

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MICHAEL STRINGER; SARAH FELLMAN;
DR. LAURA SINAI; PATRICIA MATOS
AGUILERA; DR. MARGARET CURTIS;
ANN BUTZNER; AND SUZANNE KNIGHT,

Plaintiffs,

v.

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

Defendants, and,

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

Intervenor-Defendants.

NO. 20-CVS-05615

**AMENDED
COMPLAINT**

**(Three-Judge Court Requested
Pursuant to N.C. Gen. Stat. Ann.
§ 1-81.1(a1))**

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. The current public health crisis caused by the novel coronavirus (hereinafter, “COVID-19”) has resulted in mass closures of North Carolina county election offices, and the North Carolina State Board of Elections (the “Board”) has indicated that polling place consolidations, relocations, and poll-worker shortages will follow. On March 10, Governor Roy Cooper declared a state of emergency and has since issued orders prohibiting gatherings of more than 50 people, while encouraging North Carolinians, consistent with guidance from public health

officials, to “maintain social distancing of at least six (6) feet,” wear face coverings, and to minimize unnecessary interactions with individuals outside of their homes.¹ Because there is no cure for COVID-19 and infections continue to rise, these measures designed to slow the spread of the virus are likely to extend well into the fall. Worse yet, the Director of the Centers for Disease Control and Prevention has cautioned that the country might encounter a second, more deadly wave of COVID-19 later this year that will “be even more difficult than the one” in the spring.²

2. For these reasons, the Board has acknowledged that use of voting by mail (“absentee ballots” or “mail ballots”) will expand dramatically—predicting a 800 percent increase in upcoming elections—and that in-person voting will be significantly impacted due to poll worker shortages and the need to establish polling places in alternative locations to accommodate social distancing guidelines and to replace sites that will no longer be available due to COVID-19. But with the general election fast approaching, the State is woefully underprepared, not only for the rapid expansion of absentee voters, but also for voters who will attempt to cast their ballots in person and may be forced to choose between their health and their constitutional right to vote.

3. Plaintiffs Michael Stringer, Sarah Fellman, Dr. Laura Sinai, Patricia Matos Aguilera, Dr. Margaret Curtis, Ann Butzner, and Suzanne Knight bring this lawsuit to eliminate the barriers to a free and fair election and to ensure that they, along with all other eligible North Carolinians, have a meaningful opportunity to exercise their constitutional right to vote during the

¹ See Governor Roy Cooper, Exec. Order No. 121 at 3 (Mar. 27, 2020), <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-text.pdf>; Exec. Order No. 141 (May 20, 2020), <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>; Governor Roy Cooper, Exec. Order No. 147 (June 24, 2020), <https://files.nc.gov/governor/documents/files/EO147-Phase-2-Extension.pdf>

² Zack Budryk, *CDC director warns second wave of coronavirus might be ‘more difficult,’* THE HILL (Apr. 21, 2020), <https://thehill.com/policy/healthcare/493973-cdc-director-warns-second-wave-of-coronavirus-might-be-more-difficult>

COVID-19 pandemic and beyond. Specifically, Plaintiffs challenge the State’s failure to provide sufficiently accessible in-person voting opportunities that comply with social distancing guidelines during the COVID-19 pandemic, and its continued enforcement of several barriers to vote by mail that unduly burden voters and subject them to significant risk of arbitrary disenfranchisement. These barriers include: (1) the requirement that voters submit mail ballots at their own expense, and the State’s failure to provide pre-paid postage for absentee ballots and ballot applications (“Postage Requirement”); (2) the enforcement of the current absentee ballot receipt deadline, which is untenable in light of the mail delivery disruptions and the United States Postal Service’s well-documented budgetary shortfalls (“Receipt Deadline”); (3) the requirement that all absentee ballot envelopes be signed by a witness, despite the fact that medical professionals and the government have recommended that everyone practice social distancing and minimize unnecessary contact with individuals outside of the home (“Witness Requirement”); and (4) the practice in some counties of rejecting absentee ballots for signature defects—based on an official’s subjective determination that the voter’s signature on the absentee ballot envelope does not match the signature on file with election authorities—without providing sufficient advance notice and an opportunity to cure (“Signature Matching”).³

4. Taken together, these barriers to in-person and mail voting are unduly burdensome, pose significant risks to voters’ health and safety, and will result in the disenfranchisement of an unprecedented number of North Carolinians, especially those who are medically and financially vulnerable.

³ See N.C. Gen. Stat. Ann. §§ 163-226(a); 163-231(a)(4); 163-231(b)(1); 163-231(b)(2); H.B. 1169 (June 11, 2020).

5. Recent primaries across the country illustrate how the State's failure to take adequate precautions can derail the electoral process. In Wisconsin, for instance, election officials encountered some of the same burdens at issue in this lawsuit, and the result was large-scale disenfranchisement as countless absentee ballots were not delivered on time (either from election officials to voters or vice versa); those who attempted to vote in person were forced to endure extremely long lines due to polling place closures and consolidations; and dozens of voters and poll workers who participated in Wisconsin's April 7 primary election became infected with COVID-19. Similar scenes have played out in jurisdictions with late-spring primaries such as Georgia, Kentucky, Pennsylvania, and Washington, D.C.⁴

6. The barriers to voting in North Carolina will not sort themselves out. Protecting the safety of all North Carolinians while enforcing the constitutional rights to vote and to a free and fair election, requires advance planning and immediate proactive measures that ensure adequate opportunities to vote (by mail or in person) and eliminate unnecessary and burdensome restrictions that disenfranchise voters. Plaintiffs therefore request that this Court issue an Order: (i) enjoining the Postage Requirement and requiring the State to provide pre-paid postage on all absentee ballots and ballot requests; (ii) enjoining the Witness Requirement for absentee ballots; (iii) extending the deadline by which mail ballots must be received to nine days after Election Day, or to coincide with the deadline for receipt of military or overseas ballots; (iv) enjoining election officials from

⁴ See, e.g., Bart Jansen, '*Complete catastrophe*': Georgia primary voting blasted for long lines, malfunctioning equipment, USA Today (June 10, 2020), <https://www.usatoday.com/story/news/politics/2020/06/10/georgia-primary-catastrophe-voting-groups-blast-long-lines-other-malfunctions/5332904002/>; Joey Garrison, '*A substantial challenge*': What Kentucky, New York tell us about voting in a pandemic come November, USA Today (June 24, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/06/24/kentucky-primary-few-issues-polls-but-also-lessons-november/3249391001/>.

rejecting ballots based on alleged signature discrepancies or mismatches without providing the voter notice and an opportunity to cure, and requiring the State to provide uniform standards and training to all election officials engaged in signature matching as a means of verifying ballots; and (v) permitting counties to expand the early voting period by an additional 21 days in order to increase opportunities to vote in person and minimize crowding, long lines, and the risk of exposure to COVID-19.

PARTIES

7. Michael Stringer is a U.S. citizen and registered voter in Rowan County, North Carolina. He is a 61-year-old retired U.S. Air Force veteran who has been voting by mail since he cast his first absentee ballot as an Airman. Mr. Stringer has voted, usually by mail and occasionally early and in person, in every national and statewide election in North Carolina since he retired. Mr. Stringer is severely immunocompromised from an eight-year battle with cancer and must therefore be particularly fastidious about protecting himself from contracting COVID-19. As a result, Mr. Stringer only makes the 13-mile roundtrip from his rural home to the nearest store once each week to stock up on necessary supplies. Mr. Stringer and his wife, who is disabled and mobility impaired, plan to vote by mail again in the 2020 general election. Mr. Stringer does not trust others to follow as many precautions as he does in preventing the spread of COVID-19, and he simply cannot risk being exposed to the virus given his fragile health. Mr. Stringer is also concerned that with the influx of new mail ballot requests, the United States Postal Service (“USPS”) will not be able ensure that ballots mailed on time arrive by the Receipt Deadline. In his rural township, the mailman comes only once a day to collect outgoing mail, and the local post office is unaccustomed to large numbers of township residents voting by mail.

8. Plaintiff Sarah S. Fellman is a twenty-three-year-old registered voter in Mecklenburg County. Ms. Fellman has attempted to vote in every single election in which she has

been eligible. In 2015, Ms. Fellman, who at the time was an undergraduate student attending Harvard University, attempted to vote absentee in the second primary election held on October 6, 2015. Although she mailed her ballot three full days before Election Day—and would have mailed it earlier if not for the late delivery of her absentee ballot to her residence in Cambridge—Ms. Fellman’s ballot was never counted. Nor did she receive any notification that her ballot had been rejected, and her ballot was never returned to her as undeliverable; in fact, it was not until she reviewed her state voting record years later that she discovered her ballot was not counted in the 2015 second primary.

9. Having graduated from college and returned home to North Carolina, Ms. Fellman intends to vote by mail this November, particularly because of COVID-19. However, she has serious concerns that she might be disenfranchised once again, especially in light of USPS’s well-documented budgetary crisis and service disruptions, which will only increase the risk that her ballot may not arrive within three days after Election Day, as is currently required in order for a mail-in absentee ballot to be counted under the Receipt Deadline. In addition, Ms. Fellman rarely sends anything by regular mail except for her absentee ballots and is typically without any readily available stamps. Ms. Fellman is also admittedly confused about how much postage her ballot requires, given that absentee ballot return envelopes are large and might weigh more than one ounce. For that reason, and in an attempt to ensure that her ballot makes its way back to her county election officials, she typically affixes two \$0.55 Forever Stamps to her ballot envelope to be safe. In the past, she has had to ask friends for postage or try to fit a trip to her local post office into her busy schedule. In light of COVID-19 and social distancing guidelines, Ms. Fellman expects that the Postage Requirement will become even more burdensome than it has been for her in the past.

10. Plaintiff Dr. Laura Sinai, a licensed pediatrician and Ms. Fellman's mother, was also disenfranchised in the second 2015 primary election. Dr. Sinai, a registered voter in Mecklenburg County who typically prefers to vote early and in person, voted by mail in the second 2015 primary and asked her husband to sign as a witness. Because Dr. Sinai did not have a second witness to sign her ballot container envelope, State voting records indicate that her ballot was rejected, and she was disenfranchised as a result of the prior version of the Witness Requirement, which required two witness signatures.

11. Dr. Sinai is concerned about her ability to exercise her right to vote in the November general election. Although she has voted early and in person in the past, she is unsure whether sufficient social distancing and other public health measures will be in place at her polling place to ensure that she can vote safely without undue risk of exposure to COVID-19. Additional early voting days would allow her to cast her ballot in person during safer, less crowded times.

12. Plaintiff Patricia Matos Aguilera, who was born in Venezuela and became a United States citizen in 2009, is passionate about voting rights and has been a dedicated North Carolina voter ever since she first became eligible to vote. During the recent 2020 Presidential Primary, Ms. Matos Aguilera, who was working on a presidential campaign in Illinois and had to vote absentee, timely submitted her absentee ballot request form; however, Ms. Matos Aguilera never received her absentee ballot. On Super Tuesday, the date of the North Carolina Primary, a distraught Ms. Matos Aguilera called the Wake County Board of Elections, which confirmed it had sent Ms. Matos Aguilera her ballot but was unable to offer any explanation as to why the absentee ballot never made its way to Illinois. Dismayed at having been unable to vote in a primary for which she had been hard at work for a presidential candidate on the ballot, Ms. Matos Aguilera

tweeted about the incident and contacted her local state representative and senator to report what had occurred.

13. Ms. Matos Aguilera has serious concerns about voting absentee in North Carolina in November because of her experience in the March 3 primary election and recent reports of the budgetary and personnel crises now facing the USPS. She is equally concerned about the risk of exposure to COVID-19 that voting in person might entail, particularly because she suffers from asthma and therefore is at elevated risk of complications from COVID-19 infection. Faced with the choice between voting in person with some degree of certainty that her vote will be counted on the one hand, and protecting her health and safety on the other, Ms. Matos Aguilera expects to risk voting by mail again in November.

14. Dr. Margaret Curtis, who has a Ph.D. in genetics and worked for many years in academia before retiring, is a registered voter in Guilford County and lives with a disability that requires her to use a wheelchair to get around. While Dr. Curtis typically prefers to vote in person on Election Day, she intends to vote by mail in the November general election in light of the COVID-19 pandemic. Dr. Curtis has serious concerns about her ability to cast an effective mail ballot, given the uncertainty that her ballot will be delivered by USPS on time, or that her ballot will be counted if election officials engage in signature matching. Dr. Curtis is also concerned about the Witness Requirement, because it would require her to either invite an individual into her home or venture out to find a witness, both of which impose significant burdens on Dr. Curtis given her limited mobility and her elevated risk of complications from COVID-19 infection.

15. Ann Butzner, a sixty-eight-year-old registered voter in Buncombe County, and a stalwart voting activist focused on what she calls “senior suffrage,” is at elevated risk for severe illness from COVID-19 complications due to her medical history. For the last six years,

Ms. Butzner has worked tirelessly to ensure that senior and disabled voters are provided with absentee ballot request forms, assistance in completing such forms, and guidance on how to access the franchise, especially for those who are home-bound or who reside in assisted living facilities. While the Governor's stay at home order has limited Ms. Butzner's ability to assist voters, especially voters who live in assisted living facilities and nursing homes, which have been on lockdown due to COVID-19, she continues to advocate for voting reforms that will benefit the senior community and enhance their ability to access the franchise despite limited mobility and other difficulties seniors face when voting in person.

16. Ms. Butzner plans to vote by mail in November to avoid the risk of COVID-19 infection, but she has serious concerns that she and other senior and disabled voters will be unable to vote or will not have their votes counted. As a senior suffrage advocate, Ms. Butzner has seen firsthand how difficult the vote by mail restrictions make it for seniors to cast an absentee ballot and to have that ballot counted. Ms. Butzner herself, who lives alone in a rural part of the State, will similarly struggle to satisfy the Witness Requirement while maintaining social distancing, forcing her to risk either her health or disenfranchisement in order to vote.

17. Plaintiff Suzanne Knight is a 57-year-old public health worker who is a registered voter in Mecklenburg County. Ms. Knight is a committed voter who has attempted to vote in every single election since she was 18. Ms. Knight always votes in person because she finds North Carolina's voting-by-mail process too burdensome and confusing: it requires jumping through too many hoops to be a feasible way for her to vote. Ms. Knight intends to vote in person in November, but, as someone who works in public health, she is aware of the grave risk posed by COVID-19 and is concerned about going to a crowded polling place to vote. Although she considers herself to be in good health, Ms. Knight has hypertension and her partner has asthma so she tries to be

cautious to avoid the risk of exposure. As a result, Ms. Knight wants to take adequate precautions to protect her and her family's health and has decided to vote early this year. Ms. Knight usually goes to the polling place conveniently close to her home but wants to ensure she can go at a time when the lines are short and she does not have to contend with a crowd. She has read the news about the number of polling places being reduced in North Carolina and knows from her son's personal accounts of voting in Wisconsin that voting during the pandemic without adequate safeguards in place can require standing in a crowd for as long as six hours in order to vote. Ms. Knight is committed to exercising her right to vote but does not want to have to risk her health to do so.

18. Defendant the State of North Carolina has its capital in Raleigh, North Carolina.

19. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina, including voting by mail.

20. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to Article 26 of Chapter 1 of the General Statutes.

22. Under N.C. Gen. Stat. Ann. § 1-81.1(a1), the exclusive venue for this action is the Wake County Superior Court.

23. Under N.C. Gen. Stat. Ann. § 1-81.1(a1), a three-judge panel must be convened because this action involves a determination as to the facial validity of acts of the General Assembly.

FACTUAL ALLEGATIONS

A. COVID-19's impact on daily life in North Carolina.

24. COVID-19 has caused widespread disruption to daily lives and routines across the globe, which has impacted elections around the country and in North Carolina. By March 10, North Carolina had reported five confirmed cases of COVID-19.⁵ Since then, the number of confirmed cases in the State has skyrocketed to 75,875, and the virus has spread to all of North Carolina's 100 counties. *Id.* To date, COVID-19 has resulted in over 1,420 deaths in the State, with 989 more North Carolinians currently hospitalized and fighting for their lives. *Id.*

25. Also on March 10, the same date that the first five cases of COVID-19 in the State were confirmed, Governor Cooper issued his first executive order declaring a state of emergency, which remains in effect as of this filing.⁶ Four days later, the Governor closed public schools statewide, prohibited mass gatherings, and imposed social distancing guidelines.⁷ Since then, a flurry of additional executive orders designed to keep North Carolinians safe during the ever-evolving health crisis have followed.⁸ On May 20, 2020, Governor Cooper replaced the stay-at-home-order with a "Safer at Home" recommendation, which advised high-risk individuals to continue to stay home, encouraged all North Carolinians to practice social distancing and wear a

⁵ North Carolina Department of Health and Human Services, *COVID-19 by Date of Specimen Collection*, <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#cases-over-time> (last updated July 7, 2020 at 12:00 p.m.).

⁶ Governor Roy Cooper, Exec. Order 116 (Mar. 10, 2020), <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>.

⁷ Governor Roy Cooper, Exec. Order 117 (Mar. 14, 2020), <https://files.nc.gov/governor/documents/files/EO117-COVID-19-Prohibiting-Mass-Gathering-and-K12-School-Closure.pdf>.

⁸ State of North Carolina, *COVID-19 Executive Orders*, <https://www.nc.gov/covid-19/covid-19-executive-orders> (last visited May 3, 2020).

face covering when leaving home, and set forth restrictions on operations for certain businesses such as bars, restaurants, retail businesses, and child care facilities.⁹

26. Efforts to minimize the spread of the virus or the risk of infection will require North Carolinians to exercise caution by following social distancing guidelines and avoiding mass gatherings. And the need for such precautions shows no signs of easing as COVID-19 cases continue to rise even though the State is still experiencing what some have termed the first “wave” of infections.¹⁰ Indeed, the Director of the Centers for Disease Control and Prevention has warned that the country may encounter a second, more deadly wave of COVID-19 in the fall.¹¹

27. More than in any prior North Carolina election, expanded opportunities for in-person voting and vote-by-mail will be essential to ensuring that the citizens of this State have meaningful access to the franchise. The State Board has already announced that it expects a surge in mail ballots from approximately five percent during previous elections to 40 percent by Election Day, and it has asked the General Assembly to eliminate certain restrictions that reduce access to voting by mail. In a March 26, 2020 letter to Governor Roy Cooper and the General Assembly, the Board’s Executive Director urged the General Assembly to: (1) relax or eliminate the witness requirement, (2) establish a fund to pay for outbound and returned absentee ballots, (3) establish an online option for requesting absentee ballots, among other reforms, and (4) alter early voting site and hours requirements to allow counties to better accommodate in-person voters during the COVID-19 pandemic. Although the General Assembly reduced the number of signatures

⁹ Governor Roy Cooper, Exec. Order 141 (May 20, 2020), <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>.

¹⁰ Dawn Baumgartner Vaughan et al, *As coronavirus cases spike, officials say NC is in ‘first wave,’ needs to flatten curve*, News & Observer (June 12, 2020), <https://www.newsobserver.com/news/politics-government/article243490631.html>.

¹¹ *Supra* note 2.

necessary to satisfy the Witness Requirement from two to one, it has yet to adopt any of these measures in full.

28. North Carolina's inaction, despite the imminent risk of widespread disenfranchisement under the State's current election procedures, threatens to repeat the chaos and disorder that has played out in one election after another across the country.

29. In Wisconsin's April 7 primary, for instance, "the extent of the risk of holding [the] election ha[d] become increasingly clear" to Wisconsin's election officials and voters well before Election Day. *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, at *1 (W.D. Wis. Apr. 2, 2020). Like here, Wisconsin election officials knew ahead of time that in-person voting opportunities would be significantly limited due to the loss of poll workers—many of whom were over the age of 65—who feared exposure to COVID-19, and a severe reduction in the number of available polling locations. *Id.* The likely consequences of holding an election in that context were clear:

- (1) a dramatic shortfall in the number of voters on election day . . .
- (2) a dramatic increase in the risk of cross-contamination of the coronavirus among in-person voters, poll workers and, ultimately, the general population in the State, or (3) a failure to achieve sufficient in-person voting to have a meaningful election *and* an increase in the spread of COVID-19. *Id.*

30. When Wisconsin proceeded to conduct its primary election without adequate safeguards to address these issues, chaos and widespread disenfranchisement ensued. Cities throughout Wisconsin were forced to close polling locations. In Milwaukee, 18,803 voters cast their ballots in person at only five polling locations; this resulted in crowds, long lines, and excessive wait times, often without sufficient social distancing.¹² The USPS struggled to deliver

¹² Adam Brewster, *At least 7 COVID-19 cases tied to in-person voting in Wisconsin*, CBS NEWS

absentee ballots to voters, and a large portion of mail ballots were delayed or did not arrive at all. There were similar delays returning ballots to elections officials. In total, approximately 107,871 absentee ballots were received by elections officials after Election Day. The disruptions in the mail delivery of absentee ballots—both to the voters and back to the municipal clerk’s offices—were so extensive that Wisconsin’s U.S. Senators wrote to the Inspector General for the U.S. Postal Service seeking an investigation into “absentee ballots not being delivered in a timely manner.”¹³

31. In Georgia’s June 9 primary, polling place consolidations and closures due to COVID-19 combined with malfunctioning voting machines created long lines at polling places throughout the state, with some voters casting their ballots after midnight. In Kentucky’s June 23 primary, the city of Louisville had only one polling place to accommodate 600,000 people, 20 percent of whom are African American. Long lines and traffic jams predictably followed, and a court order was required to re-open the lone polling place after it had closed for the day to allow voters who were stuck in traffic to cast their ballots. Pennsylvania’s June primary was marred by long lines and confusion over consolidated polling places, and tens of thousands of vote-by-mail ballots that never made it to voters, which led the Governor to issue an executive order on the eve of the election granting a seven-day extension of the deadline for the receipt of mail ballots in six counties. And in Washington, D.C., some voters waited in line for over four hours, many of whom had requested absentee ballots but did not receive them in time to submit the ballots by Election Day.

(Apr. 21, 2020), <https://www.cbsnews.com/news/at-least-7-covid-19-cases-tied-to-in-person-voting-in-wisconsin/>.

¹³ WBAY.com, *Senators Johnson, Baldwin call for investigation of Wisconsin absentee ballots* (Apr. 9, 2020), <https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html>.

32. Without additional safeguards during the COVID-19 pandemic, future elections in North Carolina will encounter the same obstacles that have derailed other elections around the country and disenfranchised countless voters.

B. Barriers to in-person voting during the COVID-19 pandemic.

33. Because polling places draw large numbers of individuals into enclosed spaces and at times generate long lines, in-person voting during the COVID-19 pandemic poses a risk of transmission that can be mitigated—not eliminated—only through the implementation of strict social distancing requirements and other health and safety measures. This is because in-person voting involves certain fixed variables, namely the physical space in which voters cast ballots and the time it takes for voters to cast those ballots, and a voter’s risk of catching or transmitting COVID-19 is directly correlated with the density of individuals in a polling place at a given point in time and the amount of time in which a voter stays in the polling place. Safety measures necessary to mitigate the risk of transmission include: (1) maximizing the number of polling places and expanding voting opportunities to minimize crowding, long lines, and the attendant risk of COVID-19 exposure among those who cast their ballots in person, (2) ensuring that social distancing is strictly enforced among poll workers and voters casting their ballots in person, and (3) ensuring that poll workers and voters are otherwise adequately protected from the risk of exposure through the provision and use of personal protective equipment, hand sanitizer, and the use of other appropriate disinfecting products.

34. Implementation of such procedures will be necessary because North Carolinians have historically relied heavily on in-person voting and many are expected to continue to do so in 2020. In the 2018 general election, for example, less than three percent of all votes were cast by mail. And in the last three presidential elections, more than half of North Carolina’s ballots were

cast during one-stop absentee voting (“early voting”), where the overwhelming majority of North Carolinians who participated in early voting cast their ballots in person.

35. Yet despite the need for expanded in-person voting opportunities and reduced crowds, voters in the November election will see just the opposite: fewer voting locations and hours, packed polling places, and long lines. In the June 23, 2020 Republican primary, for example, Haywood County reduced the number of precincts for the county from 29 to 11; Macon County consolidated 15 polling places into just three sites.¹⁴ The State Board’s Executive Director has also expressed concerns that COVID-19 will result in polling place consolidation and relocation to allow for social distancing of six feet or more between voters and election officials and to protect medically vulnerable populations.

36. These measures will drastically reduce in-person voting opportunities, particularly when combined with the effects of recent pre-COVID-19 legislation that restricts local officials’ discretion in designating satellite early voting sites. In 2018, the General Assembly passed Senate Bills 325 and 683 (collectively, “hours restrictions”), which prohibit county boards of elections from opening a satellite early voting sites unless the site will remain open from 8:00 a.m. to 7:30 p.m. on every single weekday during the 17-day early voting period. This law eliminated county board discretion in setting early voting days and hours at satellite locations and significantly increased the cost of conducting early voting. Predictably, early voting opportunities have decreased: in the 2018 general election, as compared to 2014, 42 counties offered fewer voting sites, 47 counties offered fewer weekend voting days, and 65 counties offered fewer weekend hours.

¹⁴ Hannah McLeod, *Second primary, voting in the pandemic*, Smoky Mountain News (May 13, 2020), <https://www.smokymountainnews.com/archives/item/29083-second-primary-voting-in-the-pandemic>

37. The hours restriction, which resulted in decreased early voting opportunities even during normal times, will lead to a drastic reduction in polling locations in many counties during the COVID-19 pandemic. Faced with poll workers unwilling to risk exposure and potential voting sites that are either reluctant to open their doors to large crowds or inadequately equipped to follow social distancing guidelines, the State has already seen significant polling place consolidation. Indeed, it will be increasingly difficult for many counties to operate more than a few, if any, satellite early voting sites in accordance with the hours restriction and social distancing requirements, which means that fewer cumulative early voting hours, large crowds, and excessively long lines await those who attempt to vote in person, creating public health risks and imposing severe burdens on the right to vote.

38. To alleviate these inevitable crowds and long lines—and the resulting unconstitutional burdens on in-person voters—the State must expand opportunities to cast a ballot in person, including by extending the early voting period by up to three weeks or more. Expanding the number of early voting days not only offsets the reduction in cumulative voting hours caused by the COVID-19 pandemic, it also minimizes the risk of daily congestion and affords North Carolinians additional options in selecting an early voting day that is free of large crowds and permits adequate social distancing.

C. Barriers to voting by mail.

39. Adopted in 2001, “no-excuse” absentee voting allows any qualified citizen to vote by mail without justification and was one of several measures adopted by the State to alleviate crowds at the polls on Election Day and expand access to the franchise. N.C. Gen. Stat. Ann. § 163-226(a). Because of this and other reforms, North Carolina saw a five percent increase in overall voter participation—from 59 to 64 percent—between the 2000 and 2004 general elections. North Carolina also saw a drastic increase in vote by mail: in 2000, before the adoption of “no

excuse” absentee voting, 72,447 North Carolinians cast their ballots for the general election by mail; that number increased by thousands of voters in 2004, and nearly tripled (215,258) by the 2008 presidential election.

40. To vote by mail, a voter must first submit a written absentee ballot request form for each election.¹⁵ Once the voter receives and marks their ballot, the voter must place the ballot in the container envelope and seal the envelope. For the ballot to be counted, the voter must sign the ballot container envelope before a witness who must certify the voter’s identity, following which the voter must submit their ballot to their county board of election “by mail or by commercial courier service, at the voter’s expense, or delivered in person, or by the voter’s near relative or verifiable legal guardian.” N.C. Gen. Stat. Ann. §§ 163-231(b)(1), 163-229(b).¹⁶

Witness Requirement

41. The Witness Requirement—which mandates that each mail ballot envelope must be signed by an individual who certifies that they witnessed the voter complete the ballot—presents health risks because of the ongoing pandemic. In its letter to the General Assembly, the State Board urged the General Assembly to reduce the number of witnesses required to cast an absentee ballot from two to one and noted that “[e]liminating the witness requirement altogether . . . would further reduce the risk” to public health posed by COVID-19.¹⁷ The General Assembly

¹⁵ North Carolina law currently imposes restrictions on third-party assistance in applying for absentee ballots, which are currently being challenged in *Advance North Carolina v. North Carolina et al.*, Civil No. 20-cv-002965 (2019).

¹⁶ North Carolina’s absentee voting law makes it a felony for anyone other than a near relative or verifiable legal guardian to possess or deliver the absentee ballot of any voter. See N.C. Gen. Stat. Ann. § 163-226.3(a)(5).

¹⁷ Letter from Karen Brinson Bell, Executive Director, NCBOE, to Various North Carolina Government Officials (Mar. 26, 2020) (“RE: Recommendations to Address Election-Related Issues Affected by COVID-19”), available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf.

passed legislation, the Bipartisan Elections Act of 2020, SL 2020-18, which reduced the number of required witnesses from two to one for elections held in 2020. But even in its current form, the Witness Requirement burdens the rights of North Carolinians to vote.

42. This requirement burdens the right to vote not only because of the health risks it poses—as the State Board recognized—but also because more than one-fourth of all American households are one-member households.¹⁸ Even voters living in multi-member households will struggle to meet the Witness Requirement, as it mandates that a witness must be over 18 years old and not otherwise barred from serving as a witness.¹⁹

43. The burden of the Witness Requirement is exacerbated by the fact that the witnesses must be present at the time the voter marks their ballot, places it in and seals the container envelope, and completes the envelope’s certification. N.C. Gen. Stat. Ann. § 163-231(a)(1-4). In light of COVID-19, this requirement—which burdens the right to vote even in normal times—is potentially unsafe. Voters who live alone or in a household without eligible witnesses must venture out to find a witness, or invite a third party into their home, at a time when North Carolinians have been encouraged to stay home and socially distance for their own safety and for the safety of the

¹⁸ See United States Census Bureau, *America’s Families and Living Arrangements: 2019: Table H1. Households by Type and Tenure of Householder for Selected Characteristics: 2019*, <https://www.census.gov/data/tables/2019/demo/families/cps-2019.html>

¹⁹ Under N.C. Gen. Stat. Ann. § 163-226.3(a)(4) and N.C. Gen. Stat. Ann. § 163-237(b), an individual who is a candidate for nomination or election cannot serve as a witness unless the voter is the candidate’s near relative. In addition, the following individuals are prohibited from serving as witnesses if the voter is a patient or resident of a hospital, clinic, nursing home, or rest home: An owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident; An individual who holds any elective office under the United States, this State, or any political subdivision of this State; An individual who holds any office in a State, congressional district, county, or precinct political party or organization, or who is a campaign manager or treasurer for any candidate or political party; provided that a delegate to a convention shall not be considered a party office.

general public.²⁰ For many North Carolinians, complying with this requirement is impractical and subjects the voter and their witness to unnecessary health risks.

44. The State's interest in enforcing the Witness Requirement, moreover, is minimal at best. Witness signature requirements are ineffective fraud-prevention measures, illustrated by the fact that North Carolina is one of only 12 states that still enforce them, and the State does not impose the same requirement upon uniformed-service voters or overseas voters registered in North Carolina. Voters confined to self-isolation in the COVID-19 pandemic face similar barriers to overseas voters in complying with the Witness Requirement, but they are inexplicably denied the same opportunity to vote.

45. Finally, it defies logic to suggest that the Witness Requirement will deter individuals who already planned to commit perjury and cast an absentee ballot fraudulently. Such individuals are unlikely to draw the line at forging a witness's signature. Instead, the requirement burdens and punishes those who attempt to follow the letter of the law and are least likely to be engaged in any misconduct.

The Postage Requirement

46. To request an absentee ballot, the voter must complete an application, which must be delivered to the local county board of elections through one of the following methods: (1) in-person, by the voter; (2) by the voter's near relative or legal guardian; (3) by a member of the county's multi-partisan assistance team ("MAT team"); or (4) through the U.S. Postal Service or another authorized delivery service at the voter's expense. Once a voter receives, marks, and certifies their absentee ballot, they must return it through the same means. See N.C. Gen. Stat. Ann. § 163-231(b)(1).

²⁰ *Supra* note 1.

47. A significant number of voters will be forced to mail their applications and absentee ballots because they do not have close relatives who are willing and available to assist, and they either lack access to transportation, or are unwilling to risk potential exposure to COVID-19, to deliver their applications and absentee ballots in person. These voters must pay a postage fee in order to cast an absentee ballot, thus incurring monetary expenses and other ancillary burdens that bear most heavily on the most vulnerable members of the electorate and discourage eligible North Carolinians from exercising their constitutional right to vote. By contrast, military and overseas voters may submit absentee ballot applications by email. N.C. Gen. Stat. Ann. § 163-258.4(c).

48. As rates of unemployment skyrocket in response to COVID-19's devastating impact on the economy, the burden imposed by the Postage Requirement will create obstacles to voting for the growing number of North Carolinians now facing financial concerns over housing, food, and other essentials. As of this filing, well over 700,000 North Carolinians have already applied for unemployment insurance with the State since March 15, with a staggering number of applicants citing the COVID-19 crisis. For reference, North Carolina typically processes around 200,000 unemployment claims per year.²¹ Without question, COVID-19 related unemployment and other collateral consequences of the public health emergency will also increase the percentage of North Carolinians living in poverty, which already exceeded 14 percent before the pandemic began.

49. In the context of COVID-19, the Postage Requirement imposes other burdens on the franchise beyond the monetary cost of a stamp. Voters who do not already possess stamps must risk their health by either venturing out to the post office or other establishments selling stamps,

²¹ Will Doran, *National unemployment numbers break records, North Carolina's continue to soar*, THE NEWS & OBSERVER (Mar. 26, 2020), <https://www.newsobserver.com/news/coronavirus/article241522586.html>.

or by delivering their ballots in-person. While there are some services that allow voters to print postage online, these services also require a printer, scale, and paid subscription.²² And while a voter can order stamps online on the Postal Service website, they take 5-7 days to be delivered under normal circumstances, are not sold individually, must be purchased on a sheet of stamps that costs a minimum of \$11.00, and require the purchaser to pay for shipping and handling of the stamps themselves.²³

The Receipt Deadline

50. Once a voter's absentee ballot is returned, county election officials first determine whether the ballot is timely and reject any ballots delivered after the applicable deadline. Under N.C. Gen. Stat. § 163-231(b)(2)'s Receipt Deadline, an absentee ballot is timely only if received by no later than 5:00 p.m. on Election Day, *unless* (1) federal law requires election officials to accept the ballot (i.e., in the case of military-overseas voters), or (2) the ballot envelope is postmarked by Election Day *and* the ballot is received by no later than 5:00 p.m. on the third day after the election.

51. The Receipt Deadline presents another obstacle for voters who choose to mail their ballots. As has been widely reported in the news, the USPS is experiencing budget shortfalls and personnel shortages that threaten to shutter the entire agency by this summer.²⁴

²² See e.g., <https://www.stamps.com/> (last visited July 8, 2020).

²³ See United States Postal Service, *Postal Store: Stamps*, https://store.usps.com/store/results/stamps/_/N-9y93lv (last visited July 8, 2020).

²⁴ Nicholas Fandos & Jim Tankersley, *Coronavirus Is Threatening One of Government's Steadiest Services: The Mail*, N.Y. TIMES (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/us/politics/coronavirus-is-threatening-one-of-governments-steadiest-services-the-mail.html>; see also Kyle Cheney, *House panel warns coronavirus could destroy Postal Service by June*, POLITICO (Mar. 23, 2020), <https://www.politico.com/news/2020/03/23/coronavirus-postal-service-june-145683>.

52. As of mid-May, around 2,400 postal workers across the country, including at least one in North Carolina, had tested positive for COVID-19, 60 had died, and more than 17,000 had been self-quarantined because of prior exposure to COVID-19.²⁵ In addition, the USPS is “technically insolvent,” having lost \$69 billion over the past 11 fiscal years, including \$8.8 billion in 2019 alone, and with liabilities and debts reaching \$143 billion.²⁶

53. USPS’s struggles have serious implications for North Carolinians’ voting rights. Over the next several months, USPS will be called upon to deliver an unprecedented number of absentee ballots across the country—both from county election officials to voters, and then back again—yet the current budgetary crisis means that additional cuts to routes, processing centers, or staff are likely to follow, which will exacerbate the ongoing mail processing delays caused by COVID-19, and prevent voters from exercising their constitutional right to vote, or to have their votes counted, under the current Receipt Deadline.

54. Depending on where in North Carolina the voter resides (rural areas often have infrequent mail pick-up times), ensuring receipt of the ballot within three days after Election Day could require sending the ballot more than a week before the election—and even then, it still may not arrive on time. Short of paying for private mail carriers or USPS’s more expensive expedited delivery options, voters who wait until Election Day to mail their ballots have little assurance that

²⁵Eric Katz, *These Federal Agencies Have Seen the Most COVID-19 Deaths*, GOV. EXEC. (May 21, 2020), <https://www.govexec.com/workforce/2020/05/these-federal-agencies-have-seen-most-covid-19-deaths/165578/>; *Charlotte Postal Service employee tests positive for coronavirus*, WBTV (Apr. 17, 2020), <https://www.wbtv.com/2020/04/17/charlotte-postal-service-employee-tests-positive-coronavirus/>.

²⁶ Ahiza García-Hodges and Haley Talbot, *Could coronavirus deal a fatal blow to the U.S. Postal Service?*, NBC NEWS (Apr. 15, 2020), <https://www.nbcnews.com/business/business-news/could-coronavirus-deal-fatal-blow-u-s-postal-service-n1183376>; see also Brian Naylor, *You’ve Got Less Mail: The Postal Service Is Suffering Amid The Coronavirus*, NPR NEWS (Apr. 8, 2020), <https://www.npr.org/2020/04/08/828949609/youve-got-less-mail-the-postal-service-is-suffering-amid-the-coronavirus>.

the Postal Service will deliver their ballots within three days after the election, thus posing a significant risk of disenfranchisement.

55. While some North Carolinians choose to vote early, others may not be ready to do so until Election Day, or shortly beforehand, and forcing these voters to cast their ballots weeks in advance to avoid mail disruptions deprives them of the additional time they may need to make an informed choice. Furthermore, voting by mail far in advance of Election Day also requires that the voter receive their absentee ballot in time. Given the unprecedented number of expected mail ballots in upcoming elections and USPS’s well documented struggles, that is anything but certain; the deadline to request an absentee ballot is seven days before Election Day, and voters who timely request absentee ballots may not receive them until shortly before or even after the election—a complaint common among voters during the March 3 primary.²⁷

56. In contrast to the deadlines placed on voters living in North Carolina and elsewhere in the country, ballots from military and overseas voters are considered timely if they are transmitted by Election Day and received before close of business on the day before the county canvass, which cannot occur before 11:00 a.m. on the tenth day after an election.²⁸ In addition, unlike traditional absentee ballots, military and overseas absentee ballots, “[i]f . . . timely received, . . . may not be rejected on the basis that it has . . . an unreadable postmark, or no postmark.” N.C. Gen. Stat. Ann. § 163-258.12(b). By contrast, a traditional absentee ballot received by the county boards within three days after Election Day is nonetheless invalid if it lacks a legible postmark. See N.C. Gen. Stat. § 163-231(b)(2).

²⁷ Sara Pequeño, *Voters Requested Absentee Ballots Weeks Ago. Some Say They Never Got Them*, INDY WEEK (Mar. 3, 2020), <https://indyweek.com/news/northcarolina/north-carolina-absentee-ballots-2020/>.

²⁸ See N.C. Gen. Stat. Ann. §§ 163-258.10, 163-258.12(a), 163-182.5(b).

57. In other words, ballots cast by military and overseas voters can be received and counted for an additional six days after the Receipt Deadline imposed on absentee voters in North Carolina *in the same election*. And while the military-overseas receipt deadline is tethered to the county canvass date, the earlier Receipt Deadline for stateside voters is not supported by a sufficient State interest to justify the burden it imposes on access to the franchise, particularly for those affected by delayed mail service. Instead, it denies many North Carolinians their constitutional right to vote for reasons entirely outside their control.

58. The later deadlines provided for military and overseas voters also demonstrate that the State's election apparatus is fully capable of extending the same allowances to resident North Carolinians—especially in the midst of a public health emergency—and the State's failure to do so cannot be justified by any sufficient governmental interest.

59. Indeed, the United States Supreme Court, on an application for a stay of a Wisconsin federal court injunction, recently left intact the district court remedy extending Wisconsin's Receipt Deadline for all mail ballots that were postmarked by Election Day. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1208 (2020).

Signature Matching

60. For the absentee voters whose ballots happen to be delivered before the Receipt Deadline, another hurdle awaits: arbitrary signature verification procedures. Once received, county election officials must review the sealed container envelopes of all absentee ballots to ensure that the voter signed the certification affirming their right to vote, and that the envelope is signed by a witness. *See* N.C. Gen. Stat. § 163-231.

61. Election officials may reject an absentee ballot where the voter's signature beneath the certification is missing; in some counties, election officials endeavor to verify whether the

signature on the ballot in fact belongs to the voter by comparing the signature on the envelope to the voter's signature on file with the election office, otherwise known as "signature matching."

62. Yet the State provides no guidance to county election officials engaged in signature matching, nor is it clear whether signature matching can permissibly occur. Thus, counties are left to their own devices in determining whether and how to apply this signature verifying procedure, and, ultimately, if the ballot should be counted.

63. Unsurprisingly, North Carolina counties have developed wildly inconsistent approaches to reviewing and verifying ballot signatures, with some counties seeming to require only the presence of the voter's signature, while others attempt to compare and match signatures on ballot envelopes with voter records. The counties that engage in signature matching appear to do so without uniform standards or training, resulting in a process that varies from one election official to the next.

64. This lack of guidance or identifiable standards is problematic because signature matching, as one federal court put it, is inherently "a questionable practice" and "may lead to unconstitutional disenfranchisement." *Democratic Exec. Comm. of Fla. v. Lee*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018). Studies conducted by experts in the field of handwriting analysis have repeatedly found that signature verification conducted without adequate standards and training is unreliable, and non-experts are significantly more likely to misidentify authentic signatures as forgeries.

65. Even when conducted by experts, signature matching can lead to erroneous results in the ballot verification context because handwriting can change quickly for a variety of reasons entirely unrelated to fraud, including the signer's age, medical condition, psychological state of mind, pen type, writing surface, or writing position. It is, thus, inevitable that election officials will

erroneously reject legitimate ballots due to misperceived signature mismatches, which, without notice and a reasonable opportunity to cure, will result in the disenfranchisement of eligible voters.

66. Furthermore, the absence of any clear guidance in the statute—and the State Board’s failure to adopt any uniform standards or statewide training—has resulted in North Carolina’s 100 counties adopting a patchwork of inconsistent interpretations, thus subjecting voters to varying and conflicting signature matching practices and disparate burdens on their right to vote, depending on the county in which they reside. In fact, even within a particular county, absentee voters are likely to encounter varying standards depending on the election official who evaluates and attempts to “match” their signatures.

67. In upcoming elections, this signature matching procedure will be applied to hundreds of thousands of absentee ballots (and perhaps more), subjecting voters to the risk that their ballots will be rejected erroneously without notice or an opportunity to cure. Absent judicial intervention, their ability to cast an effective vote will ultimately depend on whichever arbitrary standard is employed by their local election officials and county elections board.

D. The cumulative burden of North Carolina’s voting procedures.

68. No-excuse voting by mail affords North Carolinians increased access to the ballot box, particularly for voters whose work schedules, health conditions, family care responsibilities, lack of transportation, or medical vulnerabilities or concerns regarding COVID-19 make in-person voting difficult or impossible. Moreover, reduced access to in-person voting, combined with the social distancing guidelines and other precautionary measures that State and federal officials have encouraged to stem the spread of COVID-19, means that more North Carolinians than ever before will need to rely on mail ballots to exercise their constitutional right to vote.

69. However, unless enjoined, the challenged absentee ballot restrictions will act individually and in concert to make voting by mail, at minimum, unduly burdensome, and, at worst, downright inaccessible for many eligible voters during this pandemic.

70. First, the Postage Requirement will deter voters and may render mail voting inaccessible for some, given the unprecedented number of North Carolinians who find themselves suddenly unemployed and economically vulnerable due to COVID-19, in addition to the striking proportion of North Carolinians who were already living in poverty before this crisis, which exceeded the national average. Even those North Carolinians able to afford the cost of postage will face the burden of unnecessary risk of exposure to COVID-19 if required to leave their homes to obtain stamps or hand deliver their ballots.

71. The Witness Requirement similarly burdens voters by imposing on them the inconceivable choice between adhering to social distancing guidelines or risking their health, as well as the health of others, by seeking out an eligible witness to watch as they mark and seal their ballots, and then complete the certification on the ballot container envelope.

72. Given mounting uncertainties about the future or viability of the Postal Service, and the current mail service delays and disruptions, including those reported by absentee voters during the March 3 North Carolina primary, the Receipt Deadline will disenfranchise voters who cast their ballots on or before Election Day for reasons—i.e., the vagaries of mail delivery—outside their control. And the State has no sufficient justification for its failure to extend the deadline for the delivery of mail ballots to at least coincide with the allowances it currently provides to overseas voters—up to nine days after Election Day—particularly during a public health emergency.

73. Finally, the signature matching process adopted by some counties in verifying ballots is conducted without uniform standards and by persons who lack adequate training in

signature examination, resulting in the erroneous rejection of ballots without notice or an opportunity to cure. The divergent practices and varying standards applied by different counties (and different election officials) also subject absentee voters to the risk of arbitrary disenfranchisement, which varies depending on the county in which they reside.

74. To be sure, the majority of North Carolina voters are still expected to cast their ballots in-person during the COVID-19 pandemic, even as the number of mail ballots increases. As previously noted, North Carolinians have continued to rely heavily on in-person voting despite the fact that vote-by-mail has long been available to all North Carolina voters. For some, voting in person has both personal and historical significance. And for others, the individual and cumulative effect of the monetary and transactional costs described above make voting by mail difficult. Without safe, accessible in-person voting options, many North Carolinians will face disenfranchisement, or will be forced to choose between their health and their constitutional right to vote.

75. Each of these barriers provides an independently unconstitutional burden on the fundamental rights of North Carolinians to participate in our democracy. But taken together, these barriers impose a severe burden that will deter or disenfranchise countless North Carolina voters, particularly during the COVID-19 pandemic, and deny Plaintiffs and other North Carolinians their constitutional right to participate safely and confidently in the electoral process.

CAUSES OF ACTION

COUNT I

Violation of the North Carolina Constitution's Free Elections Clause, Art. I, § 10 (Infringement on the Right to Participate in Free and Fair Elections)

76. Plaintiffs hereby incorporate all other paragraphs in this Complaint as if fully set forth herein.

77. Article I, § 10 of the North Carolina constitution states, in its entirety, that “[a]ll elections shall be free.” This provision has no counterpart in the U.S. Constitution.

78. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Almost a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). Another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” N.C. Const. art. I, § 10 (emphasis added).

79. As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” for proper conduct by the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

80. “[T]he object of all elections is to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915). “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

81. The constitutional obligation to ensure that elections are both free and fair and reflect the will of the people, at a minimum, requires that the State ensure that all North Carolinians

have a reasonable opportunity to vote—that is, not only to cast their ballots but to also have their ballots counted—without undue risk to their health and safety.

82. The State has an obligation under the Free Elections Clause to ensure that each step of the voting process, whether by mail or in person, does not unnecessarily endanger voters' health, subject voters to a significant risk of arbitrary disenfranchisement, or force voters to choose between exercising the fundamental right to vote and safeguarding their health and the health of their communities.

83. The State's failure to provide safe, accessible, and reliable means for its citizens to vote in the upcoming general election, both in person and by mail, denies Plaintiffs and all North Carolina voters the rights guaranteed to them under the Free Elections Clause. As State election officials have suggested, the COVID-19 pandemic has all but ensured that safe access to in-person voting will be severely restricted due to a significant reduction in the number of polling places and staff, and the health risks posed by packing more voters and poll workers into a small number of consolidated voting sites. Moreover, COVID-19's impact on staffing and polling place needs, when combined with the effects of the recently enacted early voting hours mandate, makes it prohibitively costly for counties to open additional satellite early voting sites. As a result, North Carolinians will see a drastic reduction in the cumulative number of early voting hours offered in upcoming elections during the COVID-19 pandemic.

84. At the same time, voting by mail presents a significant risk of disenfranchisement due to the expected expansion of voters who mail their ballots, backlogs in processing mail ballot requests, and U.S. Postal Service delivery delays. All of these factors, which are either caused or exacerbated by the COVID-19 pandemic, will prevent voters from receiving or submitting their mail ballots in time to be counted, subjecting voters who mail their ballots to an impermissible risk

of arbitrary disenfranchisement for reasons outside their control. And for many North Carolinians, voting by mail will require them to obtain postage, which imposes monetary and transaction costs that significantly burden or deny them the franchise altogether.

85. These barriers to in-person and absentee voting, especially when applied in the midst of the current public health crisis, will deny the franchise to eligible voters and obfuscate the will of North Carolinians, particularly those who—because of financial insecurity, health concerns, family care responsibilities, lack of transportation, or medical vulnerabilities—are unable to overcome the dramatically increased costs and burdens of participating in the political process during the COVID-19 pandemic. North Carolina’s failure to eliminate these barriers, or to even adopt its own State Board’s recommended safeguards, will result in disenfranchisement and violates the Free Elections Clause.

COUNT II
Violation of the North Carolina Constitution
Art. I, §§ 12, 14, and 19
(Burden on the Right to Vote)

86. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

87. Article I, § 12 of the North Carolina Constitution provides: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

88. Article I, § 14 of the North Carolina Constitution provides: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

89. Article I, §§ 12 and 14 of the North Carolina Constitution protect the rights of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote. “Voting, like donating money to a candidate or signing a petition for a referendum, constitutes ‘expressive activity’ that ‘express[es] [a] view’ about the State’s laws

and policies.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *119 (N.C. Super. Sep. 3, 2019) (quoting *Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 153 (1999)); *Evans v. Cowan*, 122 N.C. App. 181, 184, 468 S.E.2d 575, 577 (1996), *aff’d*, 345 N.C. 177, 477 S.E.2d 926 (1996).

90. Article I, § 19 of the North Carolina Constitution provides that “[n]o person shall be denied the equal protection of the laws.”

91. Collectively, these provisions prohibit the State from imposing burdens on the fundamental right to vote unless they are justified by a sufficiently important State interest.

92. North Carolinians have relied heavily on in-person voting, particularly during the early voting period, to participate in the political process. In-person voting ensures access to the franchise for those who encounter difficulty voting by mail, either due to unreliable mail service, the attendant costs—including the monetary or transactional costs of obtaining postage or securing a witness—or the accompanying risk of disenfranchisement. Moreover, for many North Carolinians, casting a ballot at a polling place will be their preferred method of exercising the franchise due to the historical significance of in-person voting.

93. The COVID-19 pandemic, however, will also result in a dramatic expansion of voting by mail, which expands access to the franchise for eligible voters for whom in-person voting is difficult or impossible. For many North Carolinians, voting by mail provides the only feasible opportunity to cast a ballot without putting their health at risk.

94. The barriers to absentee and in-person voting unconstitutionally burden the fundamental rights of North Carolinians to participate in our democracy, and when taken together, the cumulative impact of these barriers creates a severe burden on the right to vote for many eligible citizens.

95. Because the barriers to in-person and absentee voting impose severe burdens on the fundamental right to vote, especially in light of the COVID-19 pandemic, and because these barriers (or the failure to implement additional safeguards to facilitate access to the franchise) cannot be justified by any sufficiently important State interest, the limitations on in-person voting access and the challenged absentee voting restrictions violate the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and:

- a. Declaring, under N.C. Gen. Stat. Ann. § 1-253, *et seq.*, that North Carolina's failure to provide sufficiently accessible in-person voting opportunities that comply with social distancing guidelines during the COVID-19 pandemic violates the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;
- b. Declaring, under N.C. Gen. Stat. Ann. § 1-253, *et seq.*, that the Witness Requirement, the Postage Requirement, the Receipt Deadline, and election officials' Signature Matching practices are unconstitutional and invalid because they violate the rights of Plaintiffs and all North Carolina voters under the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;
- c. Declaring, under N.C. Gen. Stat. Ann. § 1-253, *et seq.*, that the State's failure to provide safe, accessible, and reliable means for North Carolinians to vote in person and by mail during the COVID-19 pandemic violates the rights of Plaintiffs and all North Carolina voters under the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;

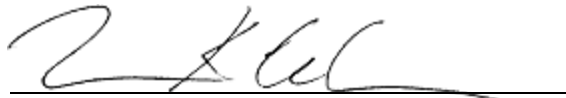
- d. Requiring the State and all local election officials to expand the early voting period by an additional 21 days, and preliminarily and permanently enjoining the enforcement of N.C. Gen. Stat. Ann. § 163-227.2(b) to the extent that it prevents the State or local election officials from extending early voting for an additional 21 days, or any other law that prevents the State or local election officials from expanding the number of early voting days;
- e. Preliminarily and permanently enjoining the Witness Requirement;
- f. Preliminarily and permanently enjoining the State and all county boards of elections from rejecting absentee ballots through Signature Matching unless the voter is provided reasonable notice and an opportunity to cure the alleged signature defect;
- g. Requiring the Board to provide uniform standards and training to all election officials engaged in Signature Matching;
- h. Requiring the State and all local election officials to provide pre-paid postage for all absentee ballot applications and absentee ballots for the November 2020 election, and enjoining the enforcement of N.C. Gen. Stat. Ann. § 163-231(b)(1) to the extent that it requires voters to mail their absentee ballots or applications at their own expense;
- i. Requiring the State to extend the Receipt Deadline, for ballots postmarked by Election Day, to mirror the deadline afforded to military-overseas absentee voters for the 2020 general election, and to interpret the term “postmark” to refer to any type of imprint applied by the U.S. Postal Service to indicate the location and date the Postal Service accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks, and, where a ballot does not bear a postmark date,

requiring the State to presume that the ballot was mailed on or before Election Day unless the preponderance of the evidence demonstrates it was mailed after Election Day;

- j. Awarding Plaintiffs their costs and expenses, under applicable statutory and common law, including N.C. Gen. Stat. Ann. §§ 6-20 and 1-263; and
- k. Granting Plaintiffs such other and further relief as the Court deems necessary.

Dated: July 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served the foregoing document by email to counsel for defendants, and by first-class mail to counsel for the intervenors and proposed intervenors, addressed as follows:

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