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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER,

Plaintiffs,

vs.

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

Defendants.

Civil Action

No. 20-cv-457

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND REQUEST TO EXPEDITE

Plaintiffs Democracy North Carolina ("DemNC") and the League of Women Voters of North Carolina ("LWVNC" and, together with DemNC, the "Organizational Plaintiffs"), as well as Donna Permar, John P. Clark, Margaret B. Cates, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, Walter Hutchins, and Susan Schaffer ("Individual Plaintiffs") (together, with the Organizational Plaintiffs, the "Plaintiffs"), hereby respectfully request, pursuant to Federal Rule of Civil Procedure 65(a)(1), that the Court issue a preliminary injunction preventing Defendants from enforcing the challenged provisions of North Carolina's election code, Chapter 163 of the North Carolina General Statutes, and requiring Defendants to provide additional accommodations to safeguard voters' rights during the November 3, 2020, general election in light of the COVID-19 pandemic.

As set forth in Plaintiffs' First Amended Complaint, ECF No. 8, North Carolina's current law and election administration impose unconstitutional burdens on the right to vote in violation of the First and Fourteenth Amendments, violate the unconstitutional conditions doctrine, violate Plaintiffs' First Amendment associational rights, violate Plaintiffs' rights to procedural due process, violate Section

208 of the Voting Rights Act, and violate Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12131, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The COVID-19 pandemic presents an unprecedented challenge to the upcoming November 3, 2020, general election. The experience of states that have already conducted their primaries has shown that the pandemic has deterred voters, strained election administrators' finite resources, and ultimately disenfranchised countless citizens. Defendant the State Board of Elections anticipates an unprecedented, ten-fold increase in the use of mail-in absentee ballots relative to the 2016 general election and a drastic shortfall in available poll workers that threatens the operation of polling places. Yet, Defendants remain unprepared to manage that level of absentee mail-in voting or to adapt in-person voting to ensure both safety and equal access. These and other statutory provisions pose a grave threat to voters' health and therefore severely burden the most fundamental right of U.S. citizenship, no matter how voters exercise it.

Preliminary injunctive relief is warranted—(1) Plaintiffs are likely to succeed on the merits of their

claims; (2) they will likely suffer irreparable harm absent an injunction; (3) the balance of hardships weighs in their favor; and (4) the injunction is in the public interest. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). Absent relief from this Court, voters will needlessly face great hardship and disenfranchisement in the November 3, 2020, general election.

Accordingly, Plaintiffs request that the Court preliminary enjoin Defendants from administering and enforcing for the November 3, 2020, general election:

i. Gen. Stat. §§ 163-82.6(d) and 163-82.20(g), (h), imposing 25-day voter registration deadlines;

ii. N.C. Gen. Stat. § 163-230.2(a), requiring requests for absentee ballots be made by a form created by the State Board of Elections;

iii. N.C. Gen. Stat. § 163-230.2(a)(4), (f), to the extent that it limits the proof of residency documents that voters must submit with their absentee ballot request forms to only a North Carolina driver's license number, special identification card number, or the last four digits of his or her Social Security number, and instead

allow election officials to accept any proof of residency document acceptable under the Help America Votes Act (HAVA);

iv. N.C. Gen. Stat. §§ 163-226.3(a)(4)-(5), 163-230.2(e)(4), 163-231(a), and 163-231(b)(1), imposing restrictions on assistance for absentee ballot request return, absentee ballot marking and completion, and absentee ballot submission;

v. N.C. Gen. Stat. § 163-231(a), imposing the double-witness certification requirement;

vi. N.C. Gen. Stat. § 163-227.6(c), requiring uniform hours in precincts; and

vii. N.C. Gen. Stat. § 163-42(b), requiring a majority of poll workers to come from the precinct in which they serve.

Plaintiff further request that the Court preliminarily enjoin Defendants from violating Plaintiffs' constitutional and federal statutory rights with respect to any election in the state for the November 3, 2020, general election.

Plaintiffs further request that the Court issue an order requiring the SBE Defendants to extend the voter registration deadline in N.C. Gen. Stat. §§ 163-82.6(d) and 163-82.20(g),

(h), until 5:00 pm on the last Saturday of early voting and the DOT and DHHS Defendants to process voter registrations online and received in their offices up until and including 5:00 pm on the last Saturday of early voting for the November 3, 2020, general election, and further order Defendants to implement measures to ensure eligible North Carolinians are able to vote in the state during the COVID-19 pandemic, including:

a. Expanding voter registration via online portals available through DHHS services;

b. Establishing contactless drop boxes for absentee ballots;

c. Establishing mechanisms for requesting absentee ballots by phone, email, and online;

d. Permitting election officials to accept any proof of residency document acceptable under the Help America Votes Act (HAVA) as acceptable forms of identification with absentee ballot requests;

e. Establishing mechanisms to cure deficient absentee ballot requests and absentee ballots; Establishing a mechanism for accepting FWAB ballots;

f. Establishing a more accessible, centralized way in which voters and advocates can monitor precinct consolidation; and

g. Permitting voters who for reason of blindness, disability, or an inability to read or write, require assistance to return an absentee ballot request form, mark and complete an absentee ballot, and/or submit an absentee ballot, to obtain assistance from anyone who is not their employer or union representative.

Plaintiffs further request the Court order Defendants to implement a remedial plan to educate voters regarding their options to register to vote and obtain and cast a ballot.

Given the urgency of the relief sought, Plaintiffs respectfully request expedited briefing and consideration of this Motion, and that the Court shorten the requirements of Local Civil Rule 7.3 to require Defendants' response within 14 days of service of this Motion and Plaintiffs' reply within 7 days of service of the response. Defendants, through counsel, consent to the request to expedite briefing and consideration. Finally, Plaintiffs respectfully request for leave to present oral argument in support of this Motion.

This Motion is supported by the contemporaneously filed Memorandum of Law, and accompanying declarations, and any additional submissions that may be considered by the Court.

Dated: June 5, 2020.

Respectfully submitted,

/s/ Jon Sherman
Jon Sherman*
D.C. Bar No. 998271
Michelle Kanter Cohen*
D.C. Bar No. 989164
Cecilia Aguilera*
D.C. Bar No. 1617884
FAIR ELECTIONS CENTER
1825 K St. NW, Ste. 450
Washington, D.C. 20006
Telephone: (202) 331-0114
Email:
jsherman@fairelectionscenter.org
mkantercohen@fairelectionscenter.org
caguilera@fairelectionscenter.org

/s/ Allison Riggs
Allison J. Riggs (State Bar #40028)
Jeffrey Loperfido (State Bar #52939)
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Facsimile: 919-323-3942
Email:
Allison@southerncoalition.org
jeff@southerncoalition.org

/s/ George P. Varghese
George P. Varghese (Pa. Bar No. 94329) Joseph J. Yu (NY Bar No. 4765392)
Stephanie Lin (MA Bar No. 690909)
Rebecca Lee (DC Bar No. 229651)
Richard A. Ingram (DC Bar No. 1657532)
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

Email:
george.varghese@wilmerhale.com
joseph.yu@wilmerhale.com
stephanie.lin@wilmerhale.com
rebecca.lee@wilmerhale.com
rick.ingram@wilmerhale.com

CERTIFICATE OF SERVICE

I certify that on the 5th day of June, 2020, the foregoing Motion for Preliminary Injunction and Request to Expedite was served by electronic mail to Defendants' Counsel, Alec McC. Peters, Chief Deputy Attorney General, at the address apeters@ncdoj.gov, with consent of counsel to accept service in this manner.

/s/ Allison J. Riggs
Allison J. Riggs

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER,

Plaintiffs,

vs.

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

Defendants.

Civil Action

No. 20-cv-457

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION AND REQUEST TO EXPEDITE*

* This memorandum exceeds the page limits set forth in Local Rule 7.3. The parties have filed a motion to expand the page limits for this memorandum. ECF No. 7.

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF FACTS 6

I. The COVID-19 Pandemic 6

A. COVID-19 6

B. North Carolina's Response to COVID-19 10

C. Election Administration Timing 12

QUESTIONS PRESENTED 14

LEGAL STANDARD 15

ARGUMENT 15

I. Plaintiffs are likely to succeed on the merits of their claims. 15

A. Undue Burdens on the Right to Vote 15

i. Voter registration 17

ii. Absentee Ballot Requirements 21

iii. In-Person Voting Restrictions 39

B. Unconstitutional Condition on the Right to Vote 48

C. Violation of the Organizational Plaintiffs' and Plaintiff Schaffer's First Amendment Rights to Free Speech and Association 54

D. Procedural Due Process 59

E. Violation of Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131 et seq.) and § 504 of the Rehabilitation Act (29 U.S.C. § 794) 62

F. Violation of Section 208 of the Voting Rights Act of 1965, 52 U.S.C. § 10508) 70

II. Absent injunctive relief, Plaintiffs will suffer irreparable harm in the November general election. 71

III. ... Given the dire circumstances of this deadly global pandemic, the balance of hardships tips heavily in Plaintiffs' favor. 74

IV. The public interest strongly favors granting Plaintiffs' requested relief to facilitate participation in the general election..... 75

REQUEST FOR EXPEDITED CONSIDERATION 76

CONCLUSION..... 77

TABLE OF AUTHORITIES

Federal Cases

A Helping Hand, LLC v. Baltimore Cty.,
515 F.3d 356 (4th Cir. 2008)

Action NC v. Strach,
216 F. Supp. 3d 597 (M.D.N.C. 2016)

Anderson v. Celebrezze,
460 U.S. 780 (1983)

Ariz. Free Enter. Club's Freedom Club PAC v. Bennett,
564 U.S. 721 (2011)

United States v. Baker,
45 F.3d 837 (4th Cir. 1995)

Bourgeois v. Peters,
387 F.3d 1303 (11th Cir. 2004)

Bragdon v. Abbott,
524 U.S. 624 (1998) (HIV)

Buckley v. Am. Constitutional Law Found,
525 U.S. 182 (1999)

Burdick v. Takushi,
504 U.S. 428 (1992)

Cleveland Bd. of Educ. v. Loudermill,
470 U.S. 532 (1985)

Clingman v. Beaver,
544 U.S. 581 (2005) (O'Connor, J., concurring)

Common Cause Ga. v. Kemp,
347 F. Supp. 3d 1270 (N.D. Ga. 2018)

Common Cause Ind. v. Lawson,
327 F. Supp. 3d 1139 (S.D. Ind. 2018)

Crawford v. Marion Cty. Election Bd.,
553 U.S. 181 (2008)

Cross v. Mokwa,
547 F.3d 890 (8th Cir. 2008) (Bye, J.,
concurring in part)

Davis v. Nat'l R.R. Passenger Corp.,
733 F. Supp. 2d 474 (D. Del. 2010)

Democratic Nat'l Comm. v. Republican Nat'l Comm.,
Nos. 20-1538 & 20-1546 (7th Cir. Apr. 3, 2020)

Fish v. Schwab,
957 F.3d 1105 (10th Cir. 2020)

Fusaro v. Cogan,
930 F.3d 241 (4th Cir. 2019)

Gill v. Whitford,
138 S. Ct. 1916 (2018)

Harman v. Forssenius,
380 U.S. 528 (1965)

Heiko v. Colombo Sav. Bank, F.S.B.,
434 F.3d 249 (4th Cir. 2006)

Kallstrom v. City of Columbus,
136 F.3d 1055 (6th Cir. 1998)

Kusper v. Pontikes,
414 U.S. 51 (1973)

League of Women Voters of N.C. v. North Carolina,
769 F.3d 224 (4th Cir. 2014)

League of Women Voters of Ohio v. Brunner,
548 F.3d 463 (6th Cir. 2008)

League of Women Voters of U.S. v. Newby,
838 F.3d 1 (D.C. Cir. 2016)

Lefkowitz v. Cunningham,
431 U.S. 801 (1977)

Libertarian Party of Ill. v. Pritzker,
No. 20-CV-2112, 2020 WL 1951687 (N.D. Ill. Apr. 23, 2020)

McCabe v. Sharrett,
12 F.3d 1558 (11th Cir. 1994)

Mem'l Hosp. v. Maricopa Cty.,
415 U.S. 250 (1974)

Meyer v. Grant,
486 U.S. 414 (1988)

Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.,
22 F.3d 546 (4th Cir. 1994)

Myers v. Hose,
50 F.3d 278 (4th Cir. 1995)

N.C. State Conf. of NAACP v. Cooper,
430 F. Supp. 3d 15 (M.D.N.C. 2019)

Nat'l Fed'n of the Blind v. Lamone,
813 F.3d 494 (4th Cir. 2016)

Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.,
354 F.3d 249 (4th Cir. 2003)

Norman v. Reed,
502 U.S. 279 (1992)

Saucedo v. Gardner,
335 F. Supp. 3d 202 (D.N.H. 2018) (applying *Mathews* and concluding that the state's scheme "fails to guarantee basic fairness")

Seremeth v. Bd. of Cty. Comm'rs Frederick Cty,
673 F.3d 333 (4th Cir. 2012)

Shapiro v. Thompson,
394 U.S. 618 (1969)

Simmons v. United States,
390 U.S. 377 (1968)

Snider Int'l Corp. v. Town of Forest Heights,
739 F.3d 140 (4th Cir. 2014)

Thomas v. Andino,
No. 3:20-cv-01552-JMC, 2020 WL 2617329 (D.S.C. May 25, 2020)

Ury v. Santee,
303 F. Supp. 119 (N.D. Ill. 1969)

Wilkinson v. Austin,
545 U.S. 209 (2005)

Williams v. Rhodes,
393 U.S. 23 (1968)

Winter v. Natural Res. Def. Council, Inc.,
555 U.S. 7 (2008)

Zessar v. Helander,
No. 05 C 1917, 2006 WL 642646 (N.D. Ill. Mar. 13, 2006)

State Cases

League of Women Voters of Okla. v. Ziriax,
No. 118765, 2020 WL 2111348 (Okla. May 4, 2020)

Federal Statutes

29 U.S.C. § 794(a)

42 U.S.C. § 1983

42 U.S.C. § 12132

52 U.S.C. §§ 20302(a)(3), 20303(a)(1)

52 U.S.C. § 20303(b)

Americans with Disabilities Act Title II (42 U.S.C. §§ 12131 et seq.)

Rehabilitation Act § 504 (29 U.S.C. § 794)

Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 *et seq.*

State Statutes

An Act to Amend the Laws Governing Mail-In Absentee Ballots, S.L. 2019-239

N.C. Gen. Stat. § 163-23.2

N.C. Gen. Stat. § 163-42(b)

N.C. Gen. Stat. § 163-82.6(c)

N.C. Gen. Stat. §§ 163-82.6(d), 163-82.20(g), (h)

N.C. Gen. Stat. § 163-128(a)

N.C. Gen. Stat. § 163-226(a)

N.C. Gen. Stat. §§ 163-226.3(a)(4) and 163-237(b)(1)

N.C. Gen. Stat. §§ 163-226.3(a), 163-229(b)(4), 163-231(a)

N.C. Gen. Stat. § 163-227.2(b)

N.C. Gen. Stat. § 163-227.6(c)

N.C. Gen. Stat. § 163-228(c)

N.C. Gen. Stat. § 163-230.2(a)(4), (f)

N.C. Gen. Stat. § 163-230.2(a), (e)(1)

N.C. Gen. Stat. § 163-230.2(e)1

N.C. Gen. Stat. § 163-230.2 (e)(2)

N.C. Gen. Stat. § 163-231(a)

N.C. Gen. Stat. § 163-237

N.C. Gen. Stat. §§ 163-274, 163-275

Regulations

10 C.F.R. § 4.101

28 C.F.R. § 35.108(b)(2)

28 C.F.R. § 35.164

28 C.F.R. § 36.105(c)(1)

Other Authorities

Local Civil Rule 7.3(f)

INTRODUCTION

The COVID-19 pandemic has upended the normal functioning of our democracy. State officials nationwide have attempted to ensure that voters can cast their ballots safely. Some states have postponed their elections, while others have shifted to mail-in voting only. In states that have maintained in-person voting in the face of the pandemic, thousands of elderly poll workers have withdrawn from service, drastically reducing the number of operational polling sites. The experience of states that have already conducted their primaries has shown that the pandemic has deterred voters, strained election administrators' finite resources, and ultimately disenfranchised countless citizens.

In North Carolina, Defendant the North Carolina State Board of Elections ("SBE") anticipates an unprecedented, ten-fold increase in the use of mail-in absentee ballots relative to the 2016 general election as voters seek to maintain physical distancing and limit their exposure to the novel coronavirus that causes COVID-19. Yet Defendants remain unprepared to manage that level of absentee mail-in voting or to adapt in-person voting to ensure both safety and equal access. North Carolina's election code was not enacted with

a global pandemic in mind, let alone one of this ferocity. And in the context of a pandemic caused by a highly contagious and lethal virus, a number of statutory provisions pose a grave threat to voters' health and therefore severely burden the most fundamental right of U.S. citizenship, no matter how voters exercise it. Absent relief from this Court, voters will needlessly face great hardship and disenfranchisement.

First, the 25-day deadline to register to vote must be lifted to ensure adequate opportunities for voters to safely complete the registration process. In a typical presidential election year, voters register in robust and increasing numbers. This year, however, registration rates have cratered as in-person registration drives have been cancelled and other in-person opportunities for registration have disappeared. Normally, this fallout would be mitigated by the opportunity to register at an early voting site within the 25-day window, but this option risks exposing voters and their families to infection.

Second, in light of the pandemic, voting by mail should theoretically be a safer option for many North Carolina voters, but the absentee ballot laws require voters to take unreasonable risks with their health. North Carolina's

restrictions on requesting, completing, and submitting a mail-in absentee ballot—including the requirement that voters complete their ballot in the presence of two witnesses—have already caused at-risk and quarantined voters to conclude that they will not be able to participate in the November election.

Third, restrictions on the administration of in-person voting must be relaxed to safeguard voters' rights, as well as their health. For example, requiring that a majority of poll workers reside in the precinct where they serve will result in inadequate staffing; the risk of exposure to COVID-19 is already causing dire shortfalls in poll worker recruitment. The additional requirement under North Carolina law that counties maintain uniform hours for early voting sites will further reduce early voting capacity. Both of these provisions will lead to long lines and large crowds, forcing voters to violate social distancing directives to exercise the right to vote.

Plaintiffs Donna Permar, John P. Clark, Margaret B. Cates, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, and Walter Hutchins, similar to many others in North Carolina, live with underlying health conditions and/or

disabilities that heighten their risks of severe complications and death from COVID-19. If this Court does not relax the state's unconstitutionally burdensome registration and voting requirements for mail-in absentee and in-person voting—relief that Plaintiffs request solely for the November 2020 general election—Plaintiffs and countless North Carolina voters will not be able to vote in that election, or will have to choose between forgoing this right and risking their health and the health of their family members.

The time to act is *now*. Epidemiologists and infectious disease specialists predict that COVID-19 infections will surge in the fall. Election administration procedures follow an inexorable timeline, and the necessary steps—to procure equipment such as personal protective equipment ("PPE"), designate polling places, print mail-in ballots with instructions, educate the electorate about voting procedures, and recruit and train poll workers—must begin well in advance of Election Day. Absent timely intervention by this Court, Plaintiffs will suffer irreparable injury.

Plaintiffs Democracy North Carolina (DemNC) and the League of Women Voters of North Carolina ("LWVNC" and, together with DemNC, the "Organizational Plaintiffs"), as

well as Donna Permar, John P. Clark, Margaret B. Cates, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, Walter Hutchins, and Susan Schaffer ("Individual Plaintiffs") (collectively, "Plaintiffs"), bring this civil rights action under the First and Fourteenth Amendments, Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act (the "RA"), 29 U.S.C. § 794, as enforced by 42 U.S.C. § 1983, for preliminary declaratory and injunctive relief against Defendants SBE; Damon Circosta, in his official capacity as Chair of SBE; Stella Anderson, in her official capacity as Secretary of SBE; Ken Raymond, Jeff Carmon III, and David C. Black, all in their official capacities as Members of SBE; Karen Brinson Bell, in her official capacity as Executive Director of the State Board of Elections (collectively "SBE Defendants"); Defendants the North Carolina Department of Transportation ("DOT") and J. Eric Boyette, in his official capacity as Secretary of the Department of Transportation (the "DOT Defendants"); and Defendants the North Carolina Department of Health and Human Services ("DHHS") and Dr. Mandy Cohen, in her official capacity as Secretary of Health and Human Services ("DHHS Defendants"). Plaintiffs seek an

injunction against the voting laws that will most interfere with conducting a free and fair election in the fall, and respectfully request that the Court expedite the briefing and consideration of this issue.

STATEMENT OF FACTS

I. The COVID-19 Pandemic

A. COVID-19

"SARS-CoV-2 is a newly identified coronavirus that is the causative agent involved in Coronavirus Disease 2019 (Covid-19)." Murray Decl. ¶ 6. The World Health Organization ("WHO") designated COVID-19 to be a Public Health Emergency of International Concern on January 30, 2020, then declared less than two months later that COVID-19 had become a pandemic. Riggs Decl. ¶ 6.

The coronavirus continues to spread at an unprecedented pace. As of June 4, 2020, there were 1,842,101 confirmed cases and 107,029 deaths in the United States.[1] This virus spreads through respiratory droplets that are attached to the surfaces of objects or are suspended in air and transmitted

[1]Coronavirus Disease 2019 (COVID-19), *Cases in the U.S.*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last updated June 4, 2020).

via inhalation and "emitted during coughs, sneezes or even talking." Murray Decl. ¶¶ 8–9. Since it can be transmitted by symptomatic and asymptomatic people alike, individuals can spread the disease before realizing they are infected and self-quarantining. *Id.* ¶ 9.

Though COVID-19 typically begins with "a flu-like illness that starts out with fever, cough, sore throat and shortness of breath," some people "develop much more serious illness, characterized by respiratory compromise due to pneumonia that can be gradual or sudden." Murray Decl. ¶¶ 14–15. The major complication in patients with severe disease is acute respiratory distress syndrome ("ARDS"), which commonly requires patients to be put on a ventilator. *Id.* ¶ 16. People who develop severe complications and require mechanical ventilation to survive ARDS "are likely to develop lung scarring that may permanently impair their pulmonary function" or, in the case of stroke, "long term neurological deficits from these events." *Id.* ¶ 19. In critical cases, COVID-19 can be fatal. *Id.* ¶ 16. Even young individuals, including children, are at risk of severe complications and death from COVID-19. *Id.* ¶¶ 16, 20.

According to the CDC, individuals are at higher risk of severe complications and death from COVID-19 if they are 65 years of age or older, are immunocompromised, or have underlying health conditions and diseases, including chronic lung disease such as chronic obstructive pulmonary disease ("COPD"), asthma, serious heart conditions, diabetes, and severe obesity. Riggs Decl. ¶ 7; Murray Decl. ¶¶ 20-21.

The COVID-19 pandemic is expected to produce steady or increased transmission in the United States through the fall, as voters seek to cast their ballots on or before Election Day. Dr. Megan Murray notes in her declaration that within the range of different possible scenarios for COVID-19 epidemic trajectories, "all scenarios are similar in that they predict that it is highly likely that Covid-19 will continue to circulate at its current level or at an even higher level than currently in October and November of 2020." *Id.* ¶ 33. Likewise, Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, has said a second wave of infections in the United States is "inevitable," and CDC Director Robert Redfield has said that wave may "be even more difficult than the one we just went through." Riggs Decl. ¶ 8.

Due to the relaxation of social distancing measures, the corresponding increase in social contacts, and seasonal changes, "it is reasonable to expect that, like other beta-coronaviruses, [COVID-19] may transmit somewhat more efficiently in fall and winter than summer." Murray Decl. ¶¶ 37–39. The projected persistent or increased risk of transmission in the fall and winter is, in part, due to seasonal factors, including "differences in the ways people congregate," as "people tend to spend more time indoors with less ventilation and less personal space than they do in the summer." *Id.* ¶ 39. Based on studies of previous influenza epidemics, Dr. Murray notes that the "most likely scenario" is that "the current first wave of Covid-19 will be followed by a larger wave in the fall or winter of 2020 and one or more smaller subsequent waves in 2021," and that "most epidemiologists expect that incidence will increase in the fall/winter months of 2020-2021." *Id.* ¶¶ 41–42. "In the period prior to the widespread use of an effective vaccine, this spread will continue to lead to serious disease and death in at-risk groups." *Id.* ¶ 44. Finally, progress towards herd immunity and vaccine development and production are unlikely

to advance sufficiently quickly to significantly alter the trajectory of the COVID-19 outbreak. *Id.* ¶¶ 51.

B. North Carolina's Response to COVID-19

As of June 4, 2020, the North Carolina Department of Health and Human Services ("DHHS") had confirmed 31,966 positive cases and 960 deaths in North Carolina, with 1,189 new cases reported in North Carolina on June 4, 2020 alone.[2]

Governor Cooper has announced a three-phase plan for easing restrictions in North Carolina, and the timeline for implementing the plan will depend on whether North Carolina has successfully met key metrics regarding infection in the state. Since May 20, 2020, North Carolina has been in "Phase 2," which "very strongly encourage[s]" individuals at high risk of severe illness, including those 65 years or older and/or with underlying medical conditions, to stay home and travel only for "absolutely essential purposes." *Id.* It maintains the prior guidance that individuals maintain at least six feet of social distancing, and requires businesses to limit occupancy and take other measures promoting social

[2] COVID-19 Response, *COVID-19 North Carolina Dashboard*, NCDHHS (last updated June 4, 2020).

distancing. *Id.* It also encourages individuals to wear face coverings. *Id.* Mass gatherings of more than 10 people indoors and 25 people outdoors remain prohibited. *Id.*[3] Given the trend of increasing transmission, similar measures will likely be required for the remainder of 2020, and Governor Cooper has stated that any spike in infections may require tightening restrictions again. Riggs Decl. ¶ 10.

COVID-19 will have an unprecedented impact on the upcoming general election on November 3, 2020. State and county election officials have recently drawn attention to the inadequacies of North Carolina's election laws to facilitate safe, free, and fair voting during a pandemic. On March 26, 2020, Defendant Karen Brinson Bell wrote to Governor Cooper and the General Assembly's leadership requesting statutory changes to address the anticipated impact of the COVID-19 pandemic on the upcoming elections. Riggs Decl. ¶ 3. In a follow-up letter, Defendant Bell emphasized that changes were required immediately during the April 28 legislative

[3] The DHHS Defendants similarly recommend that individuals "put distance between yourself and other people" and advise, "[t]he very best evidence on reducing the spread is to maintain social distance and stay at home." Riggs Decl. ¶ 22

session in order to be effective for North Carolina's upcoming general election. Riggs Decl. ¶ 4.

On April 27, 2020, dozens of county board of elections officials from eleven counties in North Carolina's 11th Congressional District similarly issued an "urgent request" of legislators to protect upcoming elections. Riggs Decl. ¶ 5. They warned that regular poll workers were "reluctant to serve" because a large percentage of them are elderly and at higher risk of severe complications and death from COVID-19. *Id.* These county officials requested that the legislators eliminate the requirement that a majority of poll workers reside in the precinct in which they serve and instead permit officials to recruit poll workers from anywhere in the county.

C. Election Administration Timing

In her letter to Governor Cooper, Defendant Bell stated the urgency of certain requested changes, particularly to absentee voting by mail, noting that "[b]ecause of deadlines associated with the 2020 General Election . . . there is an immediate need to prepare for a coronavirus response." Riggs Decl. ¶ 4. She advised that expanding the options for absentee requests needed to be made "as soon as possible as voters may already request absentee ballots for the June 23 and November

3 elections," that an online portal would need to be established "immediately," and that reducing or eliminating the witness requirement needed to happen "now in order to update the absentee instructions and return envelope, since these will need to be redesigned by June and printed in early July to ensure the counties can meet the start of absentee-by-mail voting on September 4, 2020." *Id.* She also noted that modifying the uniform hours requirement would need to be made "as soon as possible to allow time for county boards to locate and procure appropriate sites, a process that has already begun for the November 3 election." *Id.*

Consistent with this, election expert Dr. Paul Gronke states that "The experiences of Wisconsin, Pennsylvania, and other states provide evidence that North Carolina will want to prepare as soon as possible" for the November election. Gronke Decl. ¶ 50; *see also* ¶¶ 39–49, 63–64. Former Executive Director of the North Carolina State Board of Elections likewise concurs with Defendant Bell's assessment that immediate action is required to prepare for the November election. Bartlett Decl. ¶ 29.

QUESTIONS PRESENTED

A. Whether N.C. Gen. Stat. §§ 163-82.6(d), 163-82.20(g), (h) , 163-230.2(a), (c), (e), (e1), 163-231(a), 163-227.6(c), and 163-42(b) imposing restrictions on voter registration, mail-in voting, and in-person voting, and the Defendants' failures to expand voter registration via online portals available through DHHS services, establish contactless drop boxes for absentee ballots, establish mechanisms for requesting absentee ballots by phone, email, and online, establish mechanisms to cure deficient absentee ballot requests and absentee ballots, allow for submission of Federal Write-in Absentee Ballots ("FWAB"), provide personal protective equipment ("PPE") to county boards of election for use during in-person voting, and establish a more accessible, centralized way in which voters and advocates can monitor precinct consolidation, in the context of the pandemic violate the First and Fourteenth Amendments, Title II of the Americans with Disability Act, and Section 504 of the Rehabilitation Act.

B. Whether Plaintiffs are entitled to preliminary injunctive relief.

LEGAL STANDARD

To prevail on a motion for a preliminary injunction, plaintiffs must demonstrate that (1) they are "likely to succeed on the merits"; (2) they "will likely suffer irreparable harm absent an injunction"; (3) "the balance of hardships weighs in their favor"; and (4) "the injunction is in the public interest." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). "In each case, courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). Plaintiffs readily meet these requirements.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their claims.

A. Undue Burdens on the Right to Vote

Under the First and Fourteenth Amendments to the U.S. Constitution, any burden on the right to vote must be balanced against a state's legitimate interest in that requirement. The Fourth Circuit has distilled governing Supreme Court precedent into the following test:

> When facing any constitutional challenge to a state's election laws, a court must first determine whether protected rights are severely burdened. If so, strict scrutiny applies. If not, the court must balance the character and magnitude of the burdens imposed against the extent to which the regulations advance the state's interests in ensuring that 'order, rather than chaos, is to accompany the democratic processes.'

Fusaro v. Cogan, 930 F.3d 241, 257–58 (4th Cir. 2019) (quoting *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995)). To survive strict scrutiny, the regulation must be "narrowly drawn to advance a state interest of compelling importance." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)).

Even in the absence of a severe burden, the court must still evaluate "the legitimacy and strength of each of [the state's] interests" and "consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). While states certainly have an interest in protecting against voter fraud and ensuring voter integrity, the interest will not suffice absent "concrete evidence" that "those interests make it necessary to burden the plaintiff's rights." *Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020) (internal quotation marks omitted).

Each of the laws challenged and other modifications requested in this action, taken individually and as a collective scheme, unduly burden Plaintiffs' right to register and vote. In the midst of this ongoing public health crisis, the burdens on Plaintiffs' right to vote imposed by the challenged provisions and any refusal to provide the requested modifications are neither justified by nor narrowly drawn to advance a compelling state interest. Unless Plaintiffs are granted the relief requested, thousands of North Carolinians' voting rights will be severely burdened, or even denied completely, in the November general election.

i. Voter registration

In North Carolina, voters who register by mail, through state agencies, or online through the Department of Motor Vehicles ("DMV") (a division of Defendant DOT), must do so at least 25 days before the election in which the voter wishes to cast a ballot. *See* N.C. Gen. Stat. §§ 163-82.6(d), 163-82.20(g), (h); *Registering to Vote in North Carolina*, N.C. State Bd. of Elections, https://www.ncsbe.gov/Voters/Registering-to-Vote (last visited June 3, 2020); *see also* N.C. Gen. Stat. § 163-82.6(c) (voter registration via original form); *id.* §§ 163-82.20-

82.23 (agency registration); *id.* § 163-82.19 (DMV registration). Online registration, moreover, is available only to DMV customers, and until recently required voters to complete a DMV transaction, such as a license renewal, at the same time. *See* Riggs Decl. ¶ 21. The only alternative for voters to register within 25 days of an election is same-day registration during early in-person voting, which is available until the last Saturday before the election. *See* N.C. Gen. Stat. § 163-227.2(b).

In light of the COVID-19 pandemic North Carolina's 25-day registration deadline and failure to provide broader online voter registration severely burden the right to vote. The COVID-19 pandemic has limited voter registration opportunities. Like other voter registration organizations, LWVNC has reduced or canceled its in-person voter registration initiatives, Nicholas Decl. ¶ 8, 13; Lopez Decl. ¶ 20–21, and the DMV and state agencies have closed or limited in-person access. Riggs Decl. ¶ 11. These conditions have prevented voters from registering for the November 2020 election, as indicated by the dramatic drop in voter registration rates compared to the last presidential election year. January 2020 started with a 162% increase in

registrations in comparison to 2016, but comparative rates have fallen to -10% for February, -14% for March, and -50% for April. Ketchie Decl. ¶ 4.

Plaintiff LWVNC anticipates that many voters will "seek[] to register closer to the election because of limitations on in-person voter registration efforts." Nicholas Decl. ¶ 8. If enforced, the 25-day registration deadline will seriously hinder LWVNC's purpose to promote voter registration, especially given that the fail-safe option of registering during early voting is no longer viable for voters at high risk from COVID-19. Nicholas Decl. ¶ 8. Voters who could register online through the DMV are generally unaware that they no longer need to complete a "transaction," and thus the 25-day deadline for DMV registration similarly hinders the efforts of LWVNC to educate and help voters register leading up to the election. Nicholas Decl. ¶ 9. DemNC also traditionally receives many calls to its hotline during the early voting period about voter registration, and traditionally recommends same-day registration to voters, which is not an option for many voters during the pandemic. Lopez Decl. ¶ 21. Additionally, Defendants' failure to provide online registration through other agencies beyond the

DMV, such as agencies administered by Defendant DHHS, likewise hinders LWVNC's efforts to promote registration online (in lieu of its in-person events) and renders DemNC's advising efforts more difficult. Nicholas Decl. ¶ 10; Lopez Decl. ¶ 20.

The burdens discussed above are not justified by a legitimate or important state interest while COVID-19 persists. North Carolina already allows for same-day registration at one-stop early voting sites up until the Saturday before Election Day, and if needed, supplemental poll books can be printed for Election Day. Despite once having online voter registration systems "ready to test and roll out," North Carolina still fails to offer broader online registration—with no justification. Bartlett Decl. ¶ 15a. And any purported state interest would pale in comparison to the extremity of the situation, as demonstrated by the unprecedented decline in registration numbers. Accordingly, the voter registration deadline must be extended until the Saturday before the election, and Defendants must offer broader online registration through DHHS. These measures will ensure that voters have adequate opportunities to

register this year and will reduce the demand for in-person registration during early voting.

ii. Absentee Ballot Requirements

COVID-19 has caused Defendant SBE to anticipate a dramatic increase in mail-in absentee voting in 2020. Riggs Decl. ¶ 3. But North Carolina's election laws contain restrictions on absentee voting that will impermissibly force voters to choose between voting and protecting their health. The State also lacks crucial mechanisms for guaranteeing that the mail-in absentee ballots of eligible voters will be counted.

Burdens on Requesting and Submitting Absentee Ballots

North Carolina's election code and administration presents numerous burdens on mail-in absentee voting. These include: (*i*) requiring voters to submit a completed State Absentee Ballot Request Form to their county board of elections in order to receive an absentee ballot, pursuant to N.C. Gen. Stat. § 163-230.2(a), (e)(1), without allowing for voters to request absentee ballots by phone, email, or online (the "Form Requirement"); (*ii*) allowing only a "voter's near relative or verifiable legal guardian" or multi-partisan assistance teams to help voters complete and deliver an

absentee ballot request form, pursuant to N.C. Gen. Stat. § 163-230.2 (e)(2) (the "Organizational Assistance Ban");[4] (*iii*) requiring individuals voting an absentee ballot to do so either "[i]n the presence of two persons who are at least 18 years of age" (among other requirements),[5] or in the presence of a notary public, pursuant to N.C. Gen. Stat. § 163-231(a) (the "Two Witness Requirement"); and (*iv*) failing to provide for contactless drop boxes for voters to deliver absentee ballots.

In light of the COVID-19 pandemic, these requirements each impose a severe, unjustified burden on Plaintiffs' right to vote because complying with these provisions would require voters to risk their health by violating social-distancing directives and self-quarantines. Specifically, the Form

[4] Voters requiring assistance to complete the absentee ballot request form due to blindness, disability, or inability to read or write may request another person if "there is not a near relative or legal guardian available to assist that voter." N.C. Gen. Stat. § 163-230.2(e)1. However, there is no exception for those who require assistance with *returning* the request form by reason of their blindness, disability, or inability to read or write. *See id.* § 163-230.2 (e)(4).

[5] Other restrictions include prohibiting owners, managers, directors, employees of any hospital, clinic, nursing home, or rest home from witnessing for a voter who is a patient or resident. *See* N.C. Gen. Stat. §§ 163-226.3(a)(4) and 163-237(b)(1).

Requirement means that voters like Plaintiff Peggy Cates, who lacks means to print the request form, will be unable to request an absentee ballot while social distancing; they will have to seek help from others, whereas they could make such a request by alternative means if the form were not required. Cates Decl. ¶ 8. Plaintiff LWVNC has already received similar reports from members and others who have no way to download and print the request form. Nicholas Decl. ¶ 14.

The Organizational Assistance Ban augments these challenges, preventing organizations like LWVNC from helping voters to correctly complete and deliver request forms. This process can be "particularly difficult for those who are self-quarantining and do not have access to envelopes, postage, or secure USPS mail pick-up." Nicholas Decl. ¶ 14. Recent national polls indicate that a substantial number of voters are not confident that they understand the process of voting by mail. Gronke Decl. ¶ 53. Plaintiffs Clark, Cates, Edwards, Priddy, and Bentley, who all intend to vote by mail-in absentee ballot, will be restricted in terms of whom they can receive assistance from. Clark Decl. ¶ 10; Cates Decl. ¶ 9–10; Edwards Decl. ¶ 10; Priddy Decl. ¶ 5, 8; Bentley Decl. ¶ 7. The Organizational Assistance Ban thus prevents voters

from receiving needed assistance to navigate the ballot request process even though this assistance is crucial at this time.

The Organizational Assistance Ban also severely hinders the work of LWVNC and similar organizations to help those wishing to vote by mail, a population that will dramatically increase this year with an influx of voters who have never voted by mail. Nicholas Decl. ¶¶ 13–14; *see also* Lopez Decl. ¶ 24. The Ban impedes LWVNC's educational mission and message of participation in voting, its ability to build relationships and associate with voters, and most importantly, its mission of promoting voter participation and civic engagement. Nicholas Decl. ¶ 14. Additionally, the multi-partisan assistance teams cannot remedy these barriers in certain North Carolina counties, where their availability has been inadequate under the best of circumstances. *See* Riggs Decl. ¶ 12. For similar reasons, Susan Schaffer and others who (separate from LWVNC) have previously assisted voters in requesting and completing absentee ballots will be prevented from doing so. Declaration of Susan Schaffer ("Schaffer Decl.) ¶¶ 4–7.

The Two Witness Requirement also presents an insurmountable barrier to voting by mail for many voters in North Carolina. Plaintiffs Clark, Cates, Edwards, Priddy, Bentley, and Hutchins are all eligible North Carolina voters who are at high risk of developing severe complications from COVID-19 and therefore need to vote by mail to safeguard their lives and the health and well-being of their family members or co-habitants. Clark Decl. ¶¶ 2, 4–6; Cates Decl. ¶¶ 2, 4; Edwards Decl. ¶¶ 5–6; Priddy Decl. ¶¶ 4–5; Bentley Decl. ¶¶ 2, 4–7; Hutchins ¶ 6. Following advice from medical professionals or the CDC, these Plaintiffs have quarantined themselves in their homes, either alone, Cates Decl. ¶¶ 6, 9–10; Bentley Decl. ¶¶ 1, 4, or with one other individual, Clark Decl. ¶¶ 6–7; Edwards Decl. ¶¶ 1, 6; Priddy Decl. ¶¶ 1, 5. Plaintiff Hutchins is under quarantine in a nursing home due to the pandemic and the residents' vulnerability to COVID-19. Hutchins Decl. ¶ 6. These Plaintiffs have no way to safely comply with the two-witness requirement. As a result, they will be forced to choose between exercising their right to vote and risking their health by interacting with a witness. Putting Plaintiffs to this choice constitutes a severe burden on their right to vote.

These Plaintiffs are just a few among many in North Carolina. According to the U.S. Census, there are 1,113,548 single-member households in North Carolina, 37% of which are occupied by someone 65 or older, in addition to 1,388,442 two-person households (who would similarly be unable to meet the Two Witness Requirement without contact with an adult outside of their household).[6] In addition to bringing the voter in close proximity to others, the Two Witness exposes them to the risks of surface contamination and transmission of COVID-19 via the dispersion of respiratory droplets and aerosolization. Murray Decl. ¶¶ 8, 24. The alternative of obtaining a notary public's signature does not alleviate this issue since the recent remote-notarization provisions in North Carolina's COVID-19 response bill specifically exempted absentee ballots. Riggs Decl. ¶ 13. For higher-risk voters, this burden is especially severe and must be justified by and narrowly drawn to a compelling interest and the law.

Finally, the SBE Defendants' failure to provide contactless drop boxes for absentee ballots creates an

[6] Table S2501, *Occupancy Characteristics, American Community Survey 2014–2018*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=S2501&g=0400000US37&tid=ACSST5Y2018.S2501.

additional burden on voters. Drop boxes would allow voters without access to postage and USPS pick-up to securely deposit their ballots without breaking social distancing guidelines, and would further reduce the strain on North Carolina's mail infrastructure. The latter is not a merely theoretical concern: mail-in ballots must be postmarked on or before Election Day and delivered no later than 5:00 pm on Election Day, or returned to the county board of elections (not a polling location) no later than 5:00 pm on Election Day. Voters such as Plaintiffs Clark, Cates, Edwards, Priddy, Bentley, and Hutchins who intend to vote by mail will have to rely on USPS to safely submit their ballots. North Carolina's failure to provide drop boxes will likewise strain Plaintiff DemNC's resources to "assist voters (in a legal way) to find a way to return their ballots if they lack stamps or financial resources." Lopez Decl. ¶ 26. The anticipated influx of mail-in ballots means that the USPS will have to handle an unprecedented volume of absentee ballots unless contactless drop boxes are provided. Furthermore, other states, including Oregon, have successfully used drop boxes and North Carolina can easily implement a similar program. Bartlett Decl. ¶ 24.

These Burdens Are Not Justified By The State's Interest In Fraud Prevention

In the midst of this public health crisis, no legitimate or important state interest justifies the burdens placed on Plaintiffs' right to vote. To the extent the SBE Defendants invoke an interest in election security and fraud prevention, the challenged restrictions are neither justified by that interest nor narrowly drawn to advance it.

The state's lawyers will likely attempt to defend some or all of these restrictions by citing the 2018 absentee ballot fraud conspiracy in 9th Congressional District (the "Dowless Scheme"). While states have an interest in ensuring the legitimacy of their elections, *see Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008), the *Anderson-Burdick* inquiry calls for a balancing of burdens against interests, not merely the naming of a legitimate one. *See, e.g., Norman v. Reed*, 502 U.S. 279, 289 (1992). The regulation must be proportionate to the problem.

The COVID-19 pandemic has caused these provisions to burden voters to an unprecedented degree, both in terms of risk (given the severe impact COVID-19 can present to all individuals and particularly those with underlying health

issues) and in scale (given the expected increase in infection rates throughout the fall). The Form Requirement, failure to provide alternative means to request absentee ballots by phone, email, or online, and failure to provide contactless drop boxes have no clear connection to preventing voter fraud yet will significantly impair certain voters' ability to vote by mail during an election when more voters than ever before will seek to do just that.

The Organizational Assistance Ban was passed in the wake of the Dowless Scheme and therefore has some connection to preventing voter fraud. *See* An Act to Amend the Laws Governing Mail-In Absentee Ballots ("SB 683"), S.L. 2019-239, § 1 (Nov. 6, 2019). However, its restrictions are not narrowly drawn nor necessary because the state still can—and already *does*—achieve its anti-fraud goals in other, less burdensome ways by: (*i*) requiring voters to submit one of their North Carolina driver's license or state ID number or the last four digits of their Social Security Number to request an absentee ballot, *see* N.C. Gen. Stat. § 163-230.2(a)(4), (f), (which could still be required for requests made by phone, email, or online); (*ii*) requiring the same as well as a certification under penalty of perjury by the voter on the absentee ballot itself,

see, e.g., Riggs Decl. ¶ 14; (*iii*) making the identities of absentee ballot requestors confidential until Election Day, *see* N.C. Gen. Stat. § 163-228(c); and (*iv*) enhancing the penalties for certain absentee-ballot-law violations and criminalizing any receipt of payment, failure to deliver, or copying of information from an absentee ballot request or application. *See* N.C. Gen. Stat. § 163-237.

In particular, making absentee ballot requests confidential (item (*iii*) above) prevents those trying to commit fraud, such as Dowless, from targeting individuals who have requested absentee ballots. As Mr. Tutor explains,

> Mr. Dowless' illegal mail-in absentee ballot fraud enterprise was almost totally dependent on his daily access to the names and addresses of those who requested absentee ballots from the Bladen County Board of Elections. Mr. Dowless was known to have had a very long and cordial relationship with the staff at the Bladen County Board of Elections. He would either call the county board staff or come by on a daily basis to get the list of absentee ballot requests. At that time, the names and addresses of those requesting a mail-in absentee ballot were public record.
>
> Now that the law has been changed so that the identities of voters requesting mail-in absentee ballots is not a public record until Election Day, I do not believe anyone can fraudulently manipulate the system as Mr. Dowless did.

Tutor Decl. ¶¶ 6-7.

Although the Supreme Court has recognized fraud prevention as a legitimate goal, it has twice struck down voting requirements because oath requirements and other anti-fraud measures already fulfilled the same purpose. In *Dunn v. Blumstein*, the Court noted that Tennessee could prevent non-residents from fraudulently voting in its elections by imposing an oath requirement and implementing cross-checks. 405 U.S. 330, 346, 348 (1972). *See also Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 267–68 (1974) (holding that state agencies managed to prevent fraud without using durational residency requirements); *Harman v. Forssenius*, 380 U.S. 528, 543 (1965) (rejecting Virginia's argument that requiring either a poll tax or a certificate of residence promoted administrative efficiency in voting, in part because 46 other states were able to verify voters' addresses without these requirements).

The Organizational Ban also imposes greater restrictions on completing and submitting absentee ballot *applications* than exist for returned, completed absentee ballots, for which a voter may obtain assistance from a third party who is not a near relative or legal guardian. *See* N.C. Gen. Stat. §§ 163-226.3(a), 163-229(b)(4), 163-231(a). It is difficult

to ascertain how restrictions on application assistance could be justified where restrictions on ballot assistance are not necessary.

Similarly, the Two Witness Requirement does little to prevent fraud while creating mass disenfranchisement. The U.S. District Court for the District of South Carolina recently considered a similar *Anderson-Burdick* undue burden challenge to a *single*-witness requirement for mail-in voting and concluded that plaintiffs were:

> likely to prevail on their constitutional challenge to the Witness Requirement under the *Anderson-Burdick* balancing test because the character and magnitude of the burdens imposed on [plaintiffs] in having to place their health at risk during the COVID-19 pandemic likely outweigh[s] the extent to which the Witness Requirement advances the state's interests of voter fraud and integrity.

Thomas v. Andino, No. 3:20-cv-01552-JMC, 2020 WL 2617329, at *21 (D.S.C. May 25, 2020). The court placed particular emphasis on South Carolina Election Commission Executive Director Marci Andino's candid statement that "the witness signature offers no benefit to election officials as they have no ability to verify the witness signature." *Id.* at *19-20; *see also League of Women Voters of Okla. v. Ziriax*, No. 118765, 2020 WL 2111348, at *1 (Okla. May 4, 2020) (enjoining absentee ballot notary requirement); *Libertarian Party of*

Ill. v. Pritzker, No. 20-CV-2112, 2020 WL 1951687, at *4 (N.D. Ill. Apr. 23, 2020) (enjoining portions of signature requirement for potential candidate ballot eligibility because they presented "insurmountable hurdle" during pandemic).

Any purported reliance by Defendants on the Dowless Scheme to justify the Two Witness Requirement is unavailing: the Two Witness Requirement was enacted in 2013, *see* 2013 N.C. HB 589 § 4.4 (enacted Aug. 12, 2013), years before the Dowless Scheme and thus failed to prevent it. Former Lead Investigator for Defendant SBE Marshall Tutor explains in his declaration that the two-witness signature requirement is not a particularly effective anti-fraud measure:

> I do not believe a two-witness signature requirement in any way prevents potential fraud such as that conducted by Mr. Dowless' illegal ballot fraud activities. In my 15 years' experience as an investigator with the State Board of Elections, I cannot think of a time or situation in which two absentee ballot witness signatures would have prevented absentee ballot fraud.

Declaration of Marshall Tutor ("Tutor Decl.") ¶ 8. Former Executive Director of the N.C. State Board of Elections similarly explains:

> Other measures, such as fining violators, suspending voting rights and electioneering for a period of time, or incarcerating violators, would be much more

> effective in deterring voter fraud than imposing a blanket two-witness requirement that will be an unnecessary barrier to many eligible voters.

Bartlett Decl. ¶ 28. Similarly, DemNC is aware through its research and advocacy that election fraud is "quite rare, and that the issues raised by the 2018 case have to do with enforcement of laws that were already in place prior to 2018, and with enforcement, surveillance and monitoring of election irregularities can suss out and address these issues." Lopez Decl. ¶ 30.

Even if it did advance an interest in preventing fraud, the two-witness requirement is not narrowly tailored, especially in light of the other anti-fraud measures in place and listed above. As the court in *League of Women Voters of Virginia v. Virginia State Board of Elections* recently explained when considering a single witness requirement:

> In ordinary times, Virginia's witness signature requirement may not be a significant burden on the right to vote. But these are not ordinary times. In our current era of social distancing-where not just Virginians, but all Americans, have been instructed to maintain a minimum of six feet from those outside their household-the burden is substantial for a substantial and discrete class of Virginia's electorate. During this pandemic, the witness requirement has become both too restrictive and not restrictive enough to effectively prevent voter fraud.
>
> On the one hand, the measure is too restrictive in that it will force a large class of Virginians to face the choice between adhering to guidance that is meant to

> protect not only their own health, but the health of those around them, and undertaking their fundamental right-and, indeed, their civic duty-to vote in an election. The Constitution does not permit a state to force such a choice on its electorate.

No. 6:20-CV-000024, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020) (internal quotation marks and citations omitted).

Finally, the witness certifications themselves do not call for the printed name of the witnesses, a glaring omission that further undermines the certification's use as an anti-fraud tool. Accordingly, witness certifications function as placebos. They have a psychological benefit, but recent history has shown that they are not particularly effective fraud deterrence, prevention, detection, or prosecution tools. Accordingly, the Two Witness Requirement should be suspended for the November election.[7]

[7] Should the Court seek to craft a remedy tailored to voters facing the most serious risks of severe illness, Plaintiffs offer two alternatives to the Two Witness Requirement: (*i*) permitting voters to submit a certification with their absentee ballot affirming their inability to safely obtain a witness requirement following reasonable efforts, and/or (*ii*) permitting individuals to remotely witness absentee ballots remotely (e.g., via videoconference), and requiring only that voters record the name and address of the witness without requiring the witness's wet-ink signatures. *See Democratic Nat'l Comm. v. Republican Nat'l Comm.*, Nos. 20-1538 & 20-1546, at *4 (7th Cir. Apr. 3, 2020), *stayed in part*, No. 19A1016, 2020 WL 1672702 (U.S. Apr. 6, 2020). At

Additional Burdens To Absentee Voting

The failure by Defendants to ensure voters have an opportunity to cure deficient absentee ballot requests or ballots, or to submit a FWAB as an alternative of last resort to cast their votes should they fail to receive absentee ballots in time, present additional burdens to the right to vote in North Carolina. In the March 2020 North Carolina primary, almost 15 percent of submitted absentee mail-in ballots were rejected. Ketchie Decl. ¶ 5. Plaintiffs Clark, Cates, Edwards, Priddy, Bentley, and Hutchins all intend to vote by mail-in absentee ballot, some for the first time, *see e.g.*, Cates Decl. ¶ 8, and may well make errors on their absentee ballot request forms or absentee ballots and/or their certificate envelopes. There is no guarantee they will be notified or given the opportunity to cure these errors. Plaintiff LWVNC will have to redirect its limited resources toward ensuring that the voters it assists are following all procedures precisely, all while navigating the Organizational Assistance Ban. Nicholas Decl. ¶ 18. Plaintiff DemNC works in

---

bare minimum, Plaintiffs respectfully request the Court enjoin the requirement for a second witness, thereby requiring voters to only obtain one witness.

many of North Carolina's 100 counties and, without a uniform procedure for county boards to assist voters with curing their absentee ballots or request forms, will require them to spend more time helping individual voters from varying counties to successfully vote by mail. Lopez Decl. ¶ 27. In light of the anticipated dramatic increase in the use of absentee ballots and the Organizational Assistance Ban, there is a heightened risk that voters new to mail-in absentee voting will fail to follow the proper procedures. By lacking a procedure for voters to cure deficiencies, North Carolina's election code risks disenfranchising vast numbers of absentee voters.

Similarly, the importance of providing the FWAB as a back-up is underscored by the recent evidence out of Wisconsin, Ohio, and Pennsylvania, where state and local election officials, as well as the USPS, failed to timely deliver thousands of absentee ballots to voters in the mail during a spring election with significantly lower-turnout elections than the November presidential election will be. Gronke Decl. ¶¶ 55, 60. Given the anticipated ten-fold increase in use of absentee mail-in ballots, it is likely that many North Carolina voters will likewise receive their ballots too late to cast them. Those voters who timely request

an absentee ballot, such as Plaintiffs Clark, Cates, Edwards, Priddy, Bentley, and Hutchins who all intend to vote by mail-in absentee ballot, but do not receive their ballots in time to vote and drop them off or mail them by Election Day will be disenfranchised unless they are permitted to use the FWAB as an alternative of last resort to cast their votes. Plaintiff DemNC also anticipates a significant diversion of resources to help voters get last-minute absentee request submitted without the availability of the FWAB failsafe measure. Lopez Decl. ¶ 27.

There are no legitimate state interests for Defendants' failure to remedy these restrictions to absentee voting during the ongoing health crisis. It's not clear what, if any, interest would be served in requiring counties to provide voters with an opportunity to cure absentee ballots and requests forms. As for FWABs, these are already available to military and overseas citizens pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. § 20301 *et seq.* This law provides that military and overseas voters must be permitted to cast FWABs as an "Official Backup Ballot," Riggs Decl. ¶ 15,or "back-up measure," to vote in federal races if they do not receive their regular absentee

ballot. 52 U.S.C. §§ 20302(a)(3), 20303(a)(1). FWABs are then "submitted and processed in the manner provided by law for absentee ballots in the State involved." 52 U.S.C. § 20303(b). Even if these burdens to voting did serve a legitimate state interest, the need for these failsafe options during the COVID-19 pandemic would far outweigh any such interest where voting by mail is of paramount importance.

iii. In-Person Voting Restrictions

While use of mail-in absentee voting is projected to increase ten-fold, a majority of voters are projected to still rely on in-person voting options in the November election. North Carolina's electorate has expressed a clear preference for in-person voting, with just 4 percent of voters casting mail-in absentee ballots in the 2016 general election. Ketchie Decl. ¶ 6; Gronke Rep. ¶ 15. As a result, North Carolina has not built the infrastructure to accommodate such a dramatic increase in voter demand for absentee mail-in ballots without overloading current systems and causing mass disenfranchisement. Gronke Decl. ¶¶ 15, 18. Accordingly, in-person voting must be preserved as a safe alternative to mail-in ballots.

The CDC has issued guidance recommending election officials to "reduce crowd size at polling stations" and take other action to ensure safe in-person voting options in light of COVID-19. Riggs Decl. ¶ 16. Contrary to this guidance, North Carolina's election code has two provisions that have already hindered—and will continue to hinder—county boards in providing safe, free, and fair in-person voting options: (*i*) the requirement pursuant to N.C. Gen. Stat. § 163-42(b) that a majority of poll workers reside in the precinct where they serve on Election Day under (the "Majority Precinct Requirement"); and (ii) the requirement pursuant to N.C. Gen. Stat. § 163-227.6(c) that all early voting sites must be open during uniform hours and all sites other than the county board office must be open 8:00 a.m. to 7:30 p.m. (the "Uniform Hours Requirement").

The burden of these provisions on the right to vote is already apparent. As of May 14, 2020, eight county boards have moved to eliminate 64 precincts for the upcoming Congressional District 11 Second Republican Primary, with several citing a lack of poll workers as the reason for consolidation. Riggs Decl. ¶ 20. In a letter to General Assembly leadership, county board members from Congressional

District 11 conveyed that eliminating the Majority Precinct Requirement "would significantly help us staff polling places in these challenging times." Riggs Decl. ¶ 5. Eliminating the Majority Precinct requirement is likewise required to prevent the closure of polling locations in the November election in light of the anticipated persistence of COVID-19 this fall and the advanced age of poll workers. In the 2014 general election, over 60 percent of North Carolina poll workers were 61 years of age or older and, as a result, a significant portion of poll workers are in the 65-years-old-plus CDC risk category. Riggs Decl. ¶ 17. Similarly, the Uniform Hours Requirement has already proven to cause polling locations to close. After North Carolina imposed this requirement in June 2018, the costs of implementing this measure caused 43 counties to reduce the number of early voting sites in the 2018 general election compared to 2014 and over two-thirds of counties to reduce weekend hours. Lopez Decl. ¶ 7; Riggs Decl. ¶ 18—19.

The precinct consolidation that will result from enforcement of the Majority Precinct and Uniform Hours Requirements will cause a severe burden on the right to vote in North Carolina. Gronke Decl. ¶ 28. Voters who need to vote

in person, like Plaintiff Permar, will be confronted with confusion as to their voting location, increased travel time to get there, as well as long lines and crowds that will put them at greater risk of contracting COVID-19. Permar Decl. ¶ 7–10. Closures of polling places accessible by public transportation will also jeopardize the ability of those who rely on public transportation to reach polling locations, like Plaintiff Permar. *Id.* at ¶ 7. Additionally, Plaintiff LWVNC will have to divert its limited resources toward recruiting poll workers from within precincts and to alerting its members and those in their communities about precinct closures, Nicholas Decl. ¶¶ 20–21, and Plaintiff DemNC will have to spend more time advocating for early voting site sand days if the Uniform Hours Restriction is enforced. Lopez Decl. ¶ 28.

These anticipated barriers to voting are not speculative. The reductions in polling place locations in the recent Wisconsin primary caused voters to wait two to three hours to cast a ballot in some locations. Gronke Decl. ¶ 46. In North Carolina, there are over 200 precincts with over 5,000 voters, Ketchie Decl. ¶ 7, and this number only stands to increase with precinct closures. These precincts especially will

experience long lines. Bartlett Decl. ¶ 27. These factors—inconvenient polling places, long lines, and less accessible voting locations that require voters to travel longer distances—already present obstacles to voting under ordinary circumstances. Gronke ¶ 25; Lopez ¶ 14; Bartlett Decl. ¶ 17. These obstacles will only be exacerbated during the current pandemic, when social distancing is required for safe election administration. Consistent with the anticipated impact of these provisions, Defendant Bell requested a change in state law to allow county boards to recruit and train poll workers county-wide and to allow count boards of election "flexibility to determine hours because they are affected differently by, and respond differently to, the COVID-19 pandemic." Riggs. Decl. ¶ 3.

Individuals accustomed to early voting may very well be deterred by crowding and the inherent heightened risk of infection; they will thus be forced to choose between risking their health to cast a ballot or foregoing their right to vote. Accordingly, these provisions present a severe burden to these Plaintiffs and the rights of voters who rely on in-person voting. *See Ury v. Santee*, 303 F. Supp. 119, 124 (N.D. Ill. 1969) (finding that the defendant's failure to provide

adequate voting facilities despite their foreknowledge of precinct consolidations deprived voters of their constitutional rights); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008) (finding long lines and inadequate voting machines severely burdened Ohio voters' right to vote).

It is unclear what legitimate, let alone important, state interest could be furthered by the Majority Precinct and Uniform Hours Requirements, particularly when the shortage is already dire. In the midst of this ongoing public health crisis, there is no state interest in enforcing this requirement that justifies these burdens placed on Plaintiffs' constitutional right to vote.

In addition to the above restrictions, the SBE Defendants has imposed further burdens on the right to vote by failing to provide an accessible, centralized way for voters and advocates to monitor precinct consolidations, and failing to require counties to provide poll workers and voters with PPE for use during in-person voting for the 2020 general election. These failures add cumulatively to the panoply of restrictions on eligible voters wishing to cast a ballot in person. *See Clingman v. Beaver*, 544 U.S. 581, 607–08 (2005)

("A panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition.") (O'Connor, J., concurring).

As for precinct consolidation, each county board must give notice at least 45 days before the election when altering or consolidating precincts by posting notice in a generally circulated newspaper and on the door of the county courthouse and county board, and mailed to the chairmen of every political party in the county. *See* N.C. Gen. Stat. § 163-128(a). However, voters only need to be notified of changes in their particular precinct 30 days before an election. *Id.* Accordingly, North Carolina's failure to provide an accessible, centralized way in which voters and advocates can monitor precinct consolidation is a severe burden on the right to vote in light of the expected volume of changes. Limited access to this information will impede and confuse voters trying to determine where and how best to vote in-person, including voters like Plaintiff Permar, who must vote in person and must ensure she is able to vote at a time that is in line with her work schedule. Permar Decl. ¶¶ 1, 9. As a central hub for voter information, Plaintiff DemNC will need

to redistribute resources in order to adequately and timely inform voters about precinct consolidations absent a centralized access to this information. Lopez Decl. ¶ 14–15.

In addition, the SBE Defendants must require counties to provide PPE to ensure the safety of voters and poll workers. Such PPE should include protective masks and gloves for poll workers and/or voters, separation shields, antiseptic wipes for equipment, and single-use pens, all of which will help prevent voters such as Plaintiff Donna Permar, who must vote in person, Permar Decl. ¶ 10, and poll workers from infection. In conducting its Election Protection hotline and poll-monitoring program, DemNC volunteers will almost certainly be asked about PPE, who has it, and how to secure it if is not provided. Lopez Decl. ¶ 24. In addition to presenting a risk to voters' health, the failure in the recent Wisconsin primary to provide supplies to protect election workers caused poll worker shortages and, as a result, localities to severely limit or close early voting locations. Gronke Decl. ¶ 43. The reductions in polling place locations also caused voters to wait two to three hours to cast a ballot in some locations, thus compounding issues of crowding and risks of infection. *Id.* ¶ 46. Finally, the need for a requirement that counties

provide PPE can hardly be in dispute where Defendant Bell stated that she intended already to order PPE for counties holding the second Republican primary election. Riggs Decl. ¶ 23. The same measures should be taken for the November election.

In the midst of this ongoing public health crisis and the rapid changes to election plans it is forcing, there is no state interest in denying easy access to precinct consolidation information or failing to require counties to provide PPE that justifies the burden placed on Plaintiffs' constitutional right to vote.

As set forth above, Plaintiffs are likely to succeed on the merits of proving that these various restrictions on voter registration, absentee by-mail voting, and in-person voting, present severe burdens to the right to vote in violation of the First and Fourteenth Amendments that are not justified by any state interests, compelling or otherwise, in light of COVID-19. Even if purported to serve legitimate state interests, such as preventing voter fraud, these measures are not narrowly tailored in light of COVID-19. Although true even when taken individually, even if these restrictions were individually defensible they present a "panoply of

regulations" with the "combined effect of severely restricting participation and competition." *Clingman*, 544 U.S. at 607–08 (O'Connor, J., concurring).

B. Unconstitutional Condition on the Right to Vote

North Carolina's election laws and procedures are not designed to facilitate safe, fair, and free elections during such a public health crisis, and the legislature has failed to take action to remedy this situation. Given the rapidly spreading infection, North Carolina's current election laws will force voters to choose between exposing themselves to severe risks to their health and exercising their constitutionally-protected right to vote. This forced choice unlawfully compels North Carolina voters to forfeit their constitutionally-protected right to bodily integrity in order to exercise another constitutional right.

As the U.S. Constitution forbids undue burdens on the right to vote, so does it prohibit states from forcing individuals to choose between their rights. Defendants' enforcement of restrictions on mail-in absentee voting outlined in the sections above force mail-in absentee voters to relinquish their Fourteenth Amendment right to bodily integrity in order to exercise their First and Fourteenth

Amendment-protected right to vote. Forcing voters to forfeit their right to bodily integrity violates the Fourteenth Amendment.

Under the unconstitutional conditions doctrine, the government may not require an individual to forfeit one constitutional right in order to exercise another. *See Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[I]t [is] intolerable that one constitutional right should have to be surrendered in order to assert another."). The doctrine has also been invoked to prohibit the imposition of conditions on First Amendment-protected activities that require the forfeiture of other rights. *See Lefkowitz v. Cunningham*, 431 U.S. 801, 807–08 (1977) (finding New York law unconstitutionally required political party leaders to provide unimmunized testimony before a grand jury, forcing leaders to choose between First Amendment right of association and Fifth Amendment right against self-incrimination); *Bourgeois v. Peters*, 387 F.3d 1303, 1324 (11th Cir. 2004) ("This case presents an especially malignant unconstitutional condition because citizens are being required to surrender a constitutional right—freedom from unreasonable searches and seizures—not merely to receive a

discretionary benefit but to exercise two other fundamental rights—freedom of speech and assembly.").

Most relevant here, the Supreme Court has invalidated voting requirements or conditions that require the forfeiture of another fundamental right. In *Dunn v. Blumstein*, the Court held that a one-year durational residency requirement for voter registration placed an unconstitutional condition on the fundamental right to interstate travel. 405 U.S. 330 (1972). The Court explained that "such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote." *Id.* at 342. Notably, when First Amendment-protected rights such as the right to vote are at stake, it is irrelevant whether the government intended to coerce the voter into forfeiting a constitutional right. *See Bourgeois*, 387 F.3d at 1324–25 ("[T]he very purpose of the unconstitutional conditions doctrine is to prevent the Government from subtly pressuring citizens, *whether purposely or inadvertently*, into surrendering their rights." (emphasis added)).

Courts evaluate these claims by looking to the constitutional standard for the right that Plaintiffs are coerced to surrender. "[W]hen a condition on a government

benefit burdens a constitutional right, it generally triggers the same scrutiny as a direct penalty would." *McCabe v. Sharrett*, 12 F.3d 1558, 1562 (11th Cir. 1994). In *Dunn*, the durational residency requirement for voter registration was subjected to strict scrutiny because fundamental voting and interstate travel rights were implicated: "In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements." 405 U.S. at 335; *see also Shapiro v. Thompson*, 394 U.S. 618, 634, 638 (1969) ("Since the classification [for welfare eligibility] here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest.").

This case implicates Plaintiffs' rights to bodily integrity, which is guaranteed by the Fourteenth Amendment's Due Process Clause. Government actions that threaten the right to bodily integrity are subject to strict scrutiny. *See Kallstrom v. City of Columbus*, 136 F.3d 1055, 1064 (6th Cir. 1998). In *Guertin v. Michigan*, which concerned the Flint water

crisis, the court recognized that the Sixth Circuit articulated the following standard: "Involuntarily subjecting nonconsenting individuals to foreign substances with no known therapeutic value . . . is a classic example of invading the core of the bodily integrity protection." 912 F.3d 907, 919, 921–22 (6th Cir. 1998); *cf. id.* at 921 ("[A] government actor violates individuals' right to bodily integrity by knowingly and intentionally introducing life-threatening substances into individuals without their consent, especially when such substances have zero therapeutic benefit.").[8]

The Two-Witness Requirement forces voters who are at high risk of developing severe complications from COVID-19, such as Plaintiffs Cates, Clark, Edwards, Priddy, and Bentley, to choose between their right to vote and the right to bodily integrity. These voters, who have quarantined themselves in their homes to protect their health, wish to vote by mail

[8] Typically, these bodily integrity cases are about prior misconduct in an action for damages, *not*, as here, an action for prospective injunctive relief based upon the argument that a law or policy will, in the future, violate plaintiffs' bodily integrity. But if anything, the right to bodily integrity should be even more robust when the harm to bodily integrity arises from the face of a law—it is a small analytical hop to analogize from the cases about past official misconduct.

because they cannot vote in person—but to do so, they must risk their health by engaging two witnesses to observe their completion of the ballot. Cates Decl. ¶¶ 10–11; Clark Decl. ¶¶ 9–11; Edwards Decl. ¶¶ 10–12; Priddy Decl. ¶¶ 8–10; Bentley Decl. ¶¶ 7–10.

Further, voting in person is not a viable alternative to mail-in voting for these at-risk Plaintiffs. *See Thomas v. Andino*, No. 3:20-cv-01552-JMC, 2020 WL 2617329, at *17 n.20 (D.S.C. May 25, 2020) (holding that, in light of the COVID-19 pandemic, restrictions on absentee voting effectively impair and deny the right to vote because "it is relatively difficult to vote in person without risking the possibility of infection, especially for those who are more susceptible to the ravaging harms of COVID-19" and "absentee voting is the safest tool through [*sic*] which voters can use to *effectuate* their fundamental right to vote").

As discussed above, the Two Witness Requirement does not clearly advance the state's interest in preventing fraud, and existing anti-fraud measures more than adequately protect mail-in absentee voting, including requirements that voters submit identifying information, that they and their witnesses certify the ballot under penalty of perjury, and enhancing

the penalties for certain absentee-ballot-law violations. *See supra* Section I.A.ii at pp. 1528–367; *see also Dunn*, 405 U.S. at 346, 348 (striking down voting requirements after finding Tennessee could prevent non-residents from fraudulently voting in its elections by imposing an oath requirement and implementing cross-checks); *Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 267–68 (1974) (holding that state agencies managed to prevent fraud without using durational residency requirements); *Harman v. Forssenius*, 380 U.S. 528, 543 (1965) (rejecting Virginia's argument that requiring either a poll tax or a certificate of residence promoted administrative efficiency in voting, in part because 46 other states were able to verify voters' addresses without these requirements).

Accordingly, Defendants' enforcement of the challenged restrictions on mail-in absentee voting forces Plaintiffs and the Organizational Plaintiffs' members to forfeit their right to bodily integrity in order to exercise their right to vote in violation of the Fourteenth Amendment.

C. Violation of the Organizational Plaintiffs' and Plaintiff Schaffer's First Amendment Rights to Free Speech and Association

Voter assistance is critical to Organizational Plaintiffs' speech, associational group activity and

organizational mission. SB 683's restrictions on the organization assisting its members and other voters with completing and submitting absentee ballot request forms thus impermissibly interferes with the Organizational Plaintiffs' First Amendment rights to promote civic engagement and associate with their members and other voters. SB 683's restrictions also interfere with Plaintiff Schaffer's rights to free speech and association because she is no longer able to assist many voters who desperately need it. Schaffer Decl. ¶¶ 8–9.

There is no "doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of orderly group activity protected by the First and Fourteenth Amendments." *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973) (internal quotation omitted). The restrictions on who can assist voters with completing and returning mail-in absentee ballot request forms stymie the Organizational Plaintiffs and their members' core political speech and expressive conduct to engage potential voters and encourage them to vote by assisting voters with requesting and submitting absentee ballot requests. *See* Nicholas Decl. ¶ 6, 8, 12–14; Lopez Decl. ¶ 22.

The Supreme Court has recognized that petition-gathering activity is "the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 422–23 (1988). Whether a voter should apply for a ballot and ultimately participate in an election is a "matter of societal concern that [Plaintiffs] have a right to discuss publicly without risking criminal sanctions." *Meyer v. Grant*, 486 U.S. 414 at 421; *see also Buckley v. Am. Constitutional Law Found*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer*, 486 U.S. at 422). In *Meyer*, plaintiffs were engaged in direct outreach to fellow citizens to engage them in the political process by gathering petition signatures for inclusion of a ballot question. State law burdened their signature-gathering activity by banning payment of petition circulators. Applying "exacting scrutiny," the Supreme Court struck down this law as "restrict[ing] political expression." *Meyer*, 486 U.S. at 420–22.

As in *Meyer*, providing assistance to voters who need to vote by mail to mitigate their risk of contracting COVID-19 and who are requesting a mail-in ballot for the first time since SB 683's enactment goes to the heart of Organizational

Plaintiffs' core associational rights and missions to increase civic participation and engagement, as well as Plaintiff Schaffer's individual free speech and associational rights. Nicholas Decl. ¶¶ 6, 12–14; Lopez Decl. ¶¶ 2, 5, 10–11; Schaffer Decl. ¶¶ 6, 9. Particularly in the pandemic context, assisting voters with filling out request forms and helping voters submit them, rather than simply pointing to blank forms, would be an important part of the LWVNC's educational mission and the effectiveness of their message of participation. Nicholas Decl. ¶¶ 13–14. Where the LWVNC directly helps voters, this assistance has educational and communicative value, and helps it build relationships with members and other voters. *Id.* Voters who work with the LWVNC to submit applications, many for the first time, would be more likely to complete the process independently in the future, and more likely to vote in the following election. *Id.* ¶ 13. When voters cannot get needed assistance, DemNC must expend more resources explaining the process to them, including how to get a ballot. Lopez Decl ¶¶ 16, 22-24.

The restrictions on assisting voters with applying for mail ballots prevent Organizational Plaintiffs from associating with their members and other voters, limiting

Organizational Plaintiffs' political expression, and diminishing their ability to convey their message and further it by engaging more individuals in the political process. *See* Nicholas Decl. ¶¶ 12–13; Lopez Decl. ¶ 22. The speech in question is "at the core of our electoral process and of the First Amendment freedoms." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968). And because the restrictions interfere with core political speech, they are "accordingly 'subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010)).

By imposing a blanket ban on organizations like the Organizational Plaintiffs and Plaintiff Schaffer, which prevent them from assisting their members and/or voters with completing and requesting absentee ballots, N.C. Gen. Stat. § 163-23.2 is not narrowly-tailored to serve a compelling state interest. "[W]hen it comes to core First Amendment speech…the government may not use a hatchet where a scalpel will suffice." *Cross v. Mokwa*, 547 F.3d 890, 903

(8th Cir. 2008) (Bye, J., concurring in part) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 908 (1982)). Examples of more targeted provisions include the prohibition on falsification of papers with respect to fraudulent voter qualification, and on false representations to blind or illiterate voters regarding their ballots. N.C. Gen. Stat. §§ 163-274, 163-275. Accordingly, Organizational Plaintiffs and Plaintiff Schaffer are likely to succeed on their First Amendment speech and association claim.[9]

D. Procedural Due Process

"Where the government seeks to deprive someone of a liberty interest protected by due process, due process demands that certain procedural safeguards be provided." *United States v. Baker*, 45 F.3d 837, 843 (4th Cir. 1995). A liberty interest that is governed by due process can be created by the U.S. Constitution or "may arise from an

[9] Even if the Court were to review this restriction on Plaintiffs' associational rights under the *Anderson-Burdick* framework for regulations of the election process, there is little difference between the exacting scrutiny of *Meyer* and the close scrutiny applied under *Anderson-Burdick* when considering regulations on core political speech, which are necessarily severe. *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 208 (1999) (Thomas, J., concurring); *see id.* at 192 n.12. *See infra* Section 1.A.

expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

"[P]rocedural due process requires fair notice of impending state action and an opportunity to be heard." *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146 (4th Cir. 2014) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Absent exigent circumstances, due process requires pre-deprivation procedures. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). The *Mathews* test "set forth the familiar three-step inquiry for determining the adequacy of the opportunity to be heard," *Snider Int'l*, 739 F.3d at 146, but here state and county election officials afford no process whatsoever.

Courts have held that the failure to provide voters adequate notice and an opportunity to cure amounts to a violation of voters' procedural due process rights. *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217–22 (D.N.H. 2018) (applying *Mathews* and concluding that the state's scheme "fails to guarantee basic fairness"). North Carolina law gives all registered North Carolina voters statutory rights to request and cast a mail-in absentee ballot that will be processed and counted, thereby vesting them with liberty

interests. N.C. Gen. Stat. § 163-226(a). Eligible, registered voters enjoy an "individual and personal" right to vote under North Carolina law. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)). "The right to vote by absentee ballot is not, in and of itself, a fundamental right. But once the State permits voters to vote absentee, it must afford appropriate due process protections, including notice and a hearing, before rejecting an absentee ballot." *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *5 (N.D. Ill. Mar. 13, 2006).

As enforced by Defendants, the state's election laws do not afford mail-in absentee voters any notice of or opportunities to cure material defects in their absentee ballot request form or the absentee ballots themselves. Such material defects will result in the rejection of their request forms or absentee ballots, thereby depriving Individual Plaintiffs and the Organizational Plaintiffs' members of their right to vote by mail. Furthermore, the lack of any uniform mechanism to cure will require LWVNC and DemNC to devote additional resources towards identifying which counties are voluntarily providing some sort of process to cure absentee ballot request forms and absentee ballots,

educating voters on those processes, and assisting them. Nicholas Decl. ¶ 18; Lopez Decl. ¶¶ 23, 27.

Plaintiffs Clark, Cates, Edwards, Priddy, Bentley, and Hutchins all intend to vote by mail-in absentee ballot, some for the first time, *see e.g.*, Cates Decl. ¶ 8, and may well make errors on their absentee ballot request forms or absentee ballots and/or the certificate envelopes. Procedural due process requires a cure procedure for these defects. Defendants have deprived Plaintiffs of their protected interest in casting an absentee ballot by failing to provide notice and an opportunity to cure deficiencies in the request forms and ballots.

E. Violation of Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131 et seq.) and § 504 of the Rehabilitation Act (29 U.S.C. § 794)

Title II of the ADA provides that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity" such as voting. 42 U.S.C. § 12132. Similarly, section 504 of the RA requires that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in,

be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The ADA and RA protect individuals with disabilities from being excluded from voting on the basis of their disabilities. *See Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 510 (4th Cir. 2016). Accordingly, Defendants are obligated to provide Plaintiffs Clark, Edwards, and Priddy with the reasonable modifications so they are afforded the same opportunity to vote as other individuals who do not have disabilities.

The SBE, which received federal funding to conduct elections, must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. *See* 29 U.S.C. § 794(a). By failing to waive the two-witness requirement for absentee ballots for voters whose disabilities limit their ability to have contact with others during this pandemic, the SBE Defendants are violating the ADA and RA. Without action by this Court, vulnerable voters like Plaintiffs Clark, Edwards, Priddy, and Hutchins (the "ADA/RA Plaintiffs") will not be able to vote this November.

To prove a violation of Title II of the ADA and Section 504 of the RA,[10] plaintiffs must show

> (1) they have a disability; (2) they are otherwise qualified to receive the benefits of a public service, program, or activity; and (3) they were denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of their disability.

Lamone, 813 F.3d at 503. First, there is no question that the ADA/RA Plaintiffs have disabilities under the ADA and RA. An individual is considered disabled if he can show "(1) that he has a physical or mental impairment, (2) that this impairment implicates at least one major life activity, and (3) that the limitation is substantial." *Heiko v. Colombo Sav. Bank, F.S.B.*, 434 F.3d 249, 254 (4th Cir. 2006).

ADA/RA Plaintiffs' preexisting conditions qualify as physical impairments. Physical impairments include lung disease and diabetes, *see* 28 C.F.R. § 35.108(b)(2); 10 C.F.R. § 4.101, and both conditions impose a greater risk of severe illness from COVID-19. Courts around the country have also routinely held that conditions like COPD, diabetes,

[10] The Fourth Circuit analyzes the ADA and RA together because "the analysis is substantially the same." *Seremeth v. Bd. of Cty. Comm'rs Frederick Cty*, 673 F.3d 333, 336 n.1 (4th Cir. 2012) (internal quotation marks omitted).

blindness, and immunodeficiency can qualify as disabilities under the ADA and RA. *See, e.g.*, *Davis v. Nat'l R.R. Passenger Corp.*, 733 F. Supp. 2d 474, 494 (D. Del. 2010) (COPD); *Myers v. Hose*, 50 F.3d 278, 282 (4th Cir. 1995) (diabetes); *Lamone*, 813 F.3d 494 (blindness); *Bragdon v. Abbott*, 524 U.S. 624 (1998) (HIV). Moreover, the CDC has deemed that individuals who have impairments such as COPD, diabetes, and organ transplants (requiring immunosuppressant medication), or are of advanced age (65 or older), such as the ADA/RA Plaintiffs, are "at higher risk for severe illness from COVID-19." Riggs Decl. ¶ 7.

These physical impairments, in combination with the pandemic, also substantially affect ADA/RA Plaintiffs by restricting their enjoyment of at least one major life activity. Major life activities include breathing, standing, sleeping, reading, writing, walking, as well as the operation of a major bodily function, such as "function of the immune system" and respiratory and endocrine systems. 28 C.F.R. § 36.105(c)(1). Plaintiff Clark suffers from severe COPD, which interferes with several major life activities, including breathing. Clark Decl. ¶ 5. Plaintiff Edwards possesses type 1 Diabetes, a physical impairment that substantially affects

her major bodily function through her endocrine system. Edwards Decl. ¶ 5. Plaintiff Priddy's pre-existing conditions are physical impairments that substantially influences his major life activities because the function of his immune system is directly affected. Priddy Decl. ¶ 4. Plaintiff Hutchin's blindness is a physical impairment that substantially influences many major life activities, such as reading, writing, and walking. Hutchins Decl. ¶¶ 4, 12. Accordingly, the ADA/RA Plaintiffs have disabilities as defined by the ADA and RA.

Second, the ADA/RA Plaintiffs are otherwise qualified to receive the benefits of a public service, program, or activity—namely, voting. Each ADA/RA Plaintiff is registered to vote this November. Clark Decl. ¶ 3; Priddy Decl. ¶ 2; Edwards Decl. ¶ 2; Hutchins Decl. ¶ 3. However, whether the ADA/RA Plaintiffs can vote in light of this pandemic will depend on whether this Court grants relief and suspends the two-witness requirement.

Third, the ADA/RA Plaintiffs are excluded from participation in and denied the benefits of voting, or are otherwise discriminated against, on the basis of their disability. Due to their conditions, the Plaintiffs Clark,

Edwards, and Priddy cannot vote safely in person and must vote by mail. However, they are unable to safely obtain two witness signatures without ignoring the CDC's guidance and putting themselves at unreasonable risk of contracting COVID-19 and suffering serious health consequences, including death. Furthermore, Plaintiff Hutchins would like to vote by mail because his age puts him at risk of serious illness or death from COVID-19. Hutchins Decl. ¶ 6. Due to his disability, he cannot fill out and return his absentee ballot himself and needs assistance. His nursing home is closed to visitors in light of the COVID-19 pandemic and he is not able to receive assistance from his wife. Thus, he would like his nursing home staff to help him. *Id.* ¶¶ 10–12. However, under North Carolina law, the nursing home staff and nurses are not allowed to assist him with returning an absentee ballot request form, marking and completing an absentee ballot, and submitting an absentee ballot. *See* N.C. Gen. State. §§ 163-226.3(a)(4)-(6), 163-230.2(e)(4); 163-231(b)(1); *see also Lamone*, 813 F.3d at 504 (because Maryland allowed no-excuse absentee voting, defendants violated the ADA by failing to make reasonable accommodations to allow individuals who were blind to vote by mail).

Thus, unless this Court grants relief, by omitting the Two Witnesses Requirement and by allowing nursing home staff to assist voters fill out and submit absentee ballots, voters like the ADA/RA Plaintiffs will confront a dilemma that they should never have to face: vote and risk exposure to a highly-contagious and deadly disease, or forego voting. Indeed, it was out of concern for the pandemic that Defendant Director Bell recommended that the witness requirement be reduced or eliminated "[i]n light of social distancing requirements to prevent the spread of COVID-19." Even if Defendants are not intentionally discriminating against individuals with disabilities, Defendants are nevertheless violating the ADA and RA because reasonable modification or accommodation claims do not require discriminatory intent. *See Lamone*, 813 F.3d at 510 (Maryland violated ADA for "failure to make reasonable accommodations" for visually-impaired voters even though "the record is devoid of any evidence that the defendants acted with discriminatory animus"). Furthermore, no discriminatory intent is necessary because Defendants' policies have a disparate impact on vulnerable voters like the ADA/RA Plaintiffs. *See A Helping Hand, LLC v. Baltimore Cty.*, 515 F.3d 356, 362 (4th Cir. 2008).

Finally, Defendants will not succeed in arguing that eliminating the two-witness requirement or the prohibition on nursing staff assistance pose an undue burden. Under ADA regulations, a public entity is not required to take any action "that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. § 35.164. Defendants bear the burden of proving this undue burden. *See id.* ("[A] public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens"). Eliminating the two-witness requirement is clearly not burdensome, as it merely requires Defendants to cease disqualifying absentee ballots lacking two witness signatures, make minor modifications to the ballots, and include instructions regarding the rule change. *See Lamone*, 813 F.3d at 508 (proposed online ballot marking tool for absentee voting for visually impaired did not pose undue burden). There can be no serious argument that eliminating the two-witness "results in a fundamental alteration in the nature" of voting. Furthermore, allowing nursing home staff to assist voters complete and submit absentee ballots cannot pose burdens on the Defendants.

Accordingly, the ADA/RA Plaintiffs are likely to prevail on their ADA and RA claims. Defendants' failure to accommodate these voters constitutes a condition on access to the ballot box that has the effect of screening out individuals from participating in the November general election because of their disabilities, in violations of Title II of the ADA and Section 504 of the RA.

F. Violation of Section 208 of the Voting Rights Act of 1965, 52 U.S.C. § 10508)

Under Section 208, a voter who needs assistance for reason of blindness, disability, or inability to read or write ("208-covered voter") possesses the right to choose *any* person other than their employer/union representative—regardless of whether the person is a near relative, legal guardian, or nursing home staff—to assist them with the voting process, including the steps necessary to obtain, cast, and submit an absentee ballot. 52 U.S.C. § 10508; *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017). Defendants are violating Section 208 of the VRA by preventing 208-covered voters from selecting their assistor of choice who is not their employer or union representative to assist them with submitting their absentee ballot request form (N.C. Gen. Stat. § 163-230.2(e)(4)), or with marking, completing

and submitting their absentee ballot (N.C. Gen. Stat. §§ 163-226.3, 163-231(b)(1)). States cannot "deny the assistance at some stages of the voting process during which assistance [is] needed." S. Rep. 97-417. For Plaintiff Hutchins, applying for a mail ballot is a prerequisite to safely voting, and he requires assistance with submitting his request for a ballot, marking and completing the ballot, and delivering it. Hutchins Decl. ¶¶ 4–12. Defendants provide an exception to 208-covered voters only for completing the request form. N.C. Gen. Stat. § 163-230.2(e1). Plaintiff Hutchins is entitled to any assistor of choice other than an employer/union representative at all stages of the absentee voting process. *See OCA-Greater Houston v. Texas*, 867 F.3d 604, 614–15 (5th Cir. 2017).

II. Absent injunctive relief, Plaintiffs will suffer irreparable harm in the November general election.

Absent an injunction suspending or modifying the challenged restrictions, voters will suffer irreparable injuries in the November general election. "[O]nce [an] election occurs, there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). For that reason, "[c]ourts routinely

deem restrictions on fundamental voting rights irreparable injury." *Id.* (collecting cases).

To demonstrate irreparable harm, a party must establish that (1) the harm is "certain and great, actual and not theoretical, and so imminen[t] that there is a clear and present need for equitable relief"; and (2) that, once incurred, the threatened harm would be "beyond remediation." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 7–8 (D.C. Cir. 2016) (internal quotation marks omitted) (alteration in original). Dr. Murray's report demonstrates that this fall the pandemic's transmission dynamics and the corresponding risk to voters are highly likely to be equal to or worse than the current situation. Murray Decl. ¶¶ 33, 42, 44. Absent relief from this Court, in-person and mail-in absentee voters alike will face severe risks and severe burdens in casting their ballots in person or by mail. Some may overcome these obstacles; many others will not. But these unconstitutional hardships will remain without an injunction.

Further, denial or abridgment of the right to vote in a particular election is the archetypal irreparable injury. *See N.C. State Conf. of NAACP v. Cooper*, 430 F. Supp. 3d 15, 51 (M.D.N.C. 2019) ("By their very nature, laws impacting the

right to vote create the potential for irreparable harm . . . .”). Once the burdens cause a denial or undue burdening of the right to vote, this injury cannot be undone. Once the results are certified, it is nearly impossible to set aside the results of an election, and voters deprived of their voice cannot be made whole. An injury is typically deemed irreparable if monetary damages are inadequate or difficult to ascertain and, typically, there are no damages in voting rights cases. *See Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994), *abrogated on other grounds by Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Just as individual voters face irreparable harm in November, so do organizations engaged in voter engagement like LWVNC and DemNC, as Defendants’ “actions ‘perceptibly impair[ ]’ the organization’s programs, making it more difficult to carry out its mission.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 642 (M.D.N.C. 2016) (quoting *Lane v. Holder*, 703 F.3d 668, 674–75 (4th Cir. 2012)); *Newby*, 838 F.3d at 9 (holding that plaintiffs suffered an irreparable harm when newly enacted barriers to registering voters “ma[de] it more

difficult for [them] to accomplish their primary mission of registering voters").

A voter engagement and advocacy organization is also irreparably harmed when its members' constitutional and statutory rights related to voting are unlawfully burdened and otherwise infringed. *See Common Cause Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1295 (N.D. Ga. 2018) (holding that harm organizational plaintiff suffered was "coterminous" with harm its members would suffer if voting was made more difficult); *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1154 (S.D. Ind. 2018) (holding that organizational plaintiff would suffer irreparable harm if voters were wrongfully disenfranchised), *aff'd*, 937 F.3d 944 (7th Cir. 2019).

III. Given the dire circumstances of this deadly global pandemic, the balance of hardships tips heavily in Plaintiffs' favor.

Many of the challenged laws in this case are quite burdensome even in normal times. As voters are now facing a virus that transmits extremely easily from person to person and can cause severe complications, lasting physical injury, and death in a wide range of people, the harm to voters far outweighs any harm to the state from the requested injunction. The injunctive relief requested seeks to strike a balance,

and Plaintiffs have herein proposed alternative solutions that safeguard election integrity while advancing voter participation and safety. For example, Plaintiffs seek the invalidation of the double-witness requirement but have suggested no fewer than three alternative remedies that would mitigate, if not eliminate, the constitutional harm. Further, Plaintiffs also do not seek invalidation or noncompliance with other requirements of the absentee ballot envelope; rather, they seek only an option for voters to cure deficiencies. In light of the pandemic's severe disruption to the normal course of voting and the threat it poses to every manner of voting, Plaintiffs have demonstrated why it is necessary to enjoin or modify the targeted restrictions, and how this will facilitate safe and equal participation and can be achieved without undermining the general election's integrity.

IV. The public interest strongly favors granting Plaintiffs' requested relief to facilitate participation in the general election.

Entering a preliminary injunction would serve the public interest as well, as non-parties to this action will stand to benefit from the requested injunction. Election integrity is not only served by *effective* anti-fraud measures but equally,

if not more so, by ensuring that all eligible, registered voters can make their voices heard. Indeed, courts have often said that the public interest "favors permitting as many qualified voters to vote as possible." *League of Women Voters of N.C.*, 769 F.3d at 247 (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)). As this Court recently put it, "electoral integrity is enhanced, not diminished, when all eligible voters are allowed to exercise their right to vote free from interference and burden unnecessarily imposed by others." *N.C. State Conf. of NAACP*, 430 F. Supp. 3d at 53. The public interest is also served by "upholding constitutional rights." *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003).

REQUEST FOR EXPEDITED CONSIDERATION

Plaintiffs respectfully request expedited briefing and consideration of this motion. As discussed *supra* p. 12 (Election Administration Timing), any changes to election administration must be made immediately to avoid irreparable harm, and specifically to allow for ordering and printing of election-related materials, recruitment of poll workers, and voter education regarding voting processes and election-day location information and other logistics. As Director Bell

stated in her April 22, 2020 letter, "[b]ecause of deadlines associated with the 2020 General Election . . . there is an immediate need to prepare for a coronavirus response." Riggs Decl. ¶ 4. Accordingly, there is good cause to expedite briefing and consideration here, and Plaintiffs respectfully request that the Court shorten the requirements of Local Civil Rule 7.3(f) to require Defendants' response within 14 days of service of this Motion and Plaintiffs' reply within 7 days of service of the response, and thereafter that the Court provide expedited consideration of a hearing date and decision on Plaintiffs' motion.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court grant their Motion for a Preliminary Injunction.

Dated: June 5, 2020.

Respectfully submitted,

/s/ Jon Sherman
Jon Sherman
D.C. Bar No. 998271
Michelle Kanter Cohen
D.C. Bar No. 989164
Cecilia Aguilera
D.C. Bar No. 1617884
FAIR ELECTIONS CENTER
1825 K St. NW, Ste. 450
Washington, D.C. 20006

/s/ Allison Riggs
Allison J. Riggs (State Bar #40028)
Jeffrey Loperfido (State Bar #52939)
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707

Telephone: (202) 331-0114
Email:
jsherman@fairelectionscenter.org
mkantercohen@fairelectionscenter.org
caguilera@fairelectionscenter.org

Telephone: 919-323-3380
Facsimile: 919-323-3942
Email:
Allison@southerncoalition.org
jeff@southerncoalition.org

/s/ George Varghese
George P. Varghese (Pa. Bar No. 94329)
Joseph J. Yu (NY Bar No. 4765392)
Stephanie Lin (MA Bar No. 690909)
Rebecca Lee (DC Bar No. 229651)
Richard A. Ingram (DC Bar No. 1657532)
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000
Email:
george.varghese@wilmerhale.com
joseph.yu@wilmerhale.com
stephanie.lin@wilmerhale.com
rebecca.lee@wilmerhale.com
rick.ingram@wilmerhale.com

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certified that the foregoing Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction and to Expedite contains 14973 words (including headings and footnotes) as measured by Microsoft Word.

/s/ Allison J. Riggs
Allison J. Riggs

CERTIFICATE OF SERVICE

I certify that on the 5th day of June, 2020, the foregoing Memorandum in Support for Plaintiffs' Motion for Preliminary Injunction and Request to Expedite, and all Declarations and Exhibits thereto, was served by electronic mail to Defendants' Counsel, Alec McC. Peters, Chief Deputy Attorney General, at the address apeters@ncdoj.gov, with consent of counsel to accept service in this manner.

/s/ Allison J. Riggs
Allison J. Riggs

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER, *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

INDEX OF PLAINTIFF DECLARATIONS

1. Declaration of Tomas Lopez, Executive Director of Democracy North Carolina
2. Declaration of Jo Nicholas, President of the League of Women Voters of North Carolina
3. Declaration of Donna Permar
4. Declaration of John P. Clark
5. Declaration of Margaret B. Cates
6. Declaration of Lelia Bentley
7. Declaration of Regina Whitney Edwards
8. Declaration of Robert K. Priddy II
9. Declaration of Walter Hutchins
10. Declaration of Susan Schaffer

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

DEMOCRACY NORTH CAROLINA, THE LEAGE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LEILIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES.	Civil Action No. 20-cv-457

DECLARATION OF TOMAS LOPEZ

I, Tomas Lopez, hereby declare as follows:

I. Background

1. I am a U.S. citizen and a resident of North Carolina. I am a registered voter in Durham County, and have resided in Durham County since 2018.

2. I have served as Executive Director of Democracy North Carolina ("DemNC") since January 2018. DemNC is a nonpartisan, nonprofit organization that works to, among other goals, protect the right to vote in our state. As part of this work, we seek to bring North Carolinians – especially historically underrepresented communities and communities of color – into the political process and encourage their participation and leadership through voting, monitoring the election process, and issue advocacy. We also author original research on election administration, help coordinate a statewide nonpartisan poll monitoring and voter assistance network, and advocate for policies and practices that we believe will increase voter access and participation.

3. In my role as Executive Director of DemNC, I am responsible for the organization's overall operations, from serving as the chief executive official at the organization, to overseeing both operational and programmatic leaders and staff. I work with our staff and board to set strategic priorities, but I am also directly involved in programmatic work, interfacing with organizational allies and democracy advocates. I am also involved in shaping our policy advocacy and research. Additionally, I interface with election officials on a frequent basis (state more than local), but I oversee a sizable organizing and advocacy staff that interfaces with all

levels of election officials (state and county). My involvement in programmatic work has afforded me direct knowledge of many of the voter protection issues that arise in this state. Since I joined the organization, I have been present at every Election Day voter assistance hotline staffing site that we and other nonpartisan organizations have collaborated to operate, and we have conducted early voting voter assistance hotline staffing out of our offices at DemNC, allowing me to see the issues faces voters and to, myself, advocate with election officials to remedy these issues.

4. Before assuming the Executive Director role at DemNC, I was a voting rights attorney at the Brennan Center for Justice at New York University, where I was involved in state and federal court litigation over election law matters, legislative advocacy on the same, and subject matter research on these topics. Prior to that, I was an attorney litigating constitutional civil rights issues affecting immigrant communities. I received my Juris Doctor from Yale in 2010.

5. DemNC has existed for nearly 30 years, and in that time has been deeply engaged in election policy issues, redistricting and campaign finance. On election and voting issues, the organization played a leadership role in the development and implementation of same-day registration, preregistration for 16- and 17-year-olds, and judicial public financing in the 2000s. Since 2010, DemNC has played a leadership role in non-partisan voter protection efforts, including poll monitoring and providing voter assistance via phone, email and text. The organization has developed a reputation for subject matter expertise in the election realm, and to this

day, continues to release original research on election issues. Since at least 2000, DemNC has employed organizers whose job was to cultivate grassroots support for democracy reform, mobilize around political participation (both voting and otherwise), and educate and assist voters across the state. In the late 2000s, DemNC moved those regional organizers from being based out of Durham to being located in the regions in which they worked. We currently employ seven regional, full-time organizers.

II. DemNC's Work to Educate and Support Voters

A. Advocacy and Research

6. As mentioned above, DemNC devotes substantial time to advocating for election reform and urging pro-voter policies at the North Carolina General Assembly, the State Board of Elections, and at many county boards of elections. It is critical to our mission that every voter be able to have easy access to the ballot box. In particular, we know the importance of in-person voting opportunities, especially for underserved communities across our state, and we recently successfully advocated for the restoration of the last Saturday of early voting.

7. Based on our original research, we have also documented the negative impact that reducing early voting opportunities can have on North Carolina's electorate, and specifically communities of color. For example, after North Carolina enacted S325 in June 2018 mandating uniform hours across all early voting sites within each

county,[1] the costs of implementing this measure caused 43 counties to reduce the number of early voting cites in the 2018 election compared to 2014 and over two thirds of counties to reduce weekend hours. This disproportionately impacts Back voters, who in 2018 made up approximately 22% of registered voters but 27% of those who cast ballots on the last Saturday of Early Voting.

8. Our regular advocacy work also includes urging counties to adopt as expansive early voting plans as possible and mobilizing our advocates to turnout to county boards of election meetings to support expansive early voting plans. Before an election, we commonly submit letters to county boards of election with data and maps documenting the usage of early voting sites and days, in order to ensure that those boards understand how their decisions can make voting easier and more accessible for voters in their counties. In particular, we have been leaders in efforts to expand weekend voting in counties, including Sunday voting so that our church partners can conduct "Souls to the Polls" efforts. We planned to do this advocacy this year, before COVID-19, and still plan to do so.

B. Election Protection, and Voter Assistance and Voter Education

9. Since 2010, we have devoted substantial time and staffing to voter protection efforts, including developing a statewide poll monitoring program and providing voter assistance via a non-partisan election protection hotline. We escalated those efforts even more starting in 2013, after the loss of Section 5 of the Voting Rights

[1] S.L. 2018-112. As originally written, the statute removed the final Saturday of early voting beginning in 2018; this was subsequently postponed.

Act and the passage of House Bill 589, a law passed by the North Carolina General Assembly that rolled back many of the voting reforms for which we had advocated. Over the last approximately seven years, we have worked with other non-partisan groups to fully staff a national election protection hotline with in-state North Carolina election experts. We help to recruit and train these hotline experts, and during early voting, we host them in our offices. The hotline (which we recently extended to offering text message services) is heavily staffed by DemNC staff, and that work specifically has represented a significant expenditure in both staff time and resources.

10. In the course of our hotline work, our staff are often contacted by voters with various physical impediments or health conditions that may make voting more difficult. We frequently have to assist voters in understand how to access curbside voting or, more commonly, when curbside voting is not working as intended, notify county elections officials and advocate for a solution.

11. We have also answered questions about how voters can use absentee voting by mail, a process that is cumbersome and hard to understand, especially for voters who have never used it before. We also get calls about voters inquiring as to the status of their absentee ballots, and many times we have dealt with situations where absentee mail ballots not getting to the voters that requested them, even before COVID-19.

12. DemNC staff answers hotline calls, emails and texts at times outside of normal voting days and hours, and our staff collectively spends many hours answering voter questions about where and how to vote, getting registered, and other aspects of the

voting process. We are already receiving more calls than we would normally expect in June from voters asking about absentee voting in the fall election.

13. In addition to staffing the hotline, DemNC runs an extensive poll monitoring program, deploying volunteers to polling places across the state. DemNC recruits, trains and places volunteers to be stationed outside polling places on Election Day and during heavily-used early voting days. The purpose of putting DemNC volunteers at polling places is to provide direct assistance to voters who have issues voting and identify the issues at polling places that require additional attention. We train our volunteers on what it means to be a non-partisan poll monitor, how to provide assistance to voters, how to refer people to the hotline so that we can better gather information to use in real time to address issues that may affect other voters. In 2018, we placed 800 monitors at approximately 260 sites, which represented about 10% of all sites statewide.

14. In January 2018, DemNC issued a report, *From the Voter's View: Lessons from the 2016 Election*, documenting the many issues North Carolina voters face when they go to the polls, including long lines, machine malfunctions, disability access challenges, and poll worker conduct.[2] In that report, we made many findings relevant to this case. For example, we consistently found that voters who showed up to the incorrect precinct on Election Day were not afforded the opportunity to cast an "out of precinct" provisional ballot and were instead told they had to go to

[2] This report is available at https://democracync.org/wp-content/uploads/2018/01/PostElectionReport_DemNC_web.pdf

another site. We also documented widespread problems with curbside voting – both in inadequate signage and long wait times due to inadequate staffing. In more than a dozen counties, we documented excessively long lines and wait times for voters on popular early voting days and on Election Day.

15. On voter education more broadly, we devote considerable staff time to voter education and mobilization. Through these efforts, we seek to explain the voting rules to the public, through in person trainings and through print and digital resources. We distribute these resources directly ourselves or through partners like state or regional partners, like churches. We also mobilize volunteers to contact voters, typically members of historically underrepresented communities, to encourage participation and to answer questions re: election rules.

16. In past elections, DemNC also produced a voter guide in collaboration with partner organizations, mailed to over one million North Carolina homes, with information about election rules and candidates. For example, in the 2018 general election, we printed 1.8 million of these non-partisan voter guides, which were distributed through direct mail, our organizing networks, and the efforts of partner organizations. We have limited funds with which to pay for these guides, so space is at a premium because of printing and mailing costs. When voting laws are changed or voting becomes more complicated, we will have to devote more space in the guides to explaining how to register and vote, for example, and less space providing voters non-partisan information about the candidates that will be on their ballots.

17. DemNC has, from time to time, including in the March 2020 primary, conducted a rides-to-the-poll program.

III. COVID-19: Reforms Needed and the Impact On DemNC's Work

18. Absent changes to make voting in a pandemic easier, DemNC is going to have to divert significant resources to help voters problem-solve complying with existing rules: from registering to vote, to successfully requesting and submitting a valid absentee ballot, to finding a place and time to vote safely in-person.

A. Voter Registration

19. DemNC has both advocated and litigated for expanded opportunities to register to vote. DemNC successfully negotiated a settlement to an action under the National Voter Registration Act filed in North Carolina in 2015, which opened the door to DMV customers who were updating their drivers' licenses to be able to also update their voter registration both in-person and online. The success of that settlement process was followed recently by DMV allowing all of its customers to register to vote online, not just those customers executing a DMV transaction. DemNC has long recognized that easier online registration options are good for democratic participation.

20. Voter registration rates in North Carolina are falling compared to the last presidential election, and the only thing halting that precipitous decline in voter registrations is the availability of online voter registration through DMV. North Carolina Department of Health and Human Services agencies should also be offering online voter registration, and having that option available to voters would

make our job easier, when voters call our hotline and ask how they can register to vote.

21. We traditionally receive many calls to the election protection hotline during the early voting period about voter registration. That is when many voters may think about their registration status for the first time. Those voters either may not know that they needed to register or re-register (if they had moved or been removed from the voter rolls). We would normally recommend same-day registration to these voters, but we anticipate that many voters will not be comfortable voting in person. Right now, the statutory cut-off for regular registration is 25 days before the election, but in advance of the deadline for requesting absentee ballots. An extension of the deadline for voter registration would impose minimal burdens on election officials, but offer more opportunities for registration by mail.

B. Absentee by Mail

22. In addition to issues we identified in the primary and would see in a "normal" election, given the expected increase in demand in absentee voting, we expect to have to spend more time helping voters new to the process navigate absentee voting by mail. We will have to do so with the same amount of capacity that we had before this. Absent significant changes to state laws governing the requesting and submitting an absentee ballot, making it easier for voters so that they do not need to seek our assistance, we will have reduced capacity to do some of our other planned advocacy—for example, efforts to improve curbside voting or engage in broad-based civics education (a part of our long-term organizing model) to explain

importance of voting and its positive impact. We will also have less time and fewer resources to devote to "what's on the ballot" training.

23. Without making it much easier to request an absentee ballot and cast it without exposing others to the virus, we also anticipate having to devote valuable space in our printed voter guides to proactive problem-solving and recommendations for voters who may have trouble requesting absentee ballots or finding a witness. This is space we would devote to other topics. Importantly, that voter guide is a key part of both our voter education and mobilization efforts, and we partner with community groups (including churches and local civic groups) and other nonpartisan organizing and mobilizing groups, often led by and serving people of color, to distribute the guides both digitally and through direct in-person contact. Because of the loss of direct contact opportunities and that these partners might have constituents that have low digital use rates (i.e., older voters, lower income), we may have to spend more on direct mail to try to explain complicated rules to voters.

24. DemNC also works with numerous civic engagement groups, and we know from those partnerships that the ban on assisting voters with completing and returning absentee ballot request forms is hindering their work. Where there are fewer volunteers on the ground able to assist voters with requesting and completing an absentee ballot, we know that we will get more inquiries to the hotline about how to get an absentee ballot or why a voter's absentee ballot never arrived. This ban strains our resources in a time we need to be putting those efforts elsewhere.

25. Voters who cannot provide their driver's license number, special identification card number, or last four digits of their social security number are not currently allowed, under Sec. 163-230.2, to request an absentee ballot. In her March 26, 2020, letter to the General Assembly, State Board of Elections Executive Director Karen Brinson Bell recommended that voters also be allowed to submit a copy of a Help America Vote Act (HAVA) document, as counties have reported to her problems with elderly voters who do not drive and cannot remember their social security number are having their absentee ballot requests rejected. Based on her recommendation and an expected increase in absentee by mail voting by a vulnerable population, we expect to get many more calls about this issue to the election protection hotline, and without substantial assistance from my staff and our volunteers, which again will undermine our efforts to do voter education or other advocacy, that statutory barrier will be insurmountable for voters.

26. Given that high volume of people will be voting by mail for the first time, we anticipate that voters will be calling with questions about postage and processes for returning absentee ballots. The state's failure to provide contactless drop-boxes will likely strain our resources in assisting voters (in a legal way) to find a way to return their ballots if they lack stamps or financial resources.

27. Likewise, the amount of time-intensive research it takes to help a voter find out what happened to his/her absentee ballot is a substantial drain on our staff time and resources. The failure to provide uniform measures for an opportunity to cure a deficient absentee ballot will certainly require that we spend more time with

individual voters helping them to figure out if their counties will allow them an opportunity to correct their ballot and how they can go about doing so. We work in so many different counties, and right now, most counties have different practices on whether they even let voters cure their absentee ballot, and if they do, those curative measures may vary wildly. We could spend thousands of hours researching the intricacies of each North Carolina county's process without some uniform rule in place. Likewise, without some sort of failsafe measure in place for absentee ballot requests forms that get lost in transmission, like the state equivalent of Federal Write-in Absentee Ballot, we anticipate a significant diversion of a resources as we help voters try to get last minute absentee requests submitted.

C. In-Person Voting

28. As mentioned before, DemNC's advocacy for expansive early voting has been a key part of its work for years. Without relief from the law that requires counties to have uniform early voting hours (that is, if one site is open, all sites must be open), particularly in light of the challenge in recruiting poll workers and the revenue shortfall that many counties are experiencing, we expect that without increased advocacy from us, many counties will reduce their number of early voting sites. This loss of early voting sites and days already happened as a result of S.B. 683, and is certain to be exacerbated by a decrease in expected in-person voting. But we will need to explain to county boards (and forcefully advocate) that respecting social distancing guidelines and allowing time for cleaning materials between voters actually means that counties need to provide more voting sites and days. That is the

only way to space out voters appropriately. If counties were allowed the flexibility to open sites when they were available and when they could secure poll workers, we would have to spend less time advocating for early voting sites and days and could devote our resources to other activities pertinent to our mission.

29. Likewise, we are fielding requests from election officials and others to help them recruit poll workers because of an anticipated shortage. Recognizing the importance of securing these workers, we are striving to incorporate recruitment into our current mobilization efforts, even though we have never done that kind of work before. But this strains our capacity and resources, and will only do more so as we get closer to the election. Right now, the law requires that a majority of poll workers on Election Day be registered voters in the precinct in which they work. Lifting that requirement, and, indeed, lifting the requirement that poll workers be residents of the county, would allow counties with older and more vulnerable populations to cast a broader net to find workers who could safely help conduct the election.

D. Concerns about Election Security

30. Recently, the North Carolina General Assembly justified imposing new restrictions and criminal penalties regarding who can assist voters with requesting absentee ballots due to the voter fraud discovered in the 2018 Campaign by Republican congressional candidate Mark Harris in the 2018 Congressional District 9 election. What we know from our research and advocacy is that fraud is quite rare, and that the issues raised by the 2018 case have to do with enforcement of laws that were already in place prior to 2018, and with enforcement, surveillance and monitoring

of election irregularities can suss out and address these issues. Eliminating the witness requirement would not open up North Carolina elections to interference, but instead would allow vulnerable communities—including many communities of color—to receive the help they need in order to participate in our democracy during a global pandemic.

31. As recent litigation has illustrated, the purported state interests that legislatures have used to implement voting restrictions in North Carolina are often red herrings and bear no relationship to the needs of conducting an election and create insurmountable burdens on the right to vote.

IV. Legislative Activity on Elections and COVID-19

32. On March 19, DemNC and its partners sent a letter to the State Board of Elections urging expansive and first-step reforms to ease the burden of voting during a global pandemic.[3] Shortly thereafter, NC State Board of Elections Executive Director Karen Brinson Bell sent a series of letters to the North Carolina General Assembly urging legislative action to ensure that fully participatory and safe elections could be conducted this fall. DemNC supported these recommendations.

33. My organization's position is that two bills filed in the legislature represent the best efforts to address the myriad of needs arising from the challenges of conducting an election during this COVID-19 pandemic: House Bill 1184, introduced by Representatives Morey, Hawkins, Autry, and Butler, and Senate Bill 861,

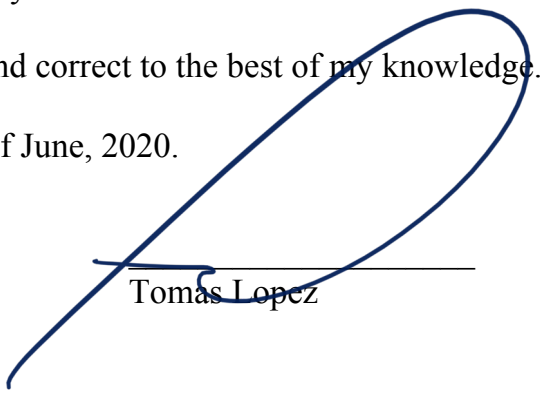
[3] This letter is available at https://democracync.org/wp-content/uploads/2020/03/Letter-to-SBOE-re-COVID-19-response-3-19-2020.pdf.

introduced by Senators Marcus, Chaudhuri, and Foushee. DemNC has urged its supporters and partners, in particular, to raise up Senate Bill 861 as an example of comprehensive electoral reform that would make voting safer and more accessible in November. However, the legislature has failed to take action on either of those bills.

34. DemNC understands that HB 1169, a compromise bill, seems to be the only legislation that stands any chance of moving, and it is, at the time of the signing of this declaration, still being heard in Senate committees. While HB 1169 might have represented a decent start to addressing the broad scope of election-related needs arising out of the COVID-19 pandemic had it been passed two months ago, when DemNC's and the State Board of Elections recommendations first came out, this bill does far too little now. It does nothing to ease the burden on voter registration during the pandemic, and it is grossly inadequate in addressing the challenges that will face those organizations like mine trying to preserve safe, in-person voting. It does not do nearly enough to ensure that voters will have an easier time using absentee mail-in voting, particularly given North Carolinians lack of familiarity with the process. Even if this bill emerges as is out of the legislature, DemNC still asserts that, absent judicial intervention, participation in this year's general election will be severely hindered and our resources will be significantly taxed and diverted trying to help voters in these unprecedented times.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge.

Executed on the 4th day of June, 2020.



Tomas Lopez

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF JO NICHOLAS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Jo Nicholas, hereby declare as follows:

1. I am a U.S. citizen and a resident of North Carolina. I am a registered voter in Moore County, and have resided in Moore County since 2003.

2. I have served as President of the League of Women Voters of North Carolina ("LWVNC") since July 2019. In this role, I preside at all meetings of the organization and board of directors and represent the organization to the public at an assembly. In the absence of the treasurer, I may sign or endorse checks, drafts and notes. I am an ex officio member of all committees except the nominating committee, and I manage and supervise the overall organization and perform other duties as may be designated by the Board. I first became involved with the LWVNC in 2011 and since then have served as Past President and Board Director in addition to my current role.

3. The LWVNC is a state affiliate of the League of Women Voters of the United States ("the League"). The League is a nonpartisan, community-based organization that encourages Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 140,000 members and supporters, and is organized in approximately 750 communities and in every state.

4. For over ninety years, the League has led efforts to remove barriers that Americans face in registering to vote and casting a ballot. The League was also deeply involved in crafting the National Voter Registration Act of 1993 ("NVRA"), having provided substantial testimony and input over the course of the NVRA's legislative history,

specifically on the topic of purges for failure to vote. *See, e.g.*, Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 101st Cong. 149 (1989) (testimony of Nancy M. Neuman, President, League of Women Voters); Voter Registration: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 103d Cong. 140 (1993) (testimony of Becky Cain, President, League of Women Voters).

5. The LWVNC is a nonpartisan political grassroots organization with seventeen local chapters throughout North Carolina. The LWVNC currently has approximately 1,912 members.

The LWVNC's Work to Help Voters Register

6. The LWVNC conducts voter registration and education initiatives throughout North Carolina, including voter registration drives, distribution of voter education materials, and voting-day assistance to help individuals exercise their right to vote. For example, in the 2016 election cycle, the LWVNC assisted several thousands of voters to register and hundreds of voters to enroll to receive absentee or by-mail ballots. In our Piedmont Triad chapter alone, which operates in Guilford County, we held 46 voter registration events as well as voter registration drives following Naturalization Ceremonies and registered over 550 voters between July 1, 2016 and June 30, 2017. Our other local chapters have engaged in similar efforts.

7. The LWVNC has expended significant resources to conduct these voter registration and education initiatives, including the time and effort of our members. We expect to engage in similar efforts for the upcoming general election cycle, and have

already started our voter education initiatives, releasing a nonpartisan voter guide ahead of the March primary.

8. The COVID-19 pandemic has already significantly hindered the LWVNC's work, requiring us to modify in-person initiatives and meetings to remote platforms. The LWVNC is becoming increasingly concerned that the COVID-19 pandemic is likely to interfere with the upcoming 2020 election, and I anticipate that without additional voter registration and support initiatives we may experience a significantly lower voter turnout. As a result, the LWVNC is currently working on initiatives to facilitate voter registration to mitigate the effects of the COVID-19 pandemic on voter turnout this fall. We expect that many voters will be seeking to register closer to the election because of the limitations on in-person voter registration efforts by LWVNC and similar groups. As a result, we expect many voters will try to register and be unable to due to the 25-day registration deadline, and if this deadline remains in force it will have the effect of frustrating our purpose in promoting voter registration. In addition, voters who need to update their registration and were previously able to do so during one-stop voting, including LWVNC members, will now be unable to do so because they are unable to vote in person due to the risk to their health. We will have to devote more resources to make sure voters, including our members, can update their information in time to apply for and vote an absentee ballot.

9. Online voter registration will be particularly important to the LWVNC's registration work given the limits on our in-person initiatives. The North Carolina Department of Motor Vehicle ("DMV") offers online registration, but previously this was

only available to individuals who were also making a "transaction" with DMV. This was recently changed in March 2020 so that voters with a DMV account can register to vote online even if they are not doing an online transaction. Since this function is very new, most voters are not aware that they can use this online feature to safely register to vote. The LWVNC intends to publicize this option, and include this in our online voter services guide, "VOTE411", within our communities, but we need time to do so. The current requirement that voters register with the DMV at least 25 days before the election will hinder these efforts and require us to devote resources to helping voters register that we would otherwise use in other initiatives leading up to the election.

10. Similarly, the failure of North Carolina to offer any other method of online voter registration, especially for individuals without DMV accounts, will significantly hinder and impact our efforts to conduct voter registration during the COVID-19 pandemic. Many voters we assist do not have DMV accounts and cannot register online currently. We would ordinarily assist citizens without DMV accounts using paper registration forms during our community voter registration activities, but cannot do so during the pandemic. The time needed to educate voters in a format that many are not familiar with – online resources – is crucial and these changes are needed now so that voters can be made aware and register to vote. The absence of an online option frustrates the mission of the LWVNC to ensure that all eligible voters can register safely in the current environment.

The LWVNC's Work to Help North Carolinians Vote By Mail

11. As noted above, the LWVNC engages in voter education through its local chapters and this includes educating voters, including our members, on their options for how to vote. We are developing educational materials for voters to use in order to help them navigate this process, and our members have already started to receive questions about this process. LWVNC is acutely aware that many voters will want to vote absentee by mail this year. We will therefore focus on educating our members and their communities about voting absentee by-mail because it will likely be the safest option for many individuals to exercise their right to vote.

12. We also expect that many of these voters will seek to vote by mail for the first time. A survey of our members indicated that most had either never voted by mail, or had not voted in North Carolina recently by mail. We recognize that significant resources need to be devoted to voter education, and particularly to absentee by mail voting, throughout the state. As a result, helping voters navigate the application process and understand the requirements of voting by mail will be an essential part of our work, including providing them with resources, application forms, and accessible ways to submit forms.

13. Before the enactment of SB 683, LWVNC members assisted voters who needed help with completing and submitting absentee ballot request forms. The new restrictions on what assistance we can provide voters to complete and submit absentee ballot request forms will naturally impair these efforts and limit the types of initiatives we

can undertake to help voters. Specifically, LWVNC and its members are unable to assist voters with correctly completing absentee ballot request forms and will be severely constrained in how we can help voters ensure they have filled these forms out correctly. Given the dramatic increase in voters wishing to vote by mail this year and the number we expect to do so for the first time, helping voters to request absentee ballots is particularly critical to our mission at this time in light of COVID-19. Assisting voters with filling out request forms is an important part of our educational mission and message of participation because once we assist voters with this process for the first time, they are more likely to do so on their own the next time and more likely to vote in the next election. Directly assisting voters is also an essential means of how we build relationships and associate with voters, including our members. In the absence of SB 683, we would be able to associate with our members and other voters to assist them with completing and submitting absentee ballot applications, which would allow us to further associate and build such relationships as a trusted messenger.

14. The LWVNC also views the lack of any method to request absentee ballots by phone, email, or online as problematic. We have already heard from people, including members, who have limited access to a computer and no access to a printer to download the absentee ballot request form. Other options need to be created to allow the many voters who will be looking to vote safely and vote absentee by mail to do so. We are also unable to help voters deliver absentee ballot request forms to the county board of elections, and this step can be particularly difficult for those who are self-quarantining and do not have

access to envelopes, postage, or secure USPS mail pick-up. Developing the kind of relationship where voters trust us to turn in their forms (much like the voter registration assistance we provide) is key to our relationship and association with voters and the purpose of our members in their respective communities. With these restrictions in place, LWVNC will have to redirect a significant amount of its limited resources to helping eligible voters access absentee ballot request forms on their own and are severely limited in the assistance we can provide to help voters actually submit those forms. Helping voters submit forms and ensuring they are delivered to election officials would also make our message of promoting participation and civic engagement more effective. It is less effective and creates less of a relationship with members and other voters to simply point to a blank form and no more.

15. As for the requirement that two witnesses or a notary certify each mail-in ballot, the LWVNC is very concerned that this requirement will seriously affect voting behavior this year. Many LWVNC members fall into the population of voters that need to practice strong social distancing behaviors to protect their health. For these members, getting two witnesses to observe ballot marking and complete the application envelope will be difficult and force them to choose whether to break social distancing guidelines. Additionally, many have stated that this requirement discouraged their voting absentee by mail in the past. If the two witness requirement remains in effect, the LWVNC will have to divert its limited resources towards educating voters on how to vote safely, if even possible, with this restriction in place.

16. Furthermore, we have great respect for all the workers with the U.S. Postal Service, but we recognize that they are likely to be overloaded this year and alternative, safe and secure delivery systems will be required to make absentee by mail voting an effective option for every voter who cannot vote in person. Contactless drop boxes are a safe and secure option for many voters. Without this option, the LWVNC's work to assist voters to vote by mail will be limited because we will have concerns as the election gets closer that mailed absentee ballots may not be postmarked or delivered in time and will have to redirect more of its limited resources towards mitigating this concern.

17. The LWVNC recognizes that many counties make a significant effort to review completed absentee ballot envelopes and flag errors so that voters can offer more information, or have an opportunity to re-do their ballot. This has been observed by League members at many local county board of elections meetings. However, we also are aware that there is no uniform standard that is followed by every county board of elections, and that not all counties undertake these efforts. All voters in North Carolina should have the same opportunity to make sure their ballot is counted in this election. Because so many voters will be submitting absentee by mail ballots for the first time this year, we expect this to be a significant issue.

18. Without uniform and adequate methods for allowing voters to cure absentee ballot application forms or absentee ballots, the LWVNC will have to redirect its limited resources to ensuring that the voters it assists are following all procedures precisely, in addition to its general educational efforts.

The LWVNC's Work to Support In-Person Voting

19. The LWVNC recognizes that North Carolina will need to have a robust in-person voting system in place. Many voters prefer to vote in person. In fact, if we follow the estimates of the State Board of Elections that 40% of voters will opt to vote absentee by mail this election cycle, millions of North Carolina voters will still want to vote in person. For example, people who lack a fixed long-term address, who rely on the ADA-ballot marking devices, or who prefer the security of seeing their ballot enter the tabulator, will still want to go to an in-person polling location.

20. Local county boards of elections must have as much flexibility as possible to operate as many polling sites as possible in what is expected to be a very challenging early voting environment. Local boards of elections will be scrambling to find locations that offer the space to provide social distancing, not only for voters, but for precinct workers. In addition, it is expected that some sites usually available for voting may become unavailable if the proprietors are uncomfortable giving the public broad access to their facilities. Allowing different sites to be open at different times will give more voters access to safe in-person voting options, reducing the possibility of long lines. If the uniform hours requirement remains in place and precincts are consolidated as a result, the LWVNC will have to divert its limited resources in its voter education efforts to alert its members and those in their communities about the changes.

21. As with in-person polling sites, local county boards of election will need flexibility in recruiting workers to staff the polls. COVID-19 has reduced the population of

registered voters who will feel comfortable interacting with large numbers of the public. I understand that Wisconsin had such a crisis during their recent primary, and that they called in their National Guard to staff some precincts where insufficient numbers of poll workers would have prevented some counties and townships from having any polling places. Many LWVNC members work as precinct officials both during early voting and on election day. Some have reported that they will not work this year because of the pandemic. We will work hard to get the word out to the community to find poll workers, but they may no longer be within the precinct. If the requirement that the majority of poll workers must come from a precinct remains in place, the LWVNC will have to redirect more of our additional resources to recruit poll workers, whereas these efforts would be much easier with this restriction lifted.

The Urgency of Preparing for the 2020 General Election

22. The LWVNC recognizes that this will be a unique election and our usual voter education will be under greater constraints. Voters have already communicated to us their concerns and their confusion. In order to effectively undertake our voter education and assistance initiatives, we need the ability *now* to give voters the information and reassurance that they will be able to vote safely in November. It is crucial for us to convey to our members and the voters in their communities that this most critical election will be handled by our government with the professional confidence that other elections have had in North Carolina, and that their votes will be received at their boards of elections and will be counted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge.

Executed on the 1st day of June, 2020.

Jo Nicholas

Jo Nicholas

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF DONNA PERMAR IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Donna Permar, hereby declare as follows:

1. I am a Durham County resident, and I work at the Duke Hospital as a staff assistant.
2. I am a United States Citizen and a registered North Carolina voter who is eligible to vote in the November 2020 General Election.
3. I am completely blind and I live with my spouse who is also completely blind.
4. I plan on voting in-person this election cycle.
5. In-person voting via an ADA compliant voting machine is the only way that I am confident in casting my ballot. Due to my blindness, voting absentee by mail is not an option for me because I cannot complete an absentee ballot without assistance from another individual, thereby compromising the privacy of my ballot.
6. Utilizing an ADA compliant machine is also the only way that I can cast my own ballot without assistance from others, and I trust it more than I do another person helping me to cast my ballot. I also trust the machine because it will read my choices back to me before I actually submit my vote.
7. I utilize public transportation in order to travel, thus it is important that my polling place for the November 2020 General Election is accessible by public transportation. If precincts are consolidated in a manner in which I would not have access to my polling place via public transportation, it would place a severe burden on my ability to cast my vote in-person.

8. I also don't believe I, or any other voter should have to stand in long lines because of excessive precinct consolidation.

9. Additionally, it is important that the location and hours of the early voting sites in Durham are widely publicized, and that I am able to request information about early voting sites from the North Carolina State Board of Elections or the Durham County Board of Elections in order to know my options as to where to vote. It is also important that the early voting site hours are at times that are accessible via public transportation.

10. Further, I don't believe I or any other voter should be subject to excessive risk of infection with COVID-19 because polling places are not adequately sanitized and because poll workers were not provided with personal protective equipment.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 19 of May, 2020.

/s/ [illegible]

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF JOHN P. CLARK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, John P. Clark, hereby declare as follows:

1. I am a U.S. citizen and a resident of the town of Apex in Wake County, North Carolina.
2. I am 79 years old. I was a high school teacher before I retired.
3. I am a registered North Carolina voter who is eligible to vote in the November 2020 general election.
4. I have severe chronic obstructive pulmonary disease ("COPD") and have lived with this disease for the last 12 years. It limits my activities. Whenever I'm active at all, walking around or working a little bit in the yard, I carry an oxygen tank. I can walk only two blocks, even with oxygen. I'm more susceptible to pneumonia and have had pneumonia four times in the last six years or so. Each time I have had pneumonia, the COPD was exacerbated by it. The most recent episode was in January 2020, which has caused a further deterioration of my respiratory condition.
5. COPD makes me more vulnerable to severe complications or even death from COVID-19. For me, the coronavirus is a death sentence. It is absolutely way too high a risk for me to vote in person. It is a necessity that I vote by absentee ballot in the November general election. To the best of my recollection, this is the first time in my life that I will not be voting in person and will be voting by mail.
6. To avoid any risk of contracting COVID-19, I have been quarantining myself during the pandemic, for the last eight weeks approximately. Because I can only

walk about two blocks using an oxygen tank, my life has been quite circumscribed during this pandemic.

7. I live only with my wife. The only people who have entered our house during the lockdown have been three service people. I made sure I was never in the same room with them. My wife has limited her grocery shopping to no more than once a week. Because of the risk to me, she wears a mask and gloves when she goes inside and she uses sanitizing wipes as well. My wife's grocery trips are her only travel outside the house except for accompanying me on my short walks in the neighborhood and an occasional drive. We never go over to neighbors' houses or yards. We never leave our property except for necessary medical appointments, short walks, and an occasional drive.

8. I have voted in every presidential election since 1968, and I vote regularly in state and local elections.

9. I want to vote in the November 2020 general election and have already applied for my mail-in absentee ballot.

10. My wife could serve as one witness for my absentee ballot, but I could not safely get a second witness for the ballot. Given my COPD and the very serious risk it poses to my life if I catch COVID-19, I simply cannot ask someone to come to to my house to serve as a second witness or go to theirs. Each additional person I interact with poses an additional risk to my life. COVID-19 creates a much greater risk for someone like me because of my serious respiratory illness.

Therefore, the only way I can safely vote is by mail, and without getting a second witness for my ballot.

11. Given the current rules in North Carolina, I am unable to figure out how I will safely cast a ballot by mail, with the current requirement of two witness signatures, that will be counted in the upcoming election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 22 of May, 2020.

/s/ John P. Clark

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF MARGARET B. CATES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Margaret B. Cates, hereby declare as follows:

1. I am a U.S. citizen and a resident of the Town of Faison in Duplin County, North Carolina.
2. I am 85 years old. I taught piano for a living but have since retired.
3. I am a registered North Carolina voter who is eligible to vote in the November 2020 general election.
4. I have had chronic fatigue syndrome for the last 27 years since 1993. When I first came down with it, I was totally bedridden. Gradually, over a period of a few years, I was able to get up, dress and function somewhat. I could go out but not very far. I also could go to my children's house but not often. I would have some recovery periods but then crashes. I was able to rehabilitate to about half my original function. Right now, I am not in good health. I have had several falls and have had a urinary tract infection coming and going for this past year which has been very debilitating. As a result, I have been pretty weak and have been using a walker in the house. I have not been able to function in a normal way. I am in bed twelve hours at night and two in the afternoon. I seldom get up and get dressed. There is no treatment for this syndrome.
5. I have also psoriasis and am being treated for that, and I also have had cancer though it is not active now though.
6. For the last six months, after the three falls and infection, I have had someone who comes over to the house for a couple hours every day except Sunday to help

with household chores, like cleaning, getting food, and doing laundry. She goes for grocery shopping and occasionally cooks. Since the coronavirus pandemic started, we have been following social distancing, and we stay far apart. I have not left the house in 3 months, except to go to a doctor's appointment right before March began and before the social distancing guidelines were put in place. She only goes out to go to the grocery store for me and her family. She is very cautious, wears a mask, and keeps her distance. I could not live in this home by myself without her help.

7. I have voted in every presidential election since the 1956 presidential election. I also vote in many state and local elections.

8. I want to vote in the November 2020 general election. I do not have a computer or printer. I do have a tablet and a smart phone. I have never voted by mail, but from what I understand there is no way for me to request an absentee ballot online. If this option were available, I could (with some assistance) and would request a ballot that way. I could also request one by phone call. I have not yet requested an absentee ballot for the November election.

9. My nearest family member is my son, who lives a two-hours' drive away in Southern Pines, North Carolina. Without an online or phone option to request an absentee ballot, I would not be able to request an absentee ballot on my own and would depend on others to mail or otherwise provide it to me.

10. If I were able to get an absentee ballot, I understand there is a requirement that I either get two witnesses or a notary public for it to be counted. My assistant who

comes to the house to help with daily tasks could serve as one witness for my absentee ballot, but I would be taking a risk in getting a second witness for the ballot. Given my poor health and debilitated state, I would have to ask someone to come into my house to serve as a second witness, and no one has been here besides my assistant. I am reluctant to ask someone to come in because of the coronavirus. Each additional person I interact with poses a risk to my life. I will not be able to get a second witness without breaking the social distancing rules that I am following to protect my health.

11. Voting in person is not an option for me, and I believe it would pose too much of a risk to me. Given the current rules for voting by mail, I am unable to figure out how I will safely cast a ballot by mail in the upcoming election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 20 of May, 2020.

/s/ Margaret B Cates
Margaret B. Cates

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF LELIA BENTLEY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Lelia Bentley, hereby declare as follows:

1. I am a U.S. citizen and a resident of the town of Wilkesboro in Wilkes County, North Carolina. I live on my own.

2. I am 62 years old and registered to vote in Wilkes County. I regularly vote in local, state, and federal elections.

3. I have been diagnosed with hypertension, which I control through diet, exercise, and activities like meditation. Additionally, about once a year, I usually get a cold that develops into respiratory issues. Typically when this happens, I get congested in my sinuses and lungs, develop a hacking cough, experience shortness of breath, and cannot leave my bed. Because of these issues and because it has been reported that COVID-19 attacks the lungs, I am terrified of getting COVID-19. I believe it could kill me.

4. I started self-isolating to protect my health on March 10. The last time I went to the grocery store was on March 15. Since then, if I have needed groceries, I order them online and have them delivered.

5. My city has been working to connect water lines in my area. City employees have come to my home to provide me with updates about this work, but I have made them stand on the sidewalk and cleaned my door and doorbell with Clorox wipes after they left.

6. I am following the stay-at-home order as best as I can. If I do not need to leave my home, then I don't.

7. I do not have any support network, including relatives, in Wilkes County and would have to ask my neighbors to serve as witnesses to request and cast a mail-in ballot. However, I believe this would put me at risk of catching COVID-19 or put others at risk. The neighbors who live on either side of my house continue to leave their homes and even host gatherings.

Other neighbors are self-isolating because they have elderly relatives, and I worry that despite all of the precautions I take, I could accidentally spread the virus to them. As for my other neighbors, I do not know what precautions, if any, they are taking, and cannot trust that they are not infected or otherwise carrying the virus as a result.

8. I will not feel safe leaving my home again until there are safe treatments available if I get sick or a vaccine.

9. It is incredibly important to me to vote in the General Election. I believe every vote will count. But I do not know that I will be able to find witnesses, or who I would ask. Even if I could find witnesses, I do not know that I would move forward with requesting a mail-in ballot or sending in a ballot by mail because of the risk of catching COVID-19 through the witnessing process. I will not vote in person because I believe it would be too much of a risk to my health.

10. I am very frustrated by these laws. I do not understand why they are required. Other states have been voting by mail for years. This situation is extremely unfair to voters like me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 19 of May, 2020.

/s/ Lelia Bentley
Lelia Bentley

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF REGINA WHITNEY EDWARDS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Regina Whitney Edwards, hereby declare as follows:

1. I am a U.S. citizen and a resident of Durham County, North Carolina. My address is 3231 Sparger Road, Durham, North Carolina 27705. I live in a single-family home with my partner.
2. I am a registered North Carolina voter who is eligible to vote in the November 2020 General Election.
3. I am 30 years old.
4. I am a Program Manager at the Duke Human Vaccine Institute. My responsibilities include managing grants, including awards from the National Institutes of Health, and overseeing a training and mentorship program for students and researchers who are affiliated with the Institute. Because immunologists and vaccine specialists at the Institute are actively working on COVID-19, I am familiar with the health risks posed by COVID-19. I am also an advocate for the American Diabetes Association.
5. I learned from the website of the Centers for Disease Control that I am at very high risk of developing severe illness from the novel coronavirus because I have a serious pre-existing medical condition, type 1 diabetes. I have had type 1 diabetes for 21 years.
6. Numerous medical professionals with whom I work at the Institute have warned me about the impact of COVID-19 on high-risk individuals like myself. To protect my health, I have remained at home since mid-March and have not seen

another person other than my partner. I work from home and avoid public spaces. I rely on my partner to shop for groceries and run other errands. In light of the advice of the medical professionals with whom I work, I am uncomfortable leaving my home or being in close proximity to people other than my partner.

7. Because of the nature of my work for the Duke Human Vaccine Institute and my advocacy with the American Diabetes Association, I understand that these measures are necessary to safeguard my physical wellbeing in light of the COVID-19 pandemic.

8. I have voted in multiple elections in North Carolina, including the most recent primary election in March 2020. I almost always vote in person. But for the threat of COVID-19, I would vote in the 2020 General Election in person.

9. Because of the pandemic and the health risks posed by in-person voting, I am not willing to vote in person during the 2020 General Election.

10. To protect my health, I would like to vote by mail-in absentee ballot. But I cannot safely comply with North Carolina's two-witness requirement. Although my partner is available to serve as the first witness, I am not willing to jeopardize my physical wellbeing by asking another person to serve as the second witness.

11. The two-witness requirement thus forces me to choose between my health and my right to vote.

12. Although I strongly wish to vote in this election, I will not do so if the two-witness requirement remains in effect.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of May, 2020.

/s/ _____
Regina Whitney Edwards

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF ROBERT K. PRIDDY II IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Robert K. Priddy II, hereby declare as follows:

1. I am a U.S. citizen and a resident of Brunswick County, North Carolina. I live at 2 Kings Grant Court, Shallotte, North Carolina 28470, with my wife.
2. I am a registered North Carolina voter who is eligible to vote in the November 2020 General Election.
3. I am 70 years old. Before I retired, I worked in nuclear safety.
4. My doctor has informed me that I am at very high risk of developing severe illness from the novel coronavirus because I have several serious pre-existing health conditions and because of my age. In 2010, I received a kidney transplant. To ensure that my body does not reject the transplant, I take medication that suppresses my immune system. The medication also causes borderline diabetic issues, so I receive treatment for diabetes.
5. To protect my health, my doctor has advised me to stay home and avoid contact with people outside my household. Accordingly, I have remained at home since mid-March. I rely on my wife to shop for groceries and run other errands. The only time I have gone outside is to pick up prescriptions from a drive-thru pharmacy, where I remain in my vehicle and do not directly interact with the pharmacist. In light of my doctor's advice, I am uncomfortable leaving my home or being in close proximity to people other than my wife.

6. I have voted in numerous elections in North Carolina. Although I usually vote in person, I have also voted by absentee ballot on occasion. But for the threat of COVID-19, I would vote in the 2020 General Election in person.
7. Because of the pandemic and the health risks posted by in-person voting, I am not willing to vote in person for the 2020 General Election.
8. I would like to vote by mail-in absentee ballot, but I cannot safely comply with North Carolina's two-witness requirement. Although my wife is available to serve as the first witness, I am not sure whether I am willing to jeopardize my physical wellbeing by asking another person to serve as the second witness.
9. The two-witness requirement thus forces me to choose between my health and my right to vote.
10. Although I strongly wish to vote, I do not expect the risks to my physical health to abate in the months leading up to the election. As a result, if the two-witness requirement remains in effect, I am not sure whether I will be able to vote in the 2020 General Election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 19 day of May, 2020.

/s/ Robert K. Priddy II
Robert K. Priddy II

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF WALTER HUTCHINS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Walter Hutchins, hereby declare as follows:

1. I am a U.S. citizen and a resident of Wilmington County, North Carolina. I have been living at The Davis Community, a nursing home in Wilmington, for about a year and a half.
2. I am 91 years old and a veteran of the U.S. Army Air Forces and U.S. Air Force. I served from 1946 to 1949.
3. I am a registered North Carolina voter who is eligible to vote in the November 2020 general election. The first election I voted in was in 1952, and the last election I voted in was the 2018 general election. I voted in person at a polling location in Plantation Village, a senior citizen living facility in Wilmington, North Carolina, where I used to live. My wife, Reverend Margaret Hutchins, is still residing there.
4. In 2018, I was not completely visually impaired. Now, I am legally blind.
5. My wife assisted me with casting my ballot in 2018. She recited the candidates and when I informed her of my choice, she would position my hand so that I could mark my ballot.
6. Due to my age, I am at very high risk of developing severe illness from the novel coronavirus. To protect my health, and the health of others similarly situated to me, The Davis Community has been on lockdown since mid-March. No visitors, including family members, are allowed. My wife has not been allowed to see me during this time.

7. The residents at Davis community are told to maintain at least 6 feet of distance from each other, due to the coronavirus. We are kept at least 6 feet apart at meals, and we are given hand sanitizer.

8. I would like to vote by absentee ballot in November. However, I have never voted by mail before and am unfamiliar with the absentee ballot process. I do not know how I will be able to request and cast an absentee ballot without my wife's assistance.

9. I asked the staff at The Davis Community how blind residents have been able to vote in the past, and no one could provide an answer. As far as I know, there has been no preparation at The Davis Community for residents to vote. I have not been given any information about how to participate in the upcoming November election.

10. I do not know how I can vote with the current restrictions in place. I am unable to fill out an absentee ballot request by mail, since I am legally blind, and would like to be able to do so by phone. I have a phone in my room, which I am able to use without assistance. If I were provided the number for the county board of elections—as well as the necessary information, such as the last four digits of my Social Security Number—by my wife or The Davis Community staff, I could make this request on my own.

11. Since The Davis Community is under lockdown and my wife cannot assist me with my absentee ballot, I would like The Davis Community staff members to

be permitted to assist me in voting and returning my absentee ballot, and only if necessary, to serve as my witnesses.

12. Otherwise, my blindness will prevent me from completing and returning my absentee ballot and voting in the upcoming November election.

13. This declaration has been read to me by my attorneys, and a copy for me to sign was provided by courier.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 4th day of June, 2020.

/s/ Walter Hutchins
Walter Hutchins

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

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER. *Plaintiffs,* *vs.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, *Defendants.*	Civil Action No. 20-cv-457

DECLARATION OF SUSAN SCHAFFER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Susan Schaffer, hereby declare as follows:

1. I am a Durham County resident, and I am a retired attorney.
2. I am a United States Citizen.
3. I am a volunteer with You Can Vote, an organization that does voter registration and, in the past, has helped people request absentee ballots.
4. In the past couple of years, I have assisted numerous voters in registering to vote and requesting absentee ballots, as well as assisting voters with completing their absentee ballots.
5. Additionally, in the past I have assisted voters at Senior living facilities and nursing homes that are now off limits to people who are seeking to assist voters with requesting an absentee ballot, but do not have a family member in that specific facility and/or are not a part of a Multi-Partisan Assistance Team.
6. The assistance prohibitions set forth in N.C. Gen. Stat. §§ 163-230.2 as amended by North Carolina Senate Bill 683 ("SB 683") have stifled persons such as myself from assisting voters who need help requesting an absentee ballot. Such as elderly voters, first-time absentee voters who are not familiar with the absentee voting rules in North Carolina, or voters who may not otherwise qualify for assistance.
7. Since the passage of SB 683, organizations like You Can Vote and its volunteer base (of which I am a part) have not been able to assist voters with requesting absentee ballots.

8. I want to ensure that I am following the letter of the law, and as not to potentially be in violation of the law I have been prevented from assisting voters in requesting an absentee ballot which may be their only way to vote this year given the Covid-19 pandemic.
9. Without having the ability to assist voters with requesting their absentee ballots, my ability to help voters who may require assistance is impaired.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 4th of June, 2020.

/s/ Susan Schaffer 6/4/2020