UNITED STATES DISTRICT COURT
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,

v.

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,

and

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

Proposed Intervenors.

Civil Action No. 20-cv-00457

MOTION TO INTERVENE

MOTION TO INTERVENE BY HON. PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE, AND HON. TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Pursuant to Federal Rule of Civil Procedure 24, Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives, respectfully move to intervene to oppose Plaintiffs' challenges to North Carolina election law. The motion should be granted for the reasons stated in the accompanying brief in support.

Proposed Intervenors also request that their motion be granted expedited consideration to ensure they can participate as parties in the preliminary injunction proceedings. Plaintiffs filed their preliminary injunction motion on June 5, 2020, and in that motion they requested expedited consideration, asking that the response be due within 14 days and the reply within 7 days of the response. *See* Doc. 9 at 7. On June 8, the Court directed the parties to file a joint status report with the Court setting forth a proposed briefing schedule by 5 p.m. on June 10. Whatever the briefing schedule ends up being, Proposed Intervenors need to be admitted into the case in advance of the response deadline to ensure that they can submit evidence in opposition to Plaintiffs' motion, which is supported by hundreds of pages of exhibits. And they also need to be a party to ensure that they can file a notice of appeal if the preliminary injunction motion is granted. For these reasons, Proposed Intervenors request that their motion be considered on an expedited basis that allows them to participate fully as parties in the preliminary injunction proceedings.

Dated: June 10, 2020

Respectfully submitted,

/s/ Nicole J. Moss
COOPER & KIRK, PLLC

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David H. Thompson*

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**Notice of Appearance Forthcoming*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on June XX, 2020, I electronically filed the foregoing Motion and the accompanying Answer with the Clerk of the Court using the CM/ECF system.

/s/ Nicole J. Moss
Nicole J. Moss

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,

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Defendants,

and

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

Proposed Intervenors.

Civil Action No. 20-cv-00457

ANSWER OF PROPOSED INTERVENORS PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE, AND TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES.

Proposed Intervenors 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, by and through counsel, answer Plaintiffs' First Amended Complaint, Doc. 8, as follows:

1. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 1 of the First Amended Complaint; thus, they are deemed denied.

2. The allegations in Paragraph 2 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the remaining allegations in Paragraph 2 of the First Amended Complaint; thus, they are deemed denied.

3. The allegations in Paragraph 3 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 3 of the First Amended Complaint.

4. The allegations in Paragraph 4 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 4 of the First Amended Complaint.

5. The allegations in Paragraph 5 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 5 of the First Amended Complaint; thus, they are deemed denied.

6. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 6 of the First Amended Complaint; thus, they are deemed denied.

7. The allegations in Paragraph 7 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors deny any remaining factual allegations in Paragraph 7 of the First Amended Complaint.

8. The allegations in Paragraph 8 of the First Amended Complaint contain conclusions of law which require no answer. Sentence 3 in Paragraph 8 references statutes; those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 8 of the First Amended Complaint.

9. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 9 of the First Amended Complaint; thus, they are deemed denied.

10. The allegations in Paragraph 10 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 10 of the First Amended Complaint; thus, they are deemed denied.

11. The allegations in Paragraph 11 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 11 of the First Amended Complaint; thus, they are deemed denied.

12. The allegations in Paragraph 12 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 12 of the First Amended Complaint; thus, they are deemed denied.

13. Proposed Intervenors admit that venue is proper in this Court. Proposed

Intervenors lack sufficient information to respond to any factual allegations in Paragraph 13 of the First Amended Complaint; thus, they are deemed denied.

14. Proposed Intervenors lack sufficient information to respond to the allegations about the identity, purpose, and activities of Plaintiff Democracy North Carolina as alleged in Paragraph 14 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining allegations in Paragraph 14 of the First Amended Complaint.

15. Proposed Intervenors lack sufficient information to respond to the allegations about the identity, purpose, and activities of Plaintiff League of Women Voters of North Carolina as alleged in Paragraph 15 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining allegations in Paragraph 15 of the First Amended Complaint.

16. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 16 of the First Amended Complaint; thus, they are deemed denied.

17. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 17 of the First Amended Complaint; thus, they are deemed denied.

18. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 18 of the First Amended Complaint; thus, they are deemed denied.

19. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 19 of the First Amended Complaint; thus, they are deemed denied.

20. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 20 of the First Amended Complaint; thus, they are deemed denied.

21. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 21 of the First Amended Complaint; thus, they are deemed denied.

22. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 22 of the First Amended Complaint; thus, they are deemed denied.

23. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 23 of the First Amended Complaint; thus, they are deemed denied.

24. Proposed Intervenors admit that the North Carolina State Board of Elections is the agency responsible for the administration of the election laws of the State of North Carolina as alleged in Paragraph 24 of the First Amended Complaint.

25. Proposed Intervenors admit that Damon Circosta is the Chair of the North Carolina State Board of Elections and that he is sued in his official capacity as alleged in Paragraph 25 of the First Amended Complaint.

26. Proposed Intervenors admit that Stella Anderson is the Secretary of the North Carolina State Board of Elections and that she is sued in her official capacity as alleged in Paragraph 26 of the First Amended Complaint.

27. Proposed Intervenors admit that Ken Raymond is a Member of the North Carolina State Board of Elections and that he is sued in his official capacity as alleged in Paragraph 27 of the First Amended Complaint.

28. Proposed Intervenors admit that Jeff Carmon III is a Member of the North Carolina State Board of Elections and that he is sued in his official capacity as alleged in Paragraph 28 of the First Amended Complaint.

29. Proposed Intervenors admit that David C. Black is a Member of the North Carolina State Board of Elections and that he is sued in his official capacity as alleged in Paragraph 29 of the First Amended Complaint.

30. Proposed Intervenors admit that Karen Brinson Bell is the Executive Director

of the North Carolina State Board of Elections and that she is sued in her official capacity as alleged in Paragraph 30 of the First Amended Complaint.

31. Proposed Intervenors admit that the North Carolina Department of Transportation is the agency that implements the online voter registration system in the State of North Carolina as alleged in Paragraph 31 of the First Amended Complaint.

32. Proposed Intervenors admit that J. Eric Boyette is the Secretary of the North Carolina Department of Transportation and that he is sued in his official capacity as alleged in Paragraph 32 of the First Amended Complaint.

33. Proposed Intervenors admit that the North Carolina Department of Health and Human Services is the agency that administers online public benefits renewal in the State of North Carolina as alleged in Paragraph 33 of the First Amended Complaint.

34. Proposed Intervenors admit that Dr. Mandy Cohen is the Secretary of the North Carolina Department of Health and Human Services and that she is sued in her official capacity as alleged in Paragraph 34 of the First Amended Complaint.

35. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 35 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 35 of the First Amended Complaint relies on documents produced by the World Health Organization, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

36. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 36 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 36 of the First Amended Complaint relies on documents produced by the U.S.

Centers for Disease Control and Prevention, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

37. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 37 of the First Amended Complaint; thus, they are deemed denied.

38. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 38 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 38 of the First Amended Complaint relies on documents produced by the U.S. Centers for Disease Control and Prevention, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

39. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 39 of the First Amended Complaint; thus, they are deemed denied.

40. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 40 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 40 of the First Amended Complaint relies on documents produced by the U.S. Centers for Disease Control and Prevention and other scientific studies, those documents and studies speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

41. Proposed Intervenors admit that Governor of North Carolina Roy Cooper declared a State of Emergency on March 10, 2020 as alleged in sentence 1 in Paragraph 41 of the First Amended Complaint. Proposed Intervenors lack sufficient information to respond to

the other factual allegations in Paragraph 41; thus, they are deemed denied.

42. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 42 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 42 of the First Amended Complaint relies on documents produced by the Office of North Carolina Governor Roy Cooper, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

43. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 43 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 43 of the First Amended Complaint relies on documents produced by the Office of North Carolina Governor Roy Cooper, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

44. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 44 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 44 of the First Amended Complaint relies on documents produced by the North Carolina Department of Health and Human Services, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

45. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 45 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 45 of the First Amended Complaint relies on documents produced by the Office of North Carolina Governor Roy Cooper, those documents speak for themselves and are

evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

46. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 46 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 46 of the First Amended Complaint relies on statements or documents produced by Dr. Anthony Fauci or the National Institute of Allergy and Infectious Diseases, those statements or documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

47. Proposed Intervenors admit that the general election for all federal offices, including the presidential election, will be held on November 3, 2020 as alleged in sentence 1 in Paragraph 47 of the First Amended Complaint. Proposed Intervenors lack sufficient information to information to respond to any other factual allegations in Paragraph 47 of the First Amended Complaint; thus, they are deemed denied.

48. The allegations in Paragraph 48 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 48 of the First Amended Complaint; thus, they are deemed denied.

49. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 49 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 49 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs

from this evidence, that characterization is denied.

50. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 50 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 50 of the First Amended Complaint relies on documents produced by Board of Election Officials from eleven counties in North Carolina's 11th Congressional District, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

51. Sentences 3 and 4 in Paragraph 51 of the First Amended Complaint reference statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other factual allegations in Paragraph 51 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 51 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

52. Sentence 1 in Paragraph 52 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other factual allegations in Paragraph 52 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 52 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs

from this evidence, that characterization is denied.

53. Sentences 1 and 2 in Paragraph 53 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other factual allegations in Paragraph 53 of the First Amended Complaint; thus, they are deemed denied.

54. Sentence 2 in Paragraph 54 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other factual allegations in Paragraph 54 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 54 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

55. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 55 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 55 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

56. The first half of sentence 2 in Paragraph 56 of the First Amended Complaint references a statute; that statute speaks for itself. The allegations in the second half of sentence 2 in Paragraph 56 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any other factual

allegations in Paragraph 56 of the First Amended Complaint; thus, they are deemed denied.

57. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 57 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 57 of the First Amended Complaint relies on documents produced by the Wisconsin Elections Commission, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

58. Sentence 2 in Paragraph 58 of the First Amended Complaint contains conclusions of law that require no answer. To the extent that Paragraph 58 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors lack sufficient information to respond to any other factual allegations in Paragraph 58 of the First Amended Complaint; thus, they are deemed denied.

59. Sentences 1 and 2 in Paragraph 59 of the First Amended Complaint reference statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors deny any remaining allegations in Paragraph 59 of the First Amended Complaint.

60. Paragraph 60 of the First Amended Complaint purports to characterize SB 683; this document speaks for itself and is evidence of its contents and to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny the remaining allegations in Paragraph 60 of the First Amended Complaint.

61. Sentence 2 in Paragraph 61 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors deny the remaining allegations in Paragraph 61 of the First Amended Complaint.

62. Sentence 1 in Paragraph 62 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors deny the remaining allegations in Paragraph 62 of the First Amended Complaint.

63. Sentence 2 in Paragraph 63 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors deny any remaining allegations in Paragraph 63 of the First Amended Complaint.

64. Paragraph 64 contains conclusions of law that require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 64 of the First Amended Complaint; thus, they are deemed denied.

65. Sentence 1 in Paragraph 65 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. To the extent that Paragraph 65 of the First Amended Complaint relies on documents produced by Karen Brinson Bell, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 65 of the First Amended Complaint.

66. Sentences 2 and 3 in Paragraph 66 of the First Amended Complaint reference statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 66 of the First Amended Complaint; thus, they are deemed denied.

67. Sentence 1 in Paragraph 67 of the First Amended Complaint references a number of statutes; those statutes speak for themselves and are evidence of their contents. To the extent that Paragraph 67 of the First Amended Complaint relies on documents produced by the National Conference of State Legislatures and the U.S. Census Bureau, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 67 of the First Amended Complaint.

68. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 68 of the First Amended Complaint; thus, they are deemed denied.

69. Paragraph 69 of the First Amended Complaint includes conclusions of law that require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 69 of the First Amended Complaint; thus, they are deemed denied.

70. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 70 of the First Amended Complaint; thus, they are deemed denied.

71. Paragraph 71 of the First Amended Complaint includes conclusions of law that require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 71 of the First Amended Complaint; thus, they are deemed denied.

72. Paragraph 72 of the First Amended Complaint includes conclusions of law that require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 72 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 72 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are

evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

73. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 73 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 73 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

74. Paragraph 74 of the First Amended Complaint includes conclusions of law that require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 74 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 74 of the First Amended Complaint relies on documents produced by the Centers for Disease Control and Prevention, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

75. Sentence 1 in Paragraph 75 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 75 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 75 of the First Amended Complaint relies on documents produced by the North Carolina State Board of Elections, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

76. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 76 of the First Amended Complaint; thus, they are deemed denied. To the extent that Paragraph 76 of the First Amended Complaint relies on documents produced by the U.S. Election Assistance Commission, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied.

77. To the extent that Paragraph 77 of the First Amended Complaint relies on letters sent from Karen Brinson Bell and Board of Election Members in Congressional District 11, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors lack sufficient information to respond to any other allegations in Paragraph 77 of the First Amended Complaint; thus, they are deemed denied.

78. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 78 of the First Amended Complaint; thus, they are deemed denied.

79. Sentence 2 in Paragraph 79 of the First Amended Complaint references statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other allegations in Paragraph 79 of the First Amended Complaint; thus, they are deemed denied.

80. Paragraph 80 of the First Amended Complaint purports to characterize the legislative history of North Carolina's uniform hour requirement for voting sites; documents from the legislative history speak for themselves and are evidence of their contents, and to the extent that the characterization in the First Amended Complaint differs from this evidence,

that characterization is denied. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 80 of the First Amended Complaint; thus, they are deemed denied.

81. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 81 of the First Amended Complaint; thus, they are deemed denied.

82. Sentences 2, 3, and 4 in Paragraph 82 of the First Amended Complaint reference statutes; those statutes speak for themselves and are evidence of their contents. Proposed Intervenors lack sufficient information to respond to any other allegations in Paragraph 82 of the First Amended Complaint; thus, they are deemed denied.

83. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 83 of the First Amended Complaint; thus, they are deemed denied.

84. Proposed Intervenors reallege and reincorporate the responses to the allegations in Paragraphs 1 through 83 of this Answer.

85. To the extent that Paragraph 85 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Burdick v. Takushi*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 85 of the First Amended Complaint.

86. To the extent that Paragraph 86 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Clingman v. Beaver* and the Fourth Circuit's decision in *NAACP v. McCrory*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining

allegations in Paragraph 86 of the First Amended Complaint.

87. The allegations in Paragraph 87 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 87 of the First Amended Complaint.

88. The allegations in Paragraph 88 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 88 of the First Amended Complaint.

89. The allegations in Paragraph 89 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 89 of the First Amended Complaint.

90. The allegations in Paragraph 90 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 90 of the First Amended Complaint.

91. The allegations in Paragraph 91 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 91 of the First Amended Complaint.

92. The allegations in Paragraph 92 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 92 of the First Amended Complaint.

93. The allegations in Paragraph 93 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 93 of the First Amended Complaint.

94. The allegations in Paragraph 94 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 94 of the First Amended Complaint.

95. The allegations in Paragraph 95 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 95 of the First Amended Complaint regarding the individual Plaintiffs; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 95 of the First Amended Complaint.

96. The allegations in Paragraph 96 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 96 of the First Amended Complaint.

97. The allegations in Paragraph 97 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 97 of the First Amended Complaint regarding the individual Plaintiffs; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 97 of the First Amended Complaint.

98. The allegations in Paragraph 98 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 98 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Burdick v. Takushi*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 98 of the First Amended Complaint.

99. The allegations in Paragraph 99 of the First Amended Complaint contain

conclusions of law which require no answer. To the extent that Paragraph 99 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Clingman v. Beaver* and the Fourth Circuit's decision in *NAACP v. McCrory*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 99 of the First Amended Complaint.

100. The allegations in Paragraph 100 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 100 of the First Amended Complaint; thus, they are deemed denied.

101. The allegations in Paragraph 101 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 101 of the First Amended Complaint.

102. The allegations in Paragraph 102 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 102 of the First Amended Complaint.

103. The allegations in Paragraph 103 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 103 of the First Amended Complaint purports to characterize the Northern District of Illinois' decision in *Ury v. Santee* and the Sixth Circuit's decision in *League of Women Voters of Ohio v. Brunner*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph

103 of the First Amended Complaint.

104. The allegations in Paragraph 104 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 104 of the First Amended Complaint; thus, they are deemed denied.

105. The allegations in Paragraph 105 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 105 of the First Amended Complaint.

106. The allegations in Paragraph 106 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 106 of the First Amended Complaint purports to characterize the Northern District of Illinois' decision in *Ury v. Santee*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 106 of the First Amended Complaint.

107. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 107 of the First Amended Complaint; thus, they are deemed denied.

108. The allegations in Paragraph 108 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 108 of the First Amended Complaint.

109. The allegations in Paragraph 109 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations regarding the Plaintiffs in Paragraph 109 of the First Amended

Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 109 of the First Amended Complaint.

110. The allegations in Paragraph 110 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 110 of the First Amended Complaint.

111. The allegations in Paragraph 111 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 111 of the First Amended Complaint.

112. The allegations in Paragraph 112 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 112 of the First Amended Complaint.

113. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 112 of this Answer.

114. The allegations in Paragraph 114 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 114 of the First Amended Complaint.

115. The allegations in Paragraph 115 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 115 of the First Amended Complaint.

116. The allegations in Paragraph 116 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 116 of the First Amended Complaint purports to characterize the Eleventh Circuit's decision in *McCabe v. Sharrett*, the Sixth Circuit's decision in *Kallstrom v. City of Columbus*, and the Supreme

Court's decision in *Dunn v. Blumstein*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 116 of the First Amended Complaint.

117. The allegations in Paragraph 117 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 117 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Missouri v. McNeely* and the Sixth Circuit's decision in *Guertin v. Michigan*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 117 of the First Amended Complaint.

118. The allegations in Paragraph 118 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 118 of the First Amended Complaint purports to characterize the Sixth Circuit's decision in *Guertin v. Michigan*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 118 of the First Amended Complaint.

119. The allegations in Paragraph 119 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 119 of the First Amended Complaint; thus, they are deemed denied.

120. The allegations in Paragraph 120 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 120 of the First Amended Complaint.

121. The allegations in Paragraph 121 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 121 of the First Amended Complaint.

122. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 121 of this Answer.

123. The allegations in Paragraph 123 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 123 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Norman v. Reed*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 123 of the First Amended Complaint.

124. The allegations in Paragraph 124 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations regarding the Plaintiffs in Paragraph 124 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 124 of the First Amended Complaint.

125. The allegations in Paragraph 125 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 125 of the First Amended Complaint.

126. Proposed Intervenors reallege and reincorporate the responses to the First

Amended Complaint's allegations in Paragraphs 1 through 125 of this Answer.

127. The allegations in Paragraph 127 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 127 of the First Amended Complaint purports to characterize the Fourteenth Amendment of the United States Constitution, the Fourth Circuit's decision in *United States v. Baker*, and the Sixth Circuit's decision in *Wilkinson v. Austin*, the text of the Constitution and those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 127 of the First Amended Complaint.

128. The allegations in Paragraph 128 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 128 of the First Amended Complaint purports to characterize the Fourth Circuit's decision in *Snider International Corp. v. Town of Forest Heights*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 128 of the First Amended Complaint.

129. The allegations in Paragraph 129 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 129 of the First Amended Complaint purports to characterize the Fourth Circuit's decision in *Snider International Corp. v. Town of Forest Heights*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 129 of the First Amended Complaint.

130. The allegations in Paragraph 130 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 130 of the First Amended Complaint purports to characterize the Fourth Circuit's decisions in *Snider International Corp. v. Town of Forest Heights* and *Sciolino v. City of Newport News, Va.*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 130 of the First Amended Complaint.

131. The allegations in Paragraph 131 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 131 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Cleveland Board of Education v. Loudermill* and the Fourth Circuit's decision in *Sciolino v. City of Newport News, Va.*, those decisions speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 131 of the First Amended Complaint.

132. The allegations in Paragraph 132 of the First Amended Complaint contain conclusions of law which require no answer. To the extent that Paragraph 132 of the First Amended Complaint purports to characterize the Supreme Court's decision in *Gill v. Whitford*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining allegations in Paragraph 132 of the First Amended Complaint.

133. The allegations in Paragraph 133 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 133 of the First Amended Complaint.

134. The allegations in Paragraph 134 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 134 of the First Amended Complaint.

135. The allegations in Paragraph 135 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations regarding the Plaintiffs in Paragraph 135 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 135 of the First Amended Complaint.

136. The allegations in Paragraph 136 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 136 of the First Amended Complaint.

137. The allegations in Paragraph 137 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 137 of the First Amended Complaint.

138. The allegations in Paragraph 138 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 138 of the First Amended Complaint.

139. The allegations in Paragraph 139 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 139 of the First Amended Complaint.

140. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 139 of this Answer.

141. The allegations in Paragraph 141 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 141 purports to characterize Title II of the Americans with Disabilities Act, that Act speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 141 of the First Amended Complaint.

142. The allegations in Paragraph 142 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 142 purports to characterize the Fourth Circuit's decision in *Heiko v. Colombo Savings Bank*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 142 of the First Amended Complaint.

143. The allegations in Paragraph 143 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations regarding the Plaintiffs in Paragraph 143 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 143 of the First Amended Complaint.

144. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 144 of the First Amended Complaint; thus, they are deemed denied. To the extent Paragraph 144 of the First Amended Complaint purports to characterize unnamed documents or statements produced by the Centers for Disease Control and Prevention, those documents

or statements speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 144 of the First Amended Complaint.

145. The allegations in Paragraph 145 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations regarding Plaintiff Hutchins in Paragraph 145 of the First Amended Complaint; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 145 of the First Amended Complaint.

146. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 146 of the First Amended Complaint; thus, they are deemed denied. To the extent Paragraph 146 of the First Amended Complaint purports to characterize unnamed documents produced by the Centers for Disease Control and Prevention, those documents speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 146 of the First Amended Complaint.

147. The allegations in Paragraph 147 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 147 of the First Amended Complaint regarding Plaintiff Hutchins; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 147 of the First Amended Complaint.

148. The allegations in Paragraph 148 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 148 of the First Amended Complaint.

149. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 148 of this Answer.

150. The allegations in Paragraph 150 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 150 purports to characterize Section 504 of the Rehabilitation Act, that Act speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 150 of the First Amended Complaint.

151. The allegations in Paragraph 151 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors admit that the State of North Carolina receives federal funding to conduct its elections as stated in Paragraph 151 of the First Amended Complaint. Proposed Intervenors deny any remaining factual allegations in Paragraph 151 of the First Amended Complaint.

152. The allegations in Paragraph 152 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 152 of the First Amended Complaint seeks to characterize the Fourth Circuit's decision in *Heiko v. Colombo Savings Bank*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 152 of the First Amended Complaint.

153. The allegations in Paragraph 153 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to any factual allegations in Paragraph 153 of the First Amended Complaint; thus, they are deemed denied.

154. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 154 of the First Amended Complaint; thus, they are deemed denied.

155. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 155 of the First Amended Complaint regarding Plaintiff Hutchins; thus, they are deemed denied. To the extent Paragraph 155 of the First Amended Complaint references statutes, those statutes speak for themselves and are evidence of their contents. Proposed Intervenors deny any remaining factual allegations in Paragraph 155 of the First Amended Complaint.

156. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 156 of the First Amended Complaint regarding the Plaintiffs; thus, they are deemed denied. To the extent Paragraph 156 of the First Amended Complaint purports to characterize unnamed documents or statements produced by the Centers for Disease Control and Prevention, those documents or statements speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 156 of the First Amended Complaint.

157. The allegations in Paragraph 157 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 157 of the First Amended Complaint regarding the Plaintiff Hutchins; thus, they are deemed denied. Proposed Intervenors deny any remaining

factual allegations in Paragraph 157 of the First Amended Complaint.

158. The allegations in Paragraph 158 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 158 of the First Amended Complaint.

159. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 158 of this Answer.

160. The allegations in Paragraph 160 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 160 purports to characterize Title II of the Americans with Disabilities Act, that Act speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 160 of the First Amended Complaint.

161. The allegations in Paragraph 161 of the First Amended Complaint contain conclusions of law which require no answer.

162. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 162 of the First Amended Complaint regarding Plaintiffs; thus, they are deemed denied. To the extent Paragraph 162 of the First Amended Complaint purports to characterize unnamed documents or statements produced by the Centers for Disease Control and Prevention, those documents or statements speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 162 of the First Amended Complaint.

163. The allegations in Paragraph 163 of the First Amended Complaint contain

conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 163 of the First Amended Complaint.

164. The allegations in Paragraph 164 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 164 of the First Amended Complaint.

165. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 164 of this Answer.

166. The allegations in Paragraph 166 of the First Amended Complaint contain conclusions of law which require no answer. To the extent Paragraph 166 purports to characterize Section 504 of the Rehabilitation Act, that Act speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 166 of the First Amended Complaint.

167. The allegations in Paragraph 167 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors admit that the State of North Carolina receives federal funding to conduct its elections. Proposed Intervenors deny any remaining factual allegations in Paragraph 167 of the First Amended Complaint.

168. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 168 of the First Amended Complaint regarding Plaintiffs; thus, they are deemed denied. To the extent Paragraph 168 of the First Amended Complaint purports to characterize unnamed documents or statements produced by the Centers for Disease Control and Prevention, those documents or statements speak for themselves and are evidence of their contents; to the extent that the characterization in the First Amended Complaint differs from

this evidence, that characterization is denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 168 of the First Amended Complaint.

169. The allegations in Paragraph 169 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 169 of the First Amended Complaint.

170. The allegations in Paragraph 170 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 170 of the First Amended Complaint.

171. Proposed Intervenors reallege and reincorporate the responses to the First Amended Complaint's allegations in Paragraphs 1 through 170 of this Answer.

172. Paragraph 172 of the First Amended Complaint contains conclusions of law that require no answer. To the extent Paragraph 172 of the First Amended Complaint references Section 208 of the Voting Rights Act, that Act speaks for itself and is evidence of its contents. Proposed Intervenors deny any factual allegations in Paragraph 172 of the First Amended Complaint.

173. Paragraph 173 of the First Amended Complaint contains conclusions of law that require no answer. To the extent Paragraph 173 of the First Amended Complaint references the Voting Rights Act, that Act speaks for itself and is evidence of its contents. To the extent Paragraph 173 of the First Amended Complaint references the Fifth Circuit's decision in *OCA-Greater Houston v. Texas*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 173 of the First Amended Complaint.

174. Paragraph 174 of the First Amended Complaint contains conclusions of law that require no answer. To the extent Paragraph 174 of the First Amended Complaint references the Voting Rights Act, that Act speaks for itself and is evidence of its contents. To the extent Paragraph 174 of the First Amended Complaint references the Fifth Circuit's decision in *OCA-Greater Houston v. Texas*, that decision speaks for itself and is evidence of its contents; to the extent that the characterization in the First Amended Complaint differs from this evidence, that characterization is denied. Proposed Intervenors deny any factual allegations in Paragraph 174 of the First Amended Complaint.

175. The allegations in Paragraph 175 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 175 of the First Amended Complaint.

176. The allegations in Paragraph 176 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 176 of the First Amended Complaint.

177. The allegations in Paragraph 177 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors lack sufficient information to respond to the allegations in Paragraph 177 of the First Amended Complaint regarding Plaintiff Hutchins; thus, they are deemed denied. Proposed Intervenors deny any remaining factual allegations in Paragraph 177 of the First Amended Complaint.

178. The allegations in Paragraph 178 of the First Amended Complaint contain conclusions of law which require no answer. Proposed Intervenors deny any factual allegations in Paragraph 178 of the First Amended Complaint.

179. The unnumbered paragraph on page 74 of the First Amended Complaint under

"PRAYER FOR RELIEF" consists of a prayer for relief that does not require a response. To the extent a response is required, Proposed Intervenors deny that Plaintiffs are entitled to, or that this Court has jurisdiction to grant, the relief described.

180. Proposed Intervenors deny each and every allegation not expressly admitted herein.

First Affirmative Defense

Plaintiffs' First Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted and should be dismissed.

Second Affirmative Defense

Plaintiffs lack standing to assert the claims in their First Amended Complaint.

Third Affirmative Defense

Plaintiffs' claims are not ripe.

WHEREFORE, Proposed Intervenors respectfully request that this Court dismiss Plaintiffs' claims with prejudice, deny Plaintiffs' prayer for relief, order Plaintiffs to pay Proposed Intervenors' costs and attorneys' fees, and grant other relief deemed just and proper.

Dated: June 10, 2020

Respectfully submitted,

/s/ Nicole J. Moss
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Counsel for Proposed Intervenors
**Notice of Appearance Forthcoming*

UNITED STATES DISTRICT COURT
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,

v.

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,

and

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

Proposed Intervenors.

Civil Action No. 20-cv-00457

[PROPOSED] ORDER

It is hereby ORDERED that Proposed Intervenors' Motion to Intervene is GRANTED.

SO ORDERED.

DATED: _____

_____
William L. Osteen, Jr.
United States District Judge

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,

v.

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,

and

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

Proposed Intervenors.

Civil Action No. 20-cv-00457

PROPOSED INTERVENORS' BRIEF IN SUPPORT OF THEIR MOTION TO INTERVENE

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STATEMENT OF SUBJECT MATTER BEFORE THE COURT

"Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Here, the laws of North Carolina could not be clearer in designating Proposed Intervenors as necessary and primary agents of the State in exercising the government authority of defending the laws of the State from attack in cases like this. This Court should honor the sovereign choice of the State of North Carolina and grant Proposed Intervenors' motion to intervene.

Under Article I, § 4 of the United States Constitution, the North Carolina General Assembly is the sole entity in the State authorized to prescribe the times, places, and manner of elections for federal office in the State. The General Assembly's task is particularly important this year, as the novel coronavirus presents novel questions about how to conduct an election during a global pandemic. And the General Assembly is hard at work seeking to answer those questions, which involve balancing interests in the integrity of elections, access to the polls, and poll worker and voter health. Bipartisan legislation to amend North Carolina election law in light of the COVID-19 pandemic known as H.B. 1169 was introduced in the North Carolina House of Representatives on May 22, passed that body by a 116-3 vote on May 28, and is currently pending in the Senate.

Plaintiffs in this action, however, are seeking to cut short this legislative process and wrest away the General Assembly's constitutional authority over prescribing the manner of elections in the State. On May 22, 2020—the same day H.B. 1169 was introduced—Plaintiffs filed this lawsuit, which challenges a panoply of North Carolina election laws alleged to be unconstitutional or otherwise unlawful in application during the COVID-19 pandemic. And on June 5, Plaintiffs filed a motion for a preliminary injunction seeking judicial sanction for their wish-list of reforms.

Defendants have their own views on the administration of elections during these unusual times. Defendant Karen Brinson Bell, the Executive Director of Defendant State Board of Elections, has twice sent letters to legislative leaders including Proposed Intervenors, President Pro Tempore Berger and Speaker Moore, requesting numerous statutory changes to address the impact of the COVID-19 pandemic on elections. Many of these changes are also sought by Plaintiffs in this action. Attorney General Josh Stein, whose office represents Defendants in this case, likewise has written to Proposed Intervenors and other legislators seeking changes similar to those sought by Plaintiffs.

This confluence of interests between Plaintiffs and Defendants—and the absence of any party in the case representing the constitutional authority of the General Assembly to set the ground rules for conducting elections—undermines the adequacy of the current parties for the effective conduct of this litigation. Fortunately, federal and state law work together to provide a solution to this problem. Federal Rule of Civil Procedure 24 grants a right to intervene in federal litigation to those whose substantial interests in the case are inadequately represented by the existing parties. Fourth Circuit case law makes clear that potential divergences of interest much less acute than that present in this case satisfy Rule 24's liberal standards. *See United Guaranty Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc.*, 819 F.2d 473 (4th Cir. 1987). And North Carolina law designates Proposed Intervenors as necessary agents of the State in litigation challenging the validity of State law and grants them final decision-making authority over the defense of that litigation. *See, e.g.*, N.C. GEN. STAT. § 120-32.6.

Under these provisions of federal and state law, Proposed Intervenors are entitled to intervene in this case. Proposed Intervenors therefore move to intervene as defendants, and they

request that this Court act on their request promptly so that they can participate fully in the response to Plaintiffs' request for a preliminary injunction.

QUESTION PRESENTED

Whether Proposed Intervenors should be granted leave to intervene in this case either as of right under Fed. R. Civ. P. 24(a) or permissively under Rule 24(b).

STATEMENT OF FACTS

Under a variety of legal theories, Plaintiffs assail a wide-ranging array of provisions of North Carolina election law which, they say, "in the context of the [COVID-19] pandemic, taken individually or in combination," violate federal law. Doc. 8, First Amend. Compl. at 75 (June 5, 2020). These provisions include:

- The requirement that requests for absentee ballots may not be "completed, partially or in whole, or signed by anyone other than the voter, or the voter's near relative or verifiable legal guardian." N.C. GEN. STAT. § 163-230.2(e). Members of multi-partisan teams ("MATs") trained and authorized by county boards of elections may also assist, *id.*, and a person in need of assistance "due to blindness, disability, or inability to read or write" may request the assistance of the person of his or her choice if "there is not a near relative or legal guardian available." *Id.* at § 163-230.2(e1).
- The requirement that absentee ballot requests be physically returned to county board of elections offices, and that the delivery must be made by the voter, the voter's near relative or legal guardian, a MAT member, the postal service, or a designated delivery service. *See* N.C. GEN. STAT. § 163-230.2(e)(4).

- The requirement that voters requesting an absentee ballot identify themselves with a North Carolina driver's license number, special identification card number, or the last four digits of their Social Security number. See N.C. GEN. STAT. § 163-230.2(a)(4), (f).
- The requirement that only a near relative, verifiable legal guardian, or MAT member may assist a voter with marking an absentee ballot. *Id.* at § 163-226.3(a)(4).
- The requirement that absentee ballots must be marked and sealed "[i]n the presence of two persons who are at least 18 years of age," or a notary public. *Id.* at § 163-231(a).
- The requirement that absentee ballots must be mailed at the voter's expense or delivered in person, by the voter or the voter's near relative or verifiable legal guardian. *Id.* at § 163-231(b)(1).
- The requirement that every precinct must be staffed by precinct assistants, a majority of whom must reside in the precinct itself. *Id.* at § 163-42(b).
- The "uniform hours" requirement for one-stop early voting sites within a county. *Id.* at § 163-227.6(c).
- The requirement that county boards of elections must provide public notice of alteration or consolidation of precincts at least 45 days before an election.
- The lack of a requirement that personal protective equipment be provided for use by poll workers or voters during in-person voting.

Plaintiffs have asserted their claims against the executive branch officials and agencies charged with administering the State's elections, and Defendants are represented in this litigation by members of the office of Attorney General Josh Stein. These officials also have been seeking changes to North Carolina election law similar to those sought by Plaintiffs. Defendant Brinson Bell, Executive Director of Defendant State Board of Elections, has written to lawmakers,

including Proposed Intervenors, on two separate occasions. *See CARES Act Request and Clarification to Recommendations to Address Election-Related Issues Affected by COVID-19*, Karen Brinson Bell, Ex. 2 to Decl. of Allison J. Riggs in Supp. of Pls. Mot. for a Prelim. Inj., Doc. 12-7 (April 22, 2020) ("Riggs Decl."); *Recommendations to Address Election-Related Issues Affected by COVID-19*, Karen Brinson Bell, Ex. 1 to Riggs Decl., Doc. 12-7 (Mar. 26, 2020). Writing on behalf of the State Board of Elections, Executive Director Bell called for laws that would, among other things:

- Expand options for absentee requests (i.e. allow requests by fax and email);
- Establish an online portal for absentee requests;
- Establish a fund to pay for postage for outbound and returned absentee ballots;
- Allow voters to use alternative personal identification in an absentee ballot requests, if unable to provide their driver's license number or last four digits of their Social Security number;
- Reduce or eliminate the witness requirement for absentee ballots;
- Temporarily modify restrictions on absentee-ballot assistance in care facilities;
- Eliminate the requirement that a majority of pollworkers reside in the precinct; and
- Modify one-stop site and hour requirements.

All of these proposals mirror claims for relief in this case.

Attorney General Stein also has proposed many of the same changes to lawmakers. *See* Letter from Attorney General Josh Stein, to Hon. Phil Berger et al. (May 29, 2020), Ex. A. His requests included:

- Relaxing identification requirements for absentee ballot requests;

- Allowing county boards to prefill ballot request forms, contrary to the current restriction of assistance to relatives, guardians, and MAT members;
- Providing prepaid postage on returned absentee ballots; and
- Repealing the uniform-hour requirements for one-stop voting sites.

While Plaintiffs, Defendants, and Attorney General Stein have expressed their own views, the General Assembly, the entity charged by the Constitution with prescribing the times, places and manners of elections, U.S. CONST. art. I, § 4, has been hard at work on legislation to address how North Carolina election law should be altered to address the COVID-19 pandemic. On May 22—the same day Plaintiffs' filed this lawsuit—H.B. 1169, "The Bipartisan Elections Act of 2020," was introduced in the House. The Bill is sponsored by two Democratic and two Republican legislators, and on May 28 it passed the House by a vote of 116–3. *See* H.B. 1169, 119th Leg., Reg. Sess. (N.C. 2020), *available at* https://bit.ly/2YckPfO. It has cleared three Senate committees and is calendared for a full vote on June 10, 2020. In its current form it would amend state law in numerous ways for the 2020 elections, including by, among other things:

- Allowing absentee ballot requests to be sent to a voter by mail, email, or fax, and posted in blank form online, H.B. 1169 Edition D at § 5(a), https://bit.ly/2YckPfO;
- Allowing absentee ballot requests to be submitted by email or fax, *id.* at § 2(a);
- Authorizing a new procedure of online request of absentee ballots, *id.* at § 7(a);
- Requiring only one witness for absentee voting, *id.* at § 1(a);
- Requiring the Department of Health and Human Services and the State Board of Elections to develop guidance for safe assistance of voters in care facilities by MATs, *id.* at § 2(b);
- Requiring only one assistant at each precinct to reside in the precinct and allowing precincts to employ assistants who reside elsewhere in the county, *id.* at § 1(b); and

- Appropriating over $26 million to the State Board of Elections "to prevent, prepare for, and respond to the coronavirus pandemic during the 2020 federal election cycle," to be used for a variety of measures, including investing substantial sums for maintaining and expanding clean and accessible one-stop early voting sites and election day voting, *id.* at §§ 11.1-11.3.

The Bill, of course, has not yet been enacted, and if and when it is it may have undergone amendment from its current form. But its existence demonstrates that the General Assembly is working in a bipartisan manner to address voting and the COVID-19 pandemic. Proposed Intervenors seek to intervene to defend North Carolina law and protect the constitutional prerogatives of the General Assembly.

ARGUMENT

I. Proposed Intervenors are Entitled to Intervene as of Right.

Under Rule 24(a), a court "must permit anyone to intervene who" (1) makes a timely motion to intervene, (2) has an "interest relating to the property or transaction that is the subject of the action," (3) is "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and (4) shows that he is not "adequately represent[ed]" by "existing parties." FED. R. CIV. P. 24(a). Proposed Intervenors meet these requirements, particularly given the Fourth Circuit's "liberal" approach to intervention. *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986). Indeed, the Fourth Circuit has authorized Proposed Intervenors to intervene in cases challenging North Carolina law, and this Court should do the

same. *See* Order, *North Carolina State Conference of NAACP v. Raymond*, No. 20-1092, Doc. 43 (March 27, 2020); Order, *ACLU v. Tata*, No. 13-1030, Doc. 43 (4th Cir. Jan. 14, 2014).[1]

A. Proposed Intervenors' Motion is Timely.

Proposed Intervenors have timely filed this motion. Plaintiffs filed the complaint on May 22, less than three weeks ago, *see* Doc. 1, Compl., and they amended it on June 5, less than a week ago. Plaintiffs' request for a preliminary injunction is only days old, as it also was filed on June 5. *See* Doc. 9, Mot. for Prelim. Inj.. Nothing else of substance has happened in the case. For the timeliness requirement of Rule 24, "[t]he most important consideration is whether the delay has prejudiced the other parties." *Spring Const. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). Proposed Intervenors have not delayed in presenting themselves to protect their interests at stake in this suit, and their intervention would not in any way impede the progress of the suit.

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

Rule 24(a)(2)'s requirement of an "interest" in the "subject of the action" refers to "significantly protectable interest." *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). Proposed Intervenors have two independent significantly protectable interests that entitle them to intervene: (1) the interest of the *State* in defending the constitutionality of the challenged laws; and (2) the interest of the *General Assembly* in defending its legislative enactments and authority, including its authority under

[1] Judge Biggs denied intervention to Proposed Intervenors in district court the *North Carolina State Conference of NAACP* case, *see* Mem. Op. and Order, *North Carolina State Conference of NAACP v. Cooper*, No. 18-1034, Doc. 56 (June 3, 2019); Mem. Op. and Order, *North Carolina State Conference of NAACP v. Cooper*, No. 18-1034, Doc. 100 (Nov. 7, 2019), but this denial is on appeal before the same panel that granted Proposed Intervenors' motion to intervene in the appeal of Judge Biggs' order granting a preliminary injunction. *See North Carolina State Conference of NAACP v. Berger*, No. 19-2273 (4th Cir.). For the reasons in their briefing in the *NAACP* case, Proposed Intervenors submit that Judge Biggs erred to the extent her reasoning and conclusions were inconsistent with those presented by Proposed Intervenors here.

Article I, §4 of the Constitution to "prescribe[ ]" the "Manner of holding Elections for Senators and Representatives." *See* U.S. CONST. art. I, §4, *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (treating interests of state and legislature as two separate interests).

1. The State of North Carolina has an interest in "defend[ing] the constitutionality of its statute[s]." *Bethune-Hill*, 139 S. Ct. at 1951. And since the "State of North Carolina" only can act through its authorized agents, the "State must be able to designate agents to represent it in federal court." *Id*. Further, it is within the State's sovereign prerogative to authorize members of the General Assembly to serve as those agents and therefore "to litigate on the State's behalf." *Id*.; *see also Karcher v. May*, 484 U.S. 72, 81 (1987); *Hollingsworth v. Perry*, 570 U.S. 693, 709–10 (2013).

Consistent with this authority, North Carolina law expressly, repeatedly, and emphatically designates Proposed Intervenors as agents of the State to defend the State's laws from attack in federal court in cases like this one. *See* N.C. GEN. STAT. § 120-32.6; N.C. GEN. STAT. § 1-72.2(b); N.C. GEN. STAT. § 114-2(10). Indeed, State law goes much further than merely designating Proposed Intervenors as its agents in this type of litigation by making clear that Proposed Intervenors are the State's *necessary* and *primary* agents for defense of its laws. "*Whenever* the validity or constitutionality of an act of the General Assembly . . . is the subject of an action in any State *or federal* court," North Carolina law provides, "the Speaker of the House of Representatives and the President Pro Tempore of the Senate, *as agents of the State through the General Assembly*, shall be *necessary parties*." N.C. GEN. STAT. § 120-32.6 (emphases added). And in "such cases, the General Assembly through the Speaker of the House of Representatives and President Pro Tempore of the Senate jointly shall possess *final decision-making* authority with respect to the defense of the challenged act of the General Assembly." N.C. GEN. STAT. § 120-32.6 (emphasis

added). The Attorney General is expressly directed to "abide by and defer to [this] final decision-making authority." N.C. GEN. STAT. § 114-2(10).

In sum, North Carolina has an "interest in the continued enforceability of" the numerous laws challenged here and the State may vindicate that interest through any officials it so designates. *Hollingsworth*, 570 U.S. at 709–10; *see Karcher*, 484 U.S. at 82. North Carolina has so designated Proposed Intervenors, which means that one of the interests at stake for the purposes of intervention are the interests of the State in defending its democratically enacted laws.

2. Proposed Intervenors have an additional significantly protectable interest entitling them to defend the laws challenged here: the interest of the General Assembly itself in defending its enactments and its legislative authority. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2665 (2015); *cf. Bethune-Hill*, 139 S. Ct. at 1953–54. Proposed Intervenors represent both houses of the General Assembly in ensuring that their enactments are not "nullified." *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2665 (quotation marks omitted). And the laws Plaintiffs seek to nullify are not just any run-of-the-mill laws; rather, they are laws that govern the times, places, and manner of holding elections for Senators and Representatives, among other offices. The power to "prescribe" such matters is vested by the Constitution "in each State by the Legislature thereof." U.S. CONST. art. I, § 4. Plaintiffs are seeking to usurp this authority for themselves by asking the Court to impose upon the State Plaintiffs' preferred elections procedures "with respect to any election in the state during the COVID-19 pandemic." Am. Compl. at 76. Proposed Intervenors have a substantial interest in defending the General Assembly's authority from this frontal assault.

In the present public health emergency, the General Assembly's interest in its authority to legislate is only heightened. When a legislature "undertakes to act in areas fraught with medical

and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation, even assuming, arguendo, that judges with more direct exposure to the problem might make wiser choices." *Marshall v. United States*, 414 U.S. 417, 427 (1974). The General Assembly must be able to pass appropriate statutes to safeguard both the integrity of North Carolina's elections and the health of North Carolina's citizens. These are matters of grave importance to the State and its people, and the General Assembly has a substantial interest in defending its authority to address them.

C. The Disposition of this Case May Impair Proposed Intervenors' Significantly Protectable Interest.

The threat posed by this case to Proposed Intervenors' significant interests is stark and easily satisfies the Rule 24 requirement that Proposed Intervenors' ability to protect its interests may be impaired "as a practical matter." FED. R. CIV. P. 24(a)(2). Here, if the Court rules in Plaintiffs' favor, the State's and the General Assembly's interests in enforcing the duly enacted laws of the State will have been undermined and "completely nullified" with respect to the host of provisions that Plaintiffs seek to enjoin. See *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2665 (quotation marks omitted). And the General Assembly's constitutionally granted authority to prescribe elections regulations will have been eviscerated during this critical time.

D. The Existing Defendants Will Not Adequately Protect Proposed Intervenors' Interests.

"The requirement of [inadequate representation] is satisfied if the applicant shows that representation of his interest *may* be inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added; quotation marks omitted). This standard is satisfied, for example, when interests overlap but are not identical. *See United Guaranty Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc.*, 819 F.2d 473, 476 (4th Cir. 1987). Proposed Intervenors clear this low hurdle.

1. As an initial matter, this Court should hold that the executive branch officers and agencies named as defendants are inadequate representatives of the State's and General Assembly's interests as a matter of law. This conclusion flows directly from North Carolina law designating Proposed Intervenors as necessary and primary agents in defending the validity of the State's statutes. As explained above, North Carolina law provides that Proposed Intervenors are "necessary parties" in challenges to State statutes, and it grants them "final decision-making authority" in the litigation. N.C. GEN. STAT. § 120-32.6. In light of those provisions, it is not possible to hold that the State's and General Assembly's interests are being adequately represented if their necessary and primary defenders are not allowed to participate as parties in the case.

2. Even apart from these provisions of North Carolina law, Defendants are not adequate representatives of Proposed Intervenors' interests because both Defendants and Proposed Intervenors have unique interests. Defendants, on the one hand, are executive branch officers and agencies with an interest in the administration of state elections. In other litigation, this has prompted the State Board of Elections, a named defendant here, to explain that "a primary objective for the State Board is to expediently obtain clear guidance on what law, if any, will need to be enforced." State Defs.' Resp. to Pls.' Mot. for Prelim. Inj. at 13, *Holmes v. Moore*, 18-cvs-15292 (N.C. Super. Ct. Wake Cty., June 19, 2019), Ex. B. It stands to reason that the State Board and its officials will have a similar objective here, as it is the agency charged with administering the State's elections in accordance with law. *See* N.C. GEN. STAT. § 163-22.

Proposed Intervenors also have a unique interest not shared by Defendants—to defend the General Assembly's constitutional prerogative in prescribing the times, places, and manner of elections. This is an interest held exclusively by the General Assembly, not by the various executive branch officers and agencies that are named defendants in this action.

These diverging interests satisfy the "inadequacy of representation" requirement for intervention under binding Supreme Court and Fourth Circuit precedent. In *Trbovich*, the Secretary of Labor instituted an action to set aside an election of officers of the United Mine Workers of America. The union member whose complaint led the Secretary to sue sought to intervene in the action. The district court denied his motion to intervene and the court of appeals affirmed, but the Supreme Court reversed. The Court reasoned that, while the Secretary of Labor was charged with representing the union member's interest in the litigation, it also was charged with protecting the "vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Trbovich*, 404 U.S. at 539. Because of the presence of this additional interest and its potential to affect the Secretary's approach to the litigation it was "clear" to the Court "that in this case there is sufficient doubt about the adequacy of representation to warrant intervention." *Id*. at 538.

The Fourth Circuit's decision in *United Guaranty* follows and is of a piece with *Trbovich*. That case involved a suit seeking to nullify mortgage insurance policies held by various purchasers of mortgage loans originated by a mortgage company that allegedly lied in its applications for mortgage insurance. The trustee for the holder of the mortgage certificates representing the interest of the purchasers of the loans, The First National Bank of Maryland, was a party, but the largest purchaser, Philadelphia Savings Fund Society, sought to intervene to defend its own interests. The district court denied intervention based on adequacy of representation, but the Fourth Circuit reversed. The Bank, the Fourth Circuit reasoned, "ha[d] a broader interest in protecting all of the certificate holders than [did] Philadelphia's narrow interest in protecting its own mortgage certificates." *United Guaranty*, 819 F.2d at 476. Although Philadelphia's interests were a subset of the Bank's, the Bank's "multiple interests [had] the potential of dictating a different approach

to the conduct of the litigation." *Id*. at 475. The court therefore held that the Bank was not an adequate representative of Philadelphia's interests, and that Philadelphia was entitled to intervene.

The case for inadequate representation is even stronger here than in *Trbovich* and *United Guaranty*, for as just explained Proposed Intervenors have an interest in the General Assembly's prerogatives that is not represented by Defendants *at all*, which was not the case in *Trbovich* and *United Guaranty*. If the Secretary's representation was inadequate in *Trbovich*, and the Bank's in *United Guaranty*, it follows *a fortiori* that Defendants' representation is inadequate here.

3. For the foregoing reasons, Proposed Intervenors have shown inadequate representation even if there were absolutely zero reason to question the resoluteness with which Defendants would defend the laws being challenged in this case. But as it happens there is reason to question. Both Defendant Bell, the Executive Director of the State Board of Elections, and Attorney General Stein, head of the office representing Defendants, have both recently lobbied the General Assembly to change North Carolina law along some of the same lines as the relief Plaintiffs request in this suit.

In her letters, addressed to Proposed Intervenors among others, Executive Director Bell sought many of the same changes to North Carolina law as Plaintiffs seek here. She advocated repeal of absentee ballot request regulations to allow requests by mail; action to "[r]educe or eliminate the witness requirement for absentee ballots"; repeal of restrictions on assistance with requesting, completing, and returning absentee ballots; elimination of the "requirement that a majority of pollworkers reside in the precinct"; establishment of an online portal for absentee ballot requests; and modification of one-stop voting hours. *See CARES Act Request and Clarification to Recommendations to Address Election-Related Issues Affected by COVID-19*, Karen Brinson Bell, Ex. 2 to Riggs Decl., Doc. 12-7 (April 22, 2020); *Recommendations to Address Election-Related*

Issues Affected by COVID-19, Karen Brinson Bell, Ex. 1 to Riggs Decl., Doc. 12-7 (Mar. 26, 2020). Plaintiffs have asked the Court to rewrite North Carolina's laws in the same way.

Attorney General Stein has also taken the highly unusual step of lobbying the legislature for his preferred election policy reforms. Less than two weeks ago, and subsequent to the filing of the initial Complaint in this litigation, Attorney General Stein wrote a letter to legislative officials, including Proposed Intervenors, seeking changes to the State's elections laws similar to those sought by Plaintiffs here. *See* Letter from Attorney General Josh Stein, to Hon. Phil Berger et al. (May 29, 2020), Ex. A. Attorney General Stein proposed (among other things) relaxing restrictions on who can assist voters with completing mail-in absentee ballot request forms and abolishing the requirement that one-stop voting sites all maintain the same generous hours of operation. *Id.* These two features of North Carolina law, codified at N.C. GEN. STAT. § 163-226.3(a)(4) and § 163-227.6(c), respectively, are both challenged by Plaintiffs here. *See* Am. Compl. at 77.

Executive Director Bell's and Attorney General Stein's policy positions call into question the adequacy of their representation of the State's and General Assembly's interests in this case. To make matters worse, Attorney General Stein and Governor Cooper (who appoints the members of and controls the State Board of Elections, *see Cooper v. Berger*, 809 S.E.2d 98 (N.C. 2018); N.C. GEN. STAT. § 163-19) have a demonstrated history of inadequately defending laws that they oppose as a policy matter. In *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), the Fourth Circuit struck down a statute that prescribed voter ID requirements and made other changes to North Carolina election laws. The State filed a cert petition and sought a stay from the Supreme Court before Governor Cooper and Attorney General Stein took office. Four Justices—the same number as required to grant cert—indicated that they would have granted a stay of the Fourth Circuit's mandate in whole or in part. *See North Carolina*

v. North Carolina State Conf. of NAACP, 137 S. Ct. 27 (2016). Yet after taking office Governor Cooper and Attorney General Stein actively sought to thwart the State's cert petition, with Attorney General Stein moving to dismiss the petition on the Governor's behalf. *See North Carolina v. North Carolina State Conference of NAACP*, 137 S. Ct. 1399, 1399 (2017); Press Release, Attorney General Josh Stein, AG Stein Moves to Dismiss Case on Voting Law (Feb. 21, 2017), Ex. C. Proposed Intervenors sought to intervene to save the petition, but the effort ultimately was for naught. In a statement respecting the denial of the petition, Chief Justice Roberts cited "the blizzard of filings" precipitated by the Governor's motion, and admonished that "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case." *Id*. at 1400 (quotation marks omitted). Governor Cooper meanwhile issued a press release celebrating the cert denial that put the final nail in the coffin of the North Carolina law he was charged with faithfully executing. *See* Governor Roy Cooper, Gov. Cooper Issues Statement on SCOTUS Voter Access (May 15, 2017), Ex. D.

All of this is not to say that there will be a repeat in this case. But given Executive Director Bell's and Attorney General Stein's letters, there certainly is a risk, and Rule 24 requires a showing only that the defendant's representation "*may* be inadequate, and the burden of making that showing should be treated as minimal." *Trbovich*, 404 U.S. at 538 n.10 (emphasis added). For the foregoing reasons, Proposed Intervenors easily clear this low bar here.

4. One final point bears emphasis, and that is that participating in this case as an amicus rather than as a party will not provide adequate protection for Proposed Intervenors' interests, because only as a party will Proposed Intervenors be guaranteed the right to participate fully in the development of a record in this case and, if necessary, file a notice of appeal. *See, e.g.*, *Feller v. Brock*, 802 F.3d 722, 730 (4th Cir. 1986); *Newport News Shipbuilding & Drydock Co. v. Peninsula*

Shipbuilders' Ass'n, 646 F.2d 117, 121–22 (4th Cir. 1981). The inadequacy of amicus status was brought into sharp focus in the *North Carolina Conference of NAACP* voter ID litigation. In that case, Judge Biggs denied Proposed Intervenors' motion to intervene and ordered that the expert reports they had proffered in opposition to the plaintiffs' preliminary injunction motion be stricken from the record. *See* Order, *North Carolina State Conference of NAACP v. Cooper*, No. 18-1034, Doc. 116 (Nov. 27, 2019). Because the defendants in that action—the members of the State Board of Elections, represented by the North Carolina Attorney General's office—did not themselves offer any expert reports in opposition to the preliminary injunction motion, that motion was decided on the basis of a record that included zero expert reports rebutting plaintiffs' many experts.

These events—along with the events surrounding the cert petition in the *McCrory* litigation—demonstrate why Proposed Intervenors must be able to intervene as a party and must be allowed to do so expeditiously. It is only as a party that Proposed Intervenors will be guaranteed the right to build a record and, if necessary, file a notice of appeal or a cert petition in this case. Proposed Intervenors therefore ask that their motion to intervene be granted on an expedited basis to allow them to participate with full party rights in opposing Plaintiffs' preliminary injunction motion.

II. Alternatively, Proposed Intervenors Should Be Allowed to Intervene Permissively.

This Court has previously permitted Proposed Intervenors to intervene under Rule 24(b) to defend North Carolina law. *See Carcaño v. McCrory*, 315 F.R.D. 176, 177 (M.D.N.C. 2016). Under Rule 24(b), the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1)(B). The Court also "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id*. at 24(b)(3).

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

Moreover, as shown in the Proposed Answer, Proposed Intervenors' defenses share with the "main action" questions of both law and fact. FED. R. CIV. P. 24(b)(2)(B). Plaintiffs claim that North Carolina voting laws violate federal constitutional and statutory requirements in light of the COVID-19 pandemic, and Proposed Intervenors deny those claims. These arguments present completely overlapping questions of fact and law, and Proposed Intervenors do not seek to inject any new claims into the case.

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

CONCLUSION

This Court should expeditiously permit Proposed Intervenors to intervene as defendants.

Dated: June 10, 2020

Respectfully submitted,

/s/ Nicole J. Moss
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**Notice of Appearance Forthcoming*

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Memorandum, including body, headings, and footnotes, contains 5,629 words as measured by Microsoft Word.

/s/Nicole J. Moss
Nicole J. Moss

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on June 10, 2020, I electronically filed the foregoing Notice of Appearance with the Clerk of the Court using the CM/ECF system.

/s/ Nicole J. Moss
Nicole J. Moss

UNITED STATES DISTRICT COURT
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,

v.

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,

and

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

Proposed Intervenors.

Civil Action No. 20-cv-00457

DECLARATION IN SUPPORT OF PROPOSED INTERVENORS' MOTION TO INTERVENE

DECLARATION OF NICOLE J. MOSS IN SUPPORT OF THE AUTHENTICITY OF THE EXHIBITS ATTACHED TO PROPOSED INTERVENORS' MOTION TO INTERVENE

Nicole J. Moss hereby declares as follows under penalty of perjury:

1. I am an attorney at the law firm of Cooper & Kirk, PLLC, counsel for Proposed Intervenors. I submit this Declaration in support of the authenticity of the exhibits attached to Proposed Intervenors' motion to intervene.

2. Proposed Intervenors' memorandum in support references 4 exhibits.

3. Exhibit A is a true and accurate copy of a May 29, 2020 letter from Attorney General Josh Stein to Hon. Phil Berger et al.

4. Exhibit B is a true and accurate copy of the State Defendants' Response to Plaintiffs' Motion for Preliminary Injunction, in *Holmes v. Moore*, 18-cvs-15292 (N.C. Super. Ct. Wake Cty., June 19, 2019).

5. Exhibit C is a true and accurate copy of Attorney General Stein's Press Release from February 21, 2017.

6. Exhibit D is a true and accurate copy of Governor Roy Cooper's Press Release from May 15, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2020

s/Nicole J. Moss
Nicole J. Moss

Attorney for Proposed Intervenors

EXHIBIT A

JOSH STEIN
ATTORNEY GENERAL

May 29, 2020

The Honorable Phil Berger
Senate President Pro Tempore
16 West Jones Street, Rm. 2007
Raleigh, NC 27601

The Honorable Dan Blue
Senate Democratic Leader
16 West Jones Street, Rm. 1129
Raleigh, NC 27601

The Honorable Tim Moore
House Speaker
16 West Jones Street, Rm. 2304
Raleigh, NC 27601

The Honorable Darren G. Jackson
House Democratic Leader
300 N. Salisbury Street, Rm. 506
Raleigh, NC 27603

Dear President Pro Tempore Berger, Senator Blue, Speaker Moore, and Representative Jackson:

I write regarding the North Carolina General Assembly's efforts to address the effects of the COVID-19 virus on our elections this year. I am pleased to know that members of the General Assembly are working together on a bipartisan basis to address this global health crisis. I have reviewed House Bill 1169, entitled An Act to Make Various Changes to the Laws Related to Elections and to Appropriate Funds to the State Board of Elections in Response to the Coronavirus Pandemic (HB 1169), which passed in the House of Representatives yesterday. Many of the provisions in HB 1169 are a step in the right direction towards ensuring that every eligible North Carolinian has the opportunity to exercise the right to vote in November. However, there are a number of outstanding areas that would benefit from the General Assembly's attention. Addressing these considerations, in particular the use of prepaid postage for absentee ballot envelopes, would serve to further the safe exercise of the franchise for the approximately 7 million registered voters in North Carolina.

- **Proof-of-residence for Absentee Ballots:** Currently, when requesting an absentee ballot, a voter must provide either their driver's license number or last four digits of

their Social Security number.[1] Many voters—and, particularly, senior citizens—may not have access to a driver's license number or may be unable to easily locate their Social Security number. These voters are often the same voters for whom it is infeasible or unsafe to vote in-person. Allowing voters to use a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the voter would help ensure that these voters, who may be most at-risk for contracting the COVID-19 virus, are able to safely exercise their right to vote.

- **County Assistance With Filling Out Absentee Ballot Requests:** HB 1169 would allow voters to request absentee ballots electronically. However, voters would not be able to request the assistance of anyone other than a near relative or guardian or a member of a multipartisan elections team to fill out these request forms. Allowing county boards of elections to pre-fill the request forms with the voters' name and address would reduce the need for those who require in-person assistance—particularly those who are at high risk—to subject themselves and others to the risk of contracting or spreading the COVID-19 virus.

- **Pollworker Pay:** HB 1169 allows money from the federal CARES Act funding to be used by county boards of elections to increase pay for official pollworkers, who are employed on a temporary basis during election season. While this is a step in the right direction, pollworkers should have the assurance that any unemployment benefits they may be receiving would not be affected by service as an official pollworker.

- **Prepaid Postage for Absentee Ballots:** The part of HB 1169 that allows for voters to request absentee ballots by email and fax would help increase access to absentee ballots by voters for whom it may be infeasible or unsafe to vote in-person. But any voter who requests an absentee ballot, even electronically, must still acquire postage to be able to return the ballot to the appropriate county board of elections if it is unsafe or infeasible for them to personally deliver it to the appropriate county board. Sometimes obtaining proper postage is difficult, especially for those with limited mobility and those at higher risk from COVID-19. Given the restrictions in movement and social-distancing requirements that may be in place in November, providing prepaid postage on returned absentee ballots would eliminate the need for a voter to leave their residence to acquire postage and would decrease the need for the voter to turn over their ballot to another individual for delivery to the appropriate county board. Prepaid postage for absentee ballots would also help facilitate North Carolinians living in assisted-living facilities to return their ballots safely.

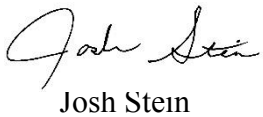
- **One-Stop Requirements:** Currently, if any one-stop site in a county is open, all one-stop sites in that county must be open from 8:00 am to 7:30 pm. Providing county boards of elections flexibility to set different hours for one-stop sites would allow them to appropriately respond to the public-health considerations and social-

[1] N.C. Gen. Stat. § 163-230.2.

distancing requirements to prevent the contraction and spread of the COVID-19 virus that may exist in November.

I am pleased that the General Assembly is endeavoring to address the global pandemic and its effect on the 2020 elections. I hope to be able to work together with you to ensure that all eligible North Carolinians are able to vote safely in November.

Regards,



Josh Stein

EXHIBIT B

STATE OF NORTH CAROLINA

WAKE COUNTY

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

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

STATE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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

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

The Photo ID Law's mandatory implementation has now been in place for a period of roughly six month since the law went into effect. The State Board of Elections, ("State Board"), the agency charged with administering many aspects of the Photo ID Law, began the process of

implementing the General Assembly's directives related to the requirements of photographic voter identification. Much work still remains to be completed by the State Board prior to the elections cycle of 2020, when the photographic identification requirements for voting are scheduled to go into effect.[1] To address the impact of a preliminary injunction and to assist the Court in weighing the equities associated with a preliminary injunction, the Board's response highlights:

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

PROCEDURAL BACKGROUND

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

Plaintiffs are six North Carolina voters who allege that the new Photo ID law is unconstitutional both facially, and as applied to their particular circumstances. *See* Compl. ¶ 6. Plaintiffs assert six constitutional claims regarding the Photo ID Law:

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

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

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

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

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

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

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

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

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

UPDATED FACTUAL BACKGROUND

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

administration, is provided below to assist the Court as it deliberates on whether an injunction is appropriate.

A. General Provisions and Recent Changes

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

The Photo ID Law lists the ten types of ID that qualify for use during voting, which include a (1) drivers license; (2) DMV-issued nonoperators ID card; (3) passport; (4) voter ID card issued by a board of elections; (5) tribal enrollment card; (6) student ID card; (7) public employee ID card; (8) out-of-state drivers license or nonoperators ID card, but only if the person registered to vote within 90 days of the election; (9) military ID card; and, (10) veterans ID card. Sess. Law 2018-144, sec. 1.2.(a), § 163A-1145.1(a).

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

rejected in March have until November 15, 2019 to reapply under the new requirements. *Id.* ¶ 12 & Ex. E.

B. Outreach and Training

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

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

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

As of May 2019, the State Board's outreach team began conducting public seminars on photo ID, in coordination with county boards. *Id.* ¶ 14. The team will host two such seminars in each county before September 1, 2019. *Id.* ¶ 14. The seminars are being advertised in local media. *Id.* As of June 18, 2019, 48 such seminars have been conducted, while 154 more have been scheduled. *Id.* ¶ 14 & Ex. F.

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

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

The State Board has created photo ID posters and informational handouts that will be provided to the county boards of elections to be placed in every precinct and one-stop early voting location for the 2019 elections. *Id.* Exhibit G of the Bell Affidavit displays one such handout. It explains that photo ID will be required in the 2020 elections, identifies which IDs are acceptable, and explains how a voter can obtain an acceptable ID if they do not have one. *See* Bell Aff., Ex. G. The handout also explains that a voter can cast a provisional ballot if they do

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

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

Apart from the station guide, and in contemplation of the Photo ID law, the State Board is revising a number of other documents and forms that it uses for election administration. *Id.* This includes updating the official voter registration form to incorporate information about photo ID, and updating the provisional ballot application form to address photo ID provisions, including the reasonable impediment requirement. *Id.* The State Board is also in the process of updating its absentee ballot request form and absentee container return envelope in order to effectuate new photo ID requirements for absentee-by-mail voting. *Id.*

C. Technological Implementation and Deadlines

As the State Board administers municipal and special elections in 2019, it is also planning for changes to its systems that are required by the Photo ID Law. For instance, the

Board operates the Statewide Elections Information Management System (SEIMS), which is the informational backbone of elections administration in the state. *Id.* ¶ 21. There are aspects of the SEIMS system that touch on photo ID, including the processing of absentee-by-mail ballot requests, which will require revisions to the computer coding and functionality of SEIMS. *Id.* Making changes to the SEIMS system takes approximately four months, from documenting business requirements, development, testing, and final production. *Id.*

SEIMS must be ready to implement the 2020 primary on the date that absentee primary ballots are mailed, which is January 13, 2020. *Id.* ¶ 22. Accordingly, because of the four-month development period for SEIMS, the State Board must initiate changes by mid-September in order for the system to be capable of carrying out the legal requirements of photo ID in January. *Id.* ¶ 23. In light of this litigation, the Board's executive director has instructed the staff responsible for making changes to SEIMS to include the ability to return to the current version of SEIMS in the event of a court-ordered injunction against Photo ID implementation prior to the 2020 elections. *Id.* ¶ 21. Unless ordered otherwise by this Court, that instruction works to assist the State Board in incorporation of system changes due to the Photo ID Law into SEIMS, and helps the Board with any reversal of the incorporated changes (to the current version of the system) if the Photo ID Law is ultimately invalidated in the courts.

LEGAL STANDARD

A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *DaimlerChrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 578, 561 S.E.2d 276, 281 (2002) (quoting *Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)). A preliminary injunction may issue only if: (1) the plaintiff shows a likelihood of success on the merits of the case, and (2) the plaintiff "is likely to sustain

irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *Id.* (quoting *Investors, Inc.*, 293 N.C. at 701, 239 S.E.2d at 574). The party moving for a preliminary injunction bears the burden of establishing entitlement to the relief. *Pruitt v. Williams*, 25 N.C. App. 376, 379, 213 S.E.2d 369, 371 (1975).

The issuance of a preliminary injunction "is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *Horner Int'l Co. v. McKoy*, 232 N.C. App. 559, 561, 754 S.E.2d 852, 855 (2014) (quoting *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983)). However, "[a] preliminary injunction should not be granted if a serious question exists in respect of the defendant's right to do what the plaintiffs seek to restrain and the granting thereof would work greater injury to the defendant than is reasonably necessary for the protection *pendente lite* of the plaintiffs' rights." *Setzer v. Annas*, 286 N.C. 534, 540, 212 S.E.2d 154, 157-58 (1975) (*citing Huskins v. Hospital*, 238 N.C. 357, 361, 78 S.E. 2d 116, 120 (1953); *Board of Elders v. Jones*, 273 N.C. 174, 182, 159 S.E. 2d 545, 551-552 (1968)). The hearing judge must consider the relative conveniences and inconveniences of the parties in determining the propriety of a preliminary injunction and the terms thereof. *Id.*

ARGUMENT

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

The State Board is in the middle of voter outreach and county board training for the implementation of the Photo ID Law. *See* Bell Aff. ¶¶ 6–16, 18–19. County boards have acquired the necessary equipment for printing free photo identification cards for voters, the State Board has trained local boards on the use of that equipment, and the State Board is in the process of reimbursing the county boards for that expense. *Id.* ¶¶ 9-10. The State Board has commenced

a statewide public seminar campaign, as required by the Photo ID Law, to educate voters on the requirements of the Photo ID law. Soon, the State Board will make technical changes to its systems, processes, and forms so that elections administrators can enforce the photo ID requirement when the first ballots go out on January 13, 2020. *See id.* ¶¶ 17, 21–23.

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

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

license or other form of identification containing a photograph issued by the Division of Motor Vehicles of the Department of Transportation, as of September 1, 2019." *Id.* § 1.5.(b).

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

As explained *supra*, the State Board's elections information management system, SEIMS, also requires sufficient lead time for proper design and testing. An injunction that exceeds the mid-September timeframe may severely disrupt development, testing, and production of SEIMS. That is so because while the Executive Director instructed the Board to make preparations to be able to reverse any SEIMS changes related to the Photo ID Law in case if this law is invalidate by the Court, the same is not true if incorporation of the Photo ID related changes is halted altogether. Any injunction that pauses incorporation of the Photo ID Law requirements past mid-September would likely result in the State Board not being able to incorporate those changes in time for 2020 election due to the design, development and testing requirements, even if the law is ultimately upheld.

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

The likelihood of a harm to the State Board from an injunction is further highlighted by the State Defendants' Motion to Dismiss Plaintiffs' facial challenge to the Photo ID Law. With respect to Claims II through VI, the State Defendants have argued that Plaintiffs are unable to meet the high burden required to establish that the legislation is invalid on its face. Specifically, Plaintiffs are required to show there are no circumstances in which the State would be able to implement the Photo ID Law in a way that satisfies the requirements of the State constitution, and that as a consequence, the law is invalid as written. As argued in the State Defendants' motion to dismiss, Plaintiffs have failed to meet that exacting standard. This reality weighs against the issuance of injunction: Plaintiffs' inability to ultimately succeed on the merits will almost certainly subvert the State Board's ability to comply with duly enacted legislation.

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

The State Board is justifiably wary of the consequences for election administration if an injunction is issued and later lifted. Meanwhile, the State Board also recognizes that if it were to continue implementation of the Photo ID law, only to find later that the Photo ID requirement is struck down, the Board will encounter different challenges and obstacles. The Board will have to expend its limited resources, both fiscal and available time, on retraining poll workers and county board staff on *not* requiring photo ID. This expenditure is compounded by the fact that

the State Board will also have to re-educate voters that the photo ID requirements are no longer operative.

Recognizing that the path of litigation is unpredictable, a primary objective for the State Board is to expediently obtain clear guidance on what law, if any, will need to be enforced. With that in mind, if the Court is inclined to issue an injunction at this stage, the State Board requests that it be granted some flexibility in making technical preparations that will allow it to implement the law in the event the injunction were later vacated. This flexibility would include being permitted to develop updates to the SEIMS system to account for the administration of an election with, and without, photo ID, while also directing county boards not to discard pre-photo ID materials in anticipation of the possibility that those materials become necessary to use again.

CONCLUSION

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

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

JOSHUA H. STEIN
Attorney General

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Counsel for the State Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing **STATE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** was served on the requesting parties by email, addressed as follows:

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This the 19th day of June, 2019.

/s/ Paul M. Cox
Paul M. Cox
Special Deputy Attorney General

EXHIBIT C

Attorney General
Josh Stein

AG STEIN MOVES TO DISMISS CASE ON VOTING LAW

Release date: 2/21/2017

For Immediate Release:
Tuesday, Feb. 21, 2017

Contact:
Laura Brewer
(919) 716-6484

AG Stein Moves to Dismiss Case on Voting Law

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

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

In addition to protecting voting rights for North Carolinians, AG Stein’s action seeks to save the state up to $12 million in potential liability. Attorneys representing the plaintiffs have agreed to waive up to $12 million of legal fees from the more than three-year litigation if the petition is dismissed and the litigation ends.

Background on this case:

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

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

EXHIBIT D

GOVERNOR

Gov. Cooper Issues Statement on SCOTUS Voter Access Decision

RALEIGH

May 15, 2017

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

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

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

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