers of voters suffer interference with voting rights conferred by law*.") emphasis added).

Second, Plaintiffs are not collaterally estopped from raising their claims in federal court. As this Court explained in *Arizona v. California*, 530 U.S. 392, 414 (2000), "consent judgments ordinarily support claim preclusion but not issue preclusion." (citation omitted). Accordingly, any overlapping issues between the state and federal actions do not prohibit Plaintiffs from challenging the Numbered Memos on federal grounds. Moreover, Plaintiffs in this case were not parties to the Consent Judgment—indeed a subset of the current Plaintiffs opposed the Consent Judgment—and do not have a relationship with the prior plaintiffs sufficient to

establish privity. *See State ex rel. Tucker v. Frinzi*, 344 N.C. 411, 416, 474 S.E.2d 127, 130 (N.C. 1996).

Third, abstention "rarely should be invoked, because the federal courts have a 'virtually unflagging obligation ... to exercise the jurisdiction given them.'" *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *Pullman* abstention does not apply because the Board's authority to issue the Numbered Memos raises federal questions that cannot be answered by state law (or, at the least, present no unsettled issues of state law). In addition, Plaintiffs' challenge to the ballot-receipt extension, postmark revision, and loosening of ballot harvesting restrictions implicates the United States Constitution, and does not involve a "sensitive area of social policy upon which the federal courts ought not to enter." *Moore v. Sims*, 442 U.S. 415, 428 (1979).

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enjoin the Board from implementing its Numbered Memos and enter any other relief it deems proper.

Respectfully submitted,

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