IN THE
SUPREME COURT OF THE UNITED STATES

No. 16A168

STATE OF NORTH CAROLINA, *et al.*,
Applicants,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP,
Respondents,

v.

LEAGUE OF WOMEN VOTERS, *et al.*,
Respondents,

v.

LOUIS M. DUKE, *et al.*,
Intervenors-Respondents,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents,

REPLY IN SUPPORT OF EMERGENCY APPLICATION TO RECALL AND STAY MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT PENDING DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The decision below prohibits North Carolina from enforcing one voting measure that this Court has already held States may constitutionally enforce, and compels North Carolina to retain other voting measures that few States have. And it does so on the theory that the State's bare decision to enact a voter-ID law, and to curtail or eliminate permissive practices that few States offer, is compelling evidence of *purposeful* racial discrimination. The Fourth Circuit had to rely on a novel and untenable theory of intentional racial discrimination because it did not and could not disturb the District Court's painstakingly detailed findings that none of the State's challenged voting measures actually has a discriminatory effect. Indeed, and quite remarkably, the Fourth Circuit found discriminatory intent based on North Carolina's mere decision to enact a law with a *potential* for discriminatory impact, despite leaving in place the District Court's finding that there was no *actual* discriminatory impact, and that many changes affirmatively increased minority turnout. Nothing in plaintiffs' 77 pages of response briefing does anything to explain away that anomaly or undermine the more than "fair prospect" that this Court will review and ultimately reverse that novel and unprecedented decision.

In the meantime, this Court should grant a stay to preserve the status quo through the upcoming election. Contrary to plaintiffs' contentions, it is not remotely "too late in the day" to avoid the irreparable injury that the State and its residents stand to suffer without a stay. While the State has been struggling mightily to comply with the Fourth Circuit's mandate (consistent with what the State actually told that court at oral argument—namely, that things were *already* at the point where it would

be "difficult, if not impossible," to alter the status quo), the process of undoing election laws that have been in force for two elections (if not longer) is far more cumbersome, and less complete, than plaintiffs would have this Court believe. Training of precinct and poll workers has not begun (in part because the decision below has forced the State to redo or do away with the training materials it intended to use), and voters have not yet received the voter guides that will explain when, where, and how to vote. Revised early voting plans (which may actually make early voting *less* convenient) have not yet been approved, and the approval process will be much more arduous and contentious because the Fourth Circuit's resuscitation of the State's former early voting regime has also resuscitated the political gamesmanship it enabled: More than 30 counties have been unable to reach consensus on a revised early voting plan. Thus, while there is no denying the disruption that the Fourth Circuit's decision has already wrought, there is still time to prevent further disruption and confusion, and to restore to North Carolina both the orderly and functioning rules that governed previous elections and the equal sovereignty that this Court has promised it.

REASONS FOR GRANTING THE STAY

I. There Is A Reasonable Probability That This Court Will Grant Certiorari And Reverse The Judgment Below.

The decision below is irreconcilable with this Court's decisions in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), and *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). In direct conflict with this Court's holding that voter-ID laws are presumptively *permissible*, the Fourth Circuit has effectively deemed voter-ID laws not only presumptively *impermissible*, but presumptively motivated by

intentional discrimination against minorities. In the Fourth Circuit's view, the mere fact that a voter-ID law has the *potential* to disparately impact minorities (which plaintiffs insist nearly every voter-ID law does) is itself compelling evidence that the enactment of such a law was motivated by racial animus—even if, as here, the State took pains to eliminate any impact that potential disparities might produce. Indeed, in the Fourth Circuit's view, the enactment of *any* voting measure that has the potential to disparately impact minorities is evidence of purposeful discrimination—again, even if the State consciously crafts its law to ensure that it will not actually deny or abridge the right of minorities to vote. Far from refuting those fundamental incompatibilities with this Court's precedent, plaintiffs' responses confirm them.

1. This Court has already held that voter-ID laws are constitutional and justified by the State's "weighty" interests in "preventing voter fraud" and promoting "public confidence in the integrity of the electoral process." *Crawford*, 553 U.S. at 191, 197. Plaintiffs attempt to distinguish the Fourth Circuit's decision from *Crawford* by invoking the purported "finding below" that North Carolina's voter-ID law has a "discriminatory impact on African-Americans." U.S.Br.31; *also* Plfs.Br.29. But there *was* no such finding below. To the contrary, the District Court expressly found, in a finding that the Fourth Circuit did not disturb, that North Carolina's voter-ID law does *not* "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color," 52 U.S.C. §10301(a).

Plaintiffs' contrary contention rests on the same mistaken premise as the Fourth Circuit's discriminatory intent holding—namely, that it is the mere *potential*

for discriminatory impact, not its actuality, that matters. Indeed, the paragraph of the Fourth Circuit's opinion on which plaintiffs rely identifies as its sole purported evidence of "sufficient disproportionate impact for an *Arlington Heights* analysis" (but, notably, not to sustain an actual disparate impact claim) "the district court's finding that African Americans … disproportionately lacked the photo ID required by SL 2013-381." Appl.App.51a. To be sure, that created the potential for disparate impact. But to establish that the law "results in a denial or abridgement of the right … to vote on account of race," 52 U.S.C. §10301(a), plaintiffs needed to establish that the disparate possession of photo ID actually translated into a meaningful burden on the right of minorities to vote even in light of the ameliorative provisions of the law. And that is precisely what the District Court found they failed to do, as the voter-ID law's two-year roll-out and robust reasonable impediment provision combined to ensure that any disparity in ID possession would not impede minorities from voting.

Plaintiffs do not and cannot identify anything in the Fourth Circuit's opinion that disturbs that conclusion. Instead, they just protest that the subsequent amendment of the voter-ID law to include a reasonable impediment provision cannot "cure" the discriminatory intent with which S.L. 2013-381 purportedly was enacted. That misses the point. That amendment is just further confirmation that there was no discriminatory intent in the first place. That should have been clear enough from the General Assembly's decision from the outset (conveniently ignored in plaintiffs' responses) to use a two-year implementation—"the longest rollout period of any state

that has enacted a photo-ID requirement," *N.C. State Conf. of the NCNAACP v. McCrory*, __ F. Supp. 3d __, 2016 WL 1650774, at *141 (M.D.N.C. Apr. 25, 2016)—in an effort to ensure that the less than 5% of North Carolinians who may have lacked an acceptable ID in 2013 would have ample time to obtain one. But it was established beyond doubt when the General Assembly, with overwhelming bipartisan support, amended the law *before it took operative effect* to include a reasonable impediment exception nearly identical to the one in South Carolina's pre-cleared law. Simply put, a State that enacts a law "'because of' … its adverse effects upon an identifiable group," *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979), does not go to such lengths to ensure that the law will not actually have adverse effects on that group.

Plaintiffs make much the same mistake in trying to defend the Fourth Circuit's invalidation of S.L. 2013-381's changes to North Carolina's early voting system. In their view, the mere fact that "African Americans used the first seven days at a higher rate than whites in 2008 and 2012" (but not in 2006 or 2010), *NCNAACP*, 2016 WL 1650774, at *49, translates into proof not only of discriminatory impact, but also of discriminatory intent. In fact, it is neither. Plaintiffs insist otherwise only by, once again, confusing potential for discriminatory impact with its actuality. The District Court, by contrast, correctly recognized that any such potential was eliminated by the same-hours provision, which operated to *expand* access to early voting by making it available at more convenient locations and hours. And that intended result has come to fruition in practice: "African American use of early in-person voting increased by 7.2%" in the 2014 midterm election, which vastly "exceeded the 1.9%

increase observed among whites." *Id.* at *50. A law that is consciously crafted to *expand* access to a voting practice preferred by minorities—and succeeds in practice in doing just that—cannot plausibly be deemed discriminatory in purpose or effect.[1]

2. Plaintiffs' continued insistence otherwise conflicts not just with numerous decisions of this Court, but also with the Sixth Circuit's recent decision in *Ohio Democratic Party v. Husted*, __ F.3d __, 2016 WL 4437605 (6th Cir. Aug. 23, 2016). As that court explained in rejecting a challenge to Ohio's decision to curb its exceedingly generous early voting period from 35 to 29 days, disparate impact must be measured by "examining [a State's] election regime *as a whole*," not by viewing each change in the law in isolation. *Id.* at *5 (emphasis added). If the regime as a whole ensures that minorities remain just as likely to vote as they previously were, then the mere fact that voters have less access to one particular voting practice that minorities otherwise might have preferred to use cannot be said to "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. §10301(a). Thus, in the absence of evidence that minorities would be materially *less likely to vote* with 29 days of early voting instead of 35, the court refused to find any discriminatory effect.

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[1] Plaintiffs' continued reliance on the fact that some General Assembly members sought information about the potential impact of various provisions on minorities (in addition to other categories of residents) fails for the same reason. How is a State supposed to craft its election laws to avoid a discriminatory effect if it cannot even ask whether a contemplated measure has the potential to produce it? Presumably for that very reason, "the United States would not tell [the district] court whether it would have been better or worse for the State not to have requested demographic data." *NCNAACP*, 2016 WL 1650774, at *137.

To be sure, *Husted* is a discriminatory impact, not intent, case. But that only underscores the clear conflict between the Sixth Circuit's approach there and the Fourth Circuit's here, as the Fourth Circuit drew an inference of discriminatory *intent* from the State's mere decision to enact a law that, under the Sixth Circuit's decision (and this Court's precedents), does not even have a discriminatory *effect*. In doing so, the Fourth Circuit created precisely the problem that the Sixth Circuit sought to avoid: It converted Section 2 into "a 'one-way ratchet' that would discourage states from ever increasing early voting opportunities, lest they be prohibited by federal courts from later modifying their election procedures in response to changing circumstances." *Husted*, 2016 WL 4437605, at *1. Worse still, the Fourth Circuit's myopic focus on whether an election law has the *potential* to impact minorities will "unnecessarily infuse race into virtually every" election law change, which itself raises "serious constitutional questions." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 445-46 (2006). That is precisely why this Court has steadfastly refused to import those kinds of retrogression principles into the Section 2 context. *See, e.g.*, *id.*; *Bartlett v. Strickland*, 556 U.S. 1, 14-16 (2009).

3. Implicitly recognizing the problems with the reasoning that the Fourth Circuit actually employed, plaintiffs attempt to convince this Court that the decision below rests on something more nefarious than the State's mere decision to enact measures that *could* disparately impact minorities. Once again, they are mistaken, as the purportedly "overwhelming evidence specific to North Carolina," U.S.Br.4, on

which the Fourth Circuit relied is nothing more than a handful of embarrassingly gross distortions of the record.[2]

For instance, plaintiffs repeatedly invoke the "smoking gun" that the Fourth Circuit claimed to discover lurking in a single sentence of the 25,000-page record where the State purportedly conceded that its "very justification for [the] challenged statute hinge[d] explicitly on race.'" U.S.Br.2 (quoting Appl.App.40a). In fact, that "smoking gun" is smoke and mirrors. According to the Fourth Circuit, the State openly admitted that it "did away with one of the two days of Sunday voting" because "'[c]ounties with Sunday voting in 2014 were disproportionately black.'" Appl.App.39a (quoting JA22,348).[3] That claim does not even make sense on its face, as the evidence revealed that most counties never even *offered* two days of Sunday voting; indeed, "*no*

[2] Plaintiffs take issue (U.S.Br.36, Plfs.Br.40) with petitioners' representation that they were unaware of any other recent case in which "a court of appeals has reversed a fact-finder's finding that a State did not enact an election law with discriminatory intent." Appl.1. But only two of the handful of cases that plaintiffs unearthed in their efforts to refute that proposition actually involved election laws, and neither involved a time, place, or manner regulation. *See Hunter v. Underwood*, 471 U.S. 222 (1985); *Perkins v. City of West Helena*, 675 F.2d 201 (8th Cir. 1982). In one of those cases, the State *conceded* that the law, which had been enacted *in 1901*, was enacted with discriminatory intent (a wise concession since the president of the constitutional convention that produced the law announced when introducing it that it was intended to "establish white supremacy"). *Hunter*, 471 U.S. at 229-30. In the other, two aldermen expressly acknowledged that the challenged municipal at-large election system operated to ensure that white alderman would be elected notwithstanding the city's 40% black population. *Perkins*, 675 F.2d at 214.

[3] The reference to "2014" in this quote appears to have been a typo in the relevant record document, which is actually discussing early voting statistics from the 2012 election. S.L. 2013-381 was enacted in 2013, and its revisions to the State's early voting laws were in force for all of the 2014 elections.

county elected to offer early voting on the first Sunday during early voting in the 2010 midterm election." *NCNAACP*, 2016 WL 1650774, at *53 (emphasis altered).

But even apart from that glaring problem, the quote the Fourth Circuit cherry-picked actually comes from a discussion illustrating how S.L. 2013-381 was designed to *increase* Sunday early voting (which explains why the language comes from *the State's* proposed findings of fact, *see* JA22,348). As the State explained, members of the General Assembly were concerned that the wide discretion given to counties and the broad control given to the Board of Elections under the 17-day regime had enabled "political gamesmanship" that impeded access to early voting. JA22,348-49. For example, because counties were not required to offer early voting on *either* Sunday (let alone both), the then-Democratically controlled Board often ensured that Sunday voting would be available in heavily Democratic and/or African-American counties, while the same convenience was not available in counties whose residents were more likely to vote for Republicans. *See* JA22,349.

The General Assembly did not respond to that concern by "d[oing] away with one of the two days of Sunday voting" (which would have been a rather futile response since most counties did not offer voting on the first Sunday anyway). Appl.App.39a. It responded by using a same-hours-over-fewer-days requirement to incentivize *all* counties to devote their limited resources to offering early voting at more convenient times and locations throughout the 10 days during which voters (including African-American voters) had proven most likely to use it. The Fourth Circuit's claim that the State admitted to seeking to *decrease* early voting opportunities for minority

voters thus gets matters exactly backward. What the State actually explained is that the objective (and ultimate effect) of S.L. 2013-381 was to "make [early voting] more convenient for *all* voters, not just certain voters" who are fortunate enough to live in a county whose residents are more likely to support whichever party happens to be in power at the moment. JA22,349 (emphasis added).

Plaintiffs fare no better with their doubly inaccurate claim that "[e]very practice disproportionately used by African-Americans was eliminated, whereas absentee voting—used more often by whites—was retained without change." U.S.Br.28; *see* Plfs.Br.30. First, as just explained, early voting was not "eliminated"; it was revised to require the same hours spread over more heavily used days. Second, absentee voting was not "retained without change." As petitioners explained in their application (at 16 n.1), S.L. 2013-381 made two critical changes to address mail-in absentee voting fraud concerns in a manner more practical than requiring voters to supply a photocopy of their identification. First, Section 4.3 requires absentee voters to supply either their driver's license number (or one of three other state-issued identification numbers) or the last four digits of their social security number. Second, Section 4.4 increases the number of witnesses who must sign their applications under penalty of perjury from one to two. Once again, then, plaintiffs' (and the Fourth Circuit's) narrative does not comport with the facts as found by the District Court, as S.L. 2013-381 actually "raised the level of security for both in-person *and absentee mail* voting." *NCNAACP*, 2016 WL 1650774, at *100 (emphasis added).

Finally, the Fourth Circuit's claim that "[u]ndisputed' evidence shows that the legislature departed from normal legislative procedures," U.S.Br.13 (quoting Appl.App.41a); *see also* Plfs.Br.27-28, is equally unfounded. After reviewing the contemporaneous record of the events preceding the enactment of S.L. 2013-381 in exhaustive detail (and contrasting them with the post hoc professions of "shock" at the purported "irregularity" of the process), the District Court explicitly found that, "[i]n every respect, the legislation was considered and passed in accordance with the procedural protections of the formal legislative rules." *NCNAACP*, 2016 WL 1650774, at *145; *see also id.* at *8-13. Indeed, the Senate Minority Leader himself thanked members of the Senate for the "good and thorough debate on this bill," which he described as having been "reviewed … in great detail." *Id.* at *145. That is hardly consistent with the Fourth Circuit's claim that bill was "rushed" through debate in "an attempt to avoid in-depth scrutiny." Appl.App.43a-44a.

4. With little else left to offer, plaintiffs resort to recycling the Fourth Circuit's heavy reliance on North Carolina's "long-ago history" of racial discrimination. Appl.App.31-32a. While the State is certainly not here to defend that regrettable chapter in its past, the fact remains that it is, as the Fourth Circuit acknowledged, in the long-ago past. And as this Court has made clear, when it comes to constraining something as sensitive as a State's ability to determine how its own elections will proceed, "current burdens must be justified by current needs." *Shelby County*, 133 S. Ct. at 2627. Accordingly, if plaintiffs want to proceed on a presumption that North

Carolina is *always* motivated by racial bias where voting laws are concerned, then they must identify *current* evidence to substantiate that extraordinary charge.

Needless to say, plaintiffs have not come close to satisfying that burden. Indeed, other than the same "long-ago past" that *Shelby County* found insufficient to justify the imposition of current burdens, plaintiffs have nothing more than the bare fact that North Carolina chose to enact an omnibus election law shortly after *Shelby County* was decided. But plaintiffs simply cannot explain why that is damning when the State had readily understandable—and perfectly permissible—reasons for taking into consideration whether its law would be subject to the more stringent substantive standard, the more onerous burden-shifting regime, and virtually guaranteed litigation costs that Section 5 imposes. Indeed, the whole point of *Shelby County* was to make it easier for previously covered States to exercise the same sovereign right as other States to enact constitutionally permissible election law measures that have no discriminatory effect. Imposing heightened scrutiny and retrogression principles just because a State used to be covered by Section 5 is nothing less than an implicit repudiation of *Shelby County*.

At bottom, plaintiffs' efforts to portray this as a fact-bound dispute specific to North Carolina's law succeed only in confirming that it is precisely the opposite. In essence, the Fourth Circuit charged North Carolina with purposeful discrimination because the State (a) engaged in racial discrimination half a century ago and, like nearly every other State, has racially polarized voting, (b) chose to exercise the equal sovereignty that *Shelby County* restored, and (c) enacted voting measures that it

knew *could* have a discriminatory impact, even though it carefully crafted those measures to ensure that no such impact would result. If that is enough to sustain a *purposeful discrimination* charge, then no voter-ID law—indeed, no voting measure that has even the potential for retrogressive effect—is safe.

II. Irreparable Injury Will Result Without A Stay.

Plaintiffs fare no better in attempting to demonstrate that the State will not suffer irreparable injury in the absence of a stay. First, while plaintiffs insist that the State cannot "credibly claim irreparable harm from the mere fact that an injunction prevents implementation of a state election law," Plfs.Br.24, decisions from members of this Court are to the contrary. *See Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J.) ("any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury"). The question here thus is not *whether* the State will suffer irreparable injury absent a stay, but rather *the extent of* its irreparable injury.

Plaintiffs attempt to minimize that irreparable injury by claiming that the State "assured" the Fourth Circuit "that it would be able to comply with any order … issued by late July." Appl.App.101a. But neither the Fourth Circuit nor the plaintiffs have produced any statement from *the State* that supports that purported assurance. That is because there is none. What the State actually told the Fourth Circuit at the June 21, 2016 argument is that the State was *already* past the point where it would

be "difficult, if not impossible," to change the status quo.[4] That was through no fault of the State's; it was the Fourth Circuit that *sua sponte* expedited the appeal of a decision upholding North Carolina's law, scheduled argument mere months before the presidential election, and ordered the State to come to argument "prepared to inform the Court of … the time required to either implement or dismantle each voting mechanism." ECF No. 122 at 3-4, No. 16-1468 (4th Cir.).

Having already implicitly concluded *sua sponte* that it was not too late for the State to do either, the court predictably rebuked the State's counsel for suggesting there was "no way that we can issue an opinion that does anything." At that point, counsel dutifully explained how the State would go about trying to comply with a decision if the court did in fact order it to "dismantle" some of its voting mechanisms less than four months before a presidential election. But far from "assuring" the court that any order issued by "late July" would pose no problems, counsel informed the court that the State would need a decision "well in advance—weeks or a month"—of its August 5 printing deadline and August 8 and 9 training session in order to even try to minimize the already unavoidable massive disruption of its ongoing efforts to prepare for the upcoming election. Instead, the State got an opinion on July 29, and its motion to stay the mandate was denied on August 4.

Although plaintiffs have much to say about the State's decision to spend the following week trying to comply with the Fourth Circuit's direction while considering

[4] No transcript of the oral argument has been produced, but the audio is available at http://bit.ly/28YvPWE. The relevant discussion begins at approximately minute 69:30 and lasts about 10 minutes.

its options and preparing an application that would adequately position this Court to determine the propriety of a stay in a case that involves nearly 600 pages of opinions (plus another 25,000 pages of record material), they fail to explain how that does anything to undermine the State's request for interim relief. They cannot credibly claim that the only course open to a State and this Court when a court of appeals refuses to stay a decision invalidating an election law is to rush a stay request to this Court for its immediate and urgent consideration. In reality, a State should not be punished for trying to comply with a lower court order while simultaneously seeking this Court's review in an orderly and still highly expedited matter. Moreover, any suggestion that it is too late in the day to reverse course is flatly incorrect, as the State has only just begun the arduous process of trying to fully implement the changes brought about by the Fourth Circuit's opinion before the upcoming election.

For instance, the Board did proceed with its previously scheduled training session for county election boards on August 8 and 9, and it told attendees that the voter-ID requirement that they successfully enforced during the March and June 2016 elections is no longer in force in light of the Fourth Circuit's decision. App.3a. But the Board also informed attendees that the law remained the subject of ongoing litigation, and that they therefore should be prepared for the possibility of its reinstatement. App.3a. Moreover, counties have not yet begun training the precinct officials and poll workers who will actually administer their elections; indeed, they do not yet have the written materials to do so because the Board had to significantly revise the uniform "station guide" pursuant to which all precinct and poll workers

must operate in light of the Fourth Circuit's opinion. App.3a. Those materials have not yet been finalized and will not be distributed to counties for several more weeks. App.3a. And while precinct and poll worker training previously included a comprehensive training video that the Board commissioned a media company to prepare, that video can no longer be used because discussion of the voter-ID requirement is too integrated into the training to be removed. App.3a-4a.

As for early voting, while the Board initially instructed counties to provide revised early voting plans by August 19, many counties were unable to do so until an extended August 25 deadline. App.7a, 17a. And the Board has not begun the process of approving those plans—a process complicated by the fact that, with the political gamesmanship that S.L. 2013-381 sought to eliminate back in full force, more than 30 of the State's 100 counties failed to reach unanimous agreement on a revised early voting plan. App.4a. Accordingly, unless the Fourth Circuit's early voting mandate is stayed, the Board will have to undertake the arduous process of deciding which plan to approve, or crafting a new plan if no proposed plan suffices. Contrary to plaintiffs' contentions, counties would not have to "reformulate" their plans yet again if this Court enters a stay. Plfs.Br.18. They can simply revert to the plans that they had already adopted and arranged to implement before the Fourth Circuit's decision.

Plaintiffs' claim that voters have already become habituated to the Fourth Circuit's decision in the few short weeks since it issued is equally unfounded. While the Board's website currently notes that early voting will take place "during a 17-day

period, beginning October 20 and November 5,"[5] as just discussed, the Board has not yet approved counties' revised plans for which days, locations, and hours they will offer. It is therefore exceedingly unlikely that any prospective voters have already "altered their schedules in reliance on the availability of voting during that first week," U.S.Br.24, as they do not yet know when or where early voting will be available. Even if some vanishingly small number of individuals have done so, moreover, it strains credulity to suggest that a voter so motivated as to have made early voting plans a full two months in advance not only would fail to check whether early voting is actually available on the contemplated day, but would "simply not return," *id.*, to the polls on Election Day or sometime during the 10-day early voting period if she mistakenly showed up before early voting began.

Nor is there any reason to think voters would be confused by the reinstatement after a mere one-month suspension of a voter-ID requirement that the State has spent the past two-and-half years aggressively and successfully promoting. In compliance with the Fourth Circuit's mandate, the Board has taken down its dedicated voter-ID website, posted a notice on its main website that, "[b]arring any alternative outcome on appeal," the voter-ID requirement is "no longer enforceable,"[6] and temporarily suspended all efforts to promote the requirement. App.2a. But it has not undertaken any broader efforts to inform voters that they will not need to comply with that

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[5] *See* North Carolina State Board of Elections, Elections in 2016, http://www.ncsbe.gov/Elections/Election-Information (last visited Aug. 28, 2016).

[6] *See* North Carolina State Board of Elections, http://www.ncsbe.gov/ (last visited Aug. 28, 2016).

requirement during the upcoming election. No "counter" media campaign has been initiated, and the statutorily mandated voter guide that must be sent to every household may not be sent any earlier than September 22. App.2a.

Accordingly, to the extent voters are aware that the State has been enjoined from enforcing its voter-ID law, that is because they either are sophisticated enough to be following the Board's website with regularity (in which case they surely will have no problem learning that voter-ID is back in place should this Court reinstate it), or have learned about the Fourth Circuit's decision through whatever media coverage it garnered. Of course, it would be the height of inequity to force the State to suffer the irreparable injury of being prohibited from enforcing a requirement with which only 00.008% of the 2.32 million people who voted during the primary election had trouble complying because the very issuance of the decision the State seeks to challenge has created uncertainty about whether that requirement will be in force.

Seeking to raise the specter of broad "disenfranchisement," the United States claims that, even accepting those purportedly "unsubstantiated" statistics, "hundreds of North Carolinians—'disproportionately' likely to be African-American, Appl.App.51a—were denied the franchise in a low-turnout primary election" on account of the State's voter-ID law. U.S.Br.22-23. The private plaintiffs, for their part, claim that "approximately 1,400 votes cast by people who lack photo ID were not counted in the March 2016 primary election." Plfs.Br.22-23. Both claims are riddled with errors. First, there is nothing "unsubstantiated" about the State's figures; they come directly from the Board of Elections, in an affidavit filed before the

Fourth Circuit more than two months ago. *See* ECF No. 121-2 at 3 ¶5, No. 16-1468 (4th Cir.). Neither the United States nor any other party has questioned the validity of the Board's data; nor has anyone submitted competing figures since that affidavit was supplied. Second, as the Board's affidavit documents, only 184 of the 1,084 provisional votes that invoked the reasonable impediment exception "were not approved due to reasons related to photo identification requirements." *Id.* The 1,400 number that plaintiffs continue to use comes from an affidavit that one of their experts submitted *before* the Board supplied a detailed breakdown of the actual figures. *See* ECF No. 99-2 at 9-10 ¶11, No. 16-1468 (4th Cir.).

Third, the 2016 primary produced the highest turnout—2.32 million people—in absolute numbers of any primary in the State's history, and was within two points of the record-high 2008 primary based on percentage of registered voters (35.3% in 2016 versus 36.9% in 2008).[7] Based on statistics from recent general elections, even assuming another record-high turnout in November, at most, that number might double. Finally, a voter's failure to comply with a duly enacted requirement for exercising the franchise does not constitute "disenfranchisement"; if it did, no State could ever place *any* restrictions on when, where, or how its residents may vote. Indeed, more than 14,000 provisional votes—10 times more than the number of voters who even *invoked* the reasonable impediment exception—were not counted during

[7] The Board has posted statistics for all recent primary and general elections at North Carolina Board of Elections, Voter Turnout, http://www.ncsbe.gov/voter-turnout (last visited Aug. 28, 2016). *See also Primary Voter Turnout at 35 Percent in NC, Exceeding 2012 Primary*, ABC12 (Mar. 16, 2016), http://bit.ly/2bKr2sD.

the 2016 primary because the prospective voter failed to properly register. ECF No. 121-2 at 3 ¶5, No. 16-1468 (4th Cir.). Surely the United States does not mean to suggest that North Carolina thus can longer require its residents to register to vote.

Not only have plaintiffs failed to demonstrate that allowing the State to enforce the relevant provisions would cause any significant injury on the other side of the balance; they utterly fail to refute the irreparable injuries that the State and its people stand to suffer in the absence of a stay. There is a reason a State suffers irreparable injury "any time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people," *King*, 133 S. Ct. at 3: because most duly enacted statutes are duly enacted to serve important state interests. That is certainly the case here. As this Court has already held, voter-ID laws further a State's "weighty" interests in "preventing voter fraud" and promoting "public confidence in the integrity of the electoral process." *Crawford*, 553 U.S. at 191, 197. In that respect, voter-ID laws actually *encourage* exercise of the franchise, as "a cynical public can lose interest in political participation altogether." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1468 (2014) (Breyer, J., dissenting).

The State's interest in continuing to enforce the changes to its early voting laws that have been in place for nearly three years is, if anything, even more weighty. While plaintiffs continue to propagate the misimpression that S.L. 2013-381 "cut back" early voting, *see, e.g.*, U.S.Br.24, that is simply not correct. In fact, "the new law offers the same aggregate hours as before; provides for more polling places rather than fewer, so that different parts of a county are more equally served; establishes

longer, more convenient hours of early voting for each day of early voting, to accommodate typical work schedules; and promotes bipartisanship in the placement and hours of early-voting sites." *NCNAACP*, 2016 WL 1650774, at *101. Unsurprisingly, then, early voting has *increased* under S.L. 2013-381—indeed, early voting by African-Americans increased by 7.2% in the 2014 midterm election. *Id.* at *50. And while a breakdown by race is not available, early voting increased again in the 2016 primary election—by 8% as compared to the 2012 presidential primary.[8]

It is therefore the Fourth Circuit's mandate, not a stay from this Court, that risks "cutting back on early voting" and all the harms that plaintiffs fear doing so would cause. U.S.Br.24. With S.L. 2013-381 no longer in force, counties no longer have to provide as many early voting hours as they provided during the last presidential election. And so long as they offer early voting during business hours at their county board of elections office and until 1pm on the final Saturday, App.6a, they can satisfy that requirement by eliminating previously scheduled early voting locations and hours that are more convenient for *voters* in favor of hours that are more convenient for *county employees*—including by eliminating weekend and/or evening hours. The Fourth Circuit's decision thus stands to injure not just the State, but the very voters whose interests plaintiffs purport to be representing.

Finally, plaintiffs cannot begin to explain how staying the Fourth Circuit's resuscitation of the State's preregistration law pending the filing of a petition for

[8] Craig Jarvis & David Raynor, *Early Voting in NC Draws Record Turnout*, The News & Observer (Mar. 14, 2016), http://bit.ly/2bvs6gf.

certiorari will cause any harm. As plaintiffs concede, staying that ruling "could not possibly affect [the upcoming] election" because no one who is currently 16 will be eligible to vote in that election. U.S.Br.21; *see also* Plfs.Br.19. While plaintiffs seem to think that this means there is no ground for a stay, that is only because, once again, they fail to recognize the irreparable injury that results "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people." *King*, 133 S. Ct. at 3. Accordingly, their concessions merely confirm that there is nothing on the other side of the balance of the equities to counter that irreparable injury.

CONCLUSION

For the foregoing reasons, the Court should recall and stay the mandate below as it relates to photo ID, early voting, and preregistration, pending the timely filing and disposition of a petition for certiorari.

Respectfully submitted,

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August 29, 2016

APPENDIX

DECLARATION OF KIM WESTBROOK STRACH

NOW COMES Kim Westbrook Strach who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.

2. I am the Executive Director of the State Board of Elections ("State Board"), a position I have held since May 2013. My statutory duties as Executive Director of the State Board include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993 ("NVRA"). The Executive Director of the State Board is responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director of the State Board, I provide guidance to the directors of the county boards.

3. As the Executive Director of the State Board and chief elections officer for the State of North Carolina, I am familiar with the procedures for registration and voting in this State. I am also responsible for implementing the laws passed by the North Carolina General Assembly, supervising the conduct of orderly, fair, and open elections, and ensuring that elections in North Carolina are administered in such a way as to preserve the integrity of protect the public confidence in the democratic process.

4. In my capacity as Executive Director, I have been personally involved in the training and preparation for the upcoming 2016 General Election, both before and after the Fourth Circuit issued its decision invalidating Session Law 2013-381.

5. The purpose of this declaration is solely to inform the Court of what steps have and have not been taken in light of the changes to the State's election procedures that the decision

mandates. The State Board of Elections is a bipartisan and independent agency tasked with the administration of elections.

Voter ID

6. To comply with the Fourth Circuit's July 29 decision, the State Board has taken down its separate website informing the public about the voter-ID requirement. The domain now hosts a notice that the voter-ID requirement is no longer in place. The State Board also has suspended its informational campaign, through media and other outlets, to educate voters regarding photo identification requirements and exceptions. The State has also instructed counties and requested certain nonprofit partners to suspend their related educational campaigns.

7. While the State Board has suspended all informational and educational efforts to comply with the Fourth Circuit's decision, it has retained materials produced for that campaign out of an abundance of caution in light of ongoing litigation. The State Board has also advised counties and nonprofit partners to do the same.

8. State law requires that the State Board prepare and distribute a "judicial voter guide" ahead of the 2016 General Election. This guide has historically been sent by U.S. Mail to every residential address within North Carolina and contains information regarding election regulations. Four prior guides contained information regarding voter-ID requirements and exceptions, appearing ahead of the primary and general elections in 2014 and the two primary election cycles this year. The State Board is now printing a revised version instructing voters that "[v]oters will no longer be required to present photo identification at the polls," along with additional information regarding other challenged provisions of Session Law 2013-381. By statute, the voter guide may be distributed no earlier than 28 days before early voting begins (September 22 under the 17-day early voting period mandated by the Fourth Circuit's decision).

9. On August 8and 9, 2016, the State Board held a previously-scheduled statewide training for county elections officials. During this training session, I and other senior staff from the State Board informed county officials that the voter-ID requirement is no longer in place as a result of the Fourth Circuit's decision. I also informed attendees that challenged provisions of Session Law 2013-381 remain the subject of ongoing litigation, and that officials must be prepared to conduct the 2016 General Election under whatever rules the courts allow or require at that time.

10. The August training was the first step of the training process for the administration of the 2016 General Election. The next step will be the counties' training of their precinct officials and other pollworkers on how the elections are to be administered. To my knowledge, the majority of counties have not yet commenced that training.

11. During the 2016 General Election, all precinct officials will be required to operate polling stations pursuant to a uniform station guide, prepared by the State Board. To comply with the Fourth Circuit's decision, the State Board is in the process of significantly revising this uniform station guide. The revised guide has not yet been finalized, printed, or distributed to the county offices, and I do not anticipate that process will be completed for several more weeks.

12. In 2015, the State Board commissioned a third-party media company to produce a standardized informational video training program that counties could use to assist in their efforts to train precinct officials and pollworkers on pertinent aspects of state election law regarding voter-ID and uniform check-in procedures. The training videos were released to the counties in December 2015 and used in training ahead of the March 2016 primary election. In order to comply with the Fourth Circuit decision, the State Board has instructed county officials to suspend their use of the instructional videos for training elections administrators and pollworkers ahead of the 2016 General Election, although the videos will be retained due to ongoing litigation. Based on

time and cost associated with the prior production of the professional videos, there are no present plans to create and distribute replacement videos ahead of county training sessions

Early Voting

13. Counties were required to submit unanimous early voting plans or non-unanimous proposals for early voting to the State Board by July 29. The State Board had administratively approved unanimous early voting plans for 18 counties before the ruling of the Fourth Circuit. The State Board had planned to review additional unanimous plans and take action on hours-reductions requests and non-unanimous plans, but the Fourth Circuit's decision issued on the very date of the submission deadline stayed that process. Following the Fourth Circuit's decision on the afternoon of July 29, I indicated by email that counties should continue to upload one-stop plan submissions to the State Board, though further approvals would not issue.

14. Following the Fourth Circuit's decision, I provided counties with a memorandum instructing them to submit any new unanimous early voting plans or non-unanimous proposals for early voting reflecting the 17-day early voting period. The deadline to do so was August 25. The State Board has received submissions from each of North Carolina's 100 county boards of elections. Of those, 66 counties have submitted unanimous early voting plans. Copies of relevant memoranda are attached.

15. When a county board of elections has considered an early voting plan that failed to receive unanimous support and any board member petitions the State Board, our appointed members may adopt an early voting plan for that county. Staff is preparing for a meeting of the appointed members of the State Board to consider petitions during the week of September 5.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of August, 2016.

Kim Westbrook Strach, Executive Director
State Board of Elections

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State Board *of* Elections

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KIM WESTBROOK STRACH
Executive Director

NUMBERED MEMO 2016-11

TO:	County Boards of Elections
FROM:	Kim Strach, Executive Director
RE:	One-stop Early Voting in November 2016 General Election
DATE:	August 4, 2016
ENCL.:	Order issued July 29, 2016
	Revised G.S. § 163-227.2

Following Friday's decision in *NAACP, et al. v. McCrory, et al.*, U.S. District Court Judge Thomas Schroeder issued the attached order permanently enjoining contested portions of S.L. 2013-381 regarding photo ID (Part 2), preregistration (Part 12), same-day registration (Part 16), early voting (Part 25), and out-of-precinct voting (Part 49). All other provisions of S.L. 2013-381 remain in effect (ex. elimination of straight party ticket voting).

This Numbered Memo sets out administrative procedures necessary to effectuate Judge Schroeder's order regarding one-stop early voting. The version of G.S. § 163-227.2 now in effect is attached for your reference. It requires, among other things, that county boards of elections offer one-stop early voting during a 17-day early voting period, beginning on the third Thursday before the election (October 20). At minimum, early voting must occur during regular business hours at the county board of elections office and until 1 p.m. on the last Saturday of the one-stop period (November 5).

The so-called "hours-matching" requirement and other changes contained in Part 25 of S.L. 2013-381 are no longer enforceable. Unfortunately, plans submitted to the State Board of Election on or before Friday, July 29 were drawn against the backdrop of now-void criteria. Therefore, consistent with our effort to enforce Judge Schroeder's order, this agency revokes all approvals issued regarding one-stop plans and will take no action on pending hours-reductions requests.

County boards will not be required to have additional sites, nor will they be required to have any additional sites open the same number of hours and days. However, we *strongly encourage* county boards of elections to be mindful of expected turnout and historical use of one-stop early voting in

their respective counties. Statewide historical data indicates that roughly **56% of all voters this election** will use one-stop early voting, which will reduce lengthy lines on Election Day.

You may submit your early voting schedule based upon your county board's selection from the following options:

A. **Extend previously-submitted hours for October 27-November 5 to the entire 17-day early voting period. If cost is a concern, please note that state law requires county commissioners to ensure adequate funding for elections administration. We recommend that you make every effort to provide ample voting opportunities through this option. *See* G.S. 163-37.**
B. **Keep previously-submitted hours for October 27-November 5, and add early voting at the county board office (or nearby alternative site in lieu of the CBE office) for the remainder of the early voting period.**
C. **Adopt a new plan for early voting at the county board office (or nearby alternative site in lieu of the county board office) and additional sites.**
D. **Adopt a new plan for early voting at the county board office (or nearby alternative site in lieu of the county board office) only, but with extended hours and/or weekend hours. County boards <u>are required</u> to open on the last Saturday until 1 p.m. (November 5). *See* G.S. § 163-227.2(b). A county board may vote to remain open on the last Saturday until 5 p.m.**
E. **If a county board does not take action to vote on a plan, all one-stop early voting will take place <u>only</u> during regular business hours at the county board office and on the last Saturday until 1 p.m. (November 5).**

County boards of election must transmit information regarding the locations and times of early voting in their county no later than **close of business August 19**. Submissions must be made using a unique link sent to each county board in a separate email.

We will discuss these options and the entire one-stop early voting process at the conference next week. There will be time at the conference to discuss any questions or issues you may have. Thank you for your service.

§ 163–227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office

(a) Any voter eligible to vote by absentee ballot under G.S. 163–226 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and of G.S. 163–82.6A, as applicable.

(a1) Deleted by S.L. 2001–337, § 2, eff. Jan. 1, 2002.

(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection(g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board.

In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163–119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163–227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in

the presence of the chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163–231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member, employee, or director of elections of the board shall keep the voter's application for absentee ballots in a safe place, separate and apart from other applications and container-return envelopes. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at that voter's residence address and at the address shown in the application for absentee ballots; and the board shall enter a challenge under G.S. 163–89.

(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163–166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163–166.8 to one-stop voting.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163–230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address

retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters.

(f) Notwithstanding the exception specified in G.S. 163–36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163–227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election and shall also be open on the last Saturday before the election. A county board may conduct one-stop absentee voting during evenings or on weekends, as long as the hours are part of a plan submitted and approved according to subsection (g) of this section. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163–45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a

member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(g1) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163–129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under this section. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board of Elections.

(h) Notwithstanding the provisions of G.S. 163–89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (g) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed

by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163–89(e).

(i) At any site where one-stop absentee voting is conducted, there shall be a curtained or otherwise private area where the voter may mark the ballot unobserved.

Added by Laws 1973, c. 536, § 1. Amended by Laws 1975, c. 844, § 12; Laws 1977, c. 469, § 1; Laws 1977, c. 626, § 1; Laws 1979, c. 107, § 14; Laws 1979, c. 799, §§ 1 to 3; Laws 1981, c. 305, § 2; Laws 1985, c. 600, § 4; Laws 1987, c. 583, § 4; Laws 1989, c. 520, § 1; Laws 1989 (Reg. Sess., 1990), c. 991, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 53, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1995, c. 509, §§ 117, 118, eff. July 29, 1995; Laws 1995 (Reg. Sess., 1996), c. 561, § 4; S.L. 1997–510, § 2, eff. Sept. 17, 1997; S.L. 1999–455, § 6; S.L. 2000–136, § 2, eff. July 17, 2000; S.L. 2001–319, §§ 5(a) to 5(c); S.L. 2001–337, § 2, eff. Jan. 1, 2002; S.L. 2001–353, § 9, eff. Aug. 10, 2001; S.L. 2003–278, § 11, eff. June 27, 2003; S.L. 2005–428, § 5(a), eff. Jan. 1, 2006; S.L. 2005–428, §§ 6(a), 7, eff. Sept. 22, 2005; S.L. 2007–253, § 3, eff. Oct. 9, 2007; S.L. 2007–391, § 34(a), eff. Jan. 1, 2008; S.L. 2009–541, § 23, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

"Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' "

Laws 1995, c. 561, § 5, provides:

"This act becomes effective with respect to elections conducted on or after January 1, 1997."

Laws 1995, c. 717, §§ 1 to 3, provide:

"Section 1. (a) Notwithstanding the provisions of G.S. 163–227.2, if the county uses a system with retrievable ballots, after the voter casts the ballot under G.S. 163–227.2, the voter shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with rules adopted by the State Board of Elections, which shall include verifying that no additional ballots have been placed in the box or system.

"(b) Voting under this section shall be under rules approved by the State Board of Elections. The ballot shall have the ballot number on it in accordance with G.S. 163–230(3)a. so that it is retrievable.

"Section 2. This act applies only to Wake, Durham, Watauga, and Randolph counties.

"Section 3. This act is effective upon ratification."

S.L. 1999–455, § 24 provides:

"This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date."

Subsecs. (f1) and (f2) were redesignated as (g) and (h) by the Revisor of Statutes.

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

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; EMMANUEL BAPTIST CHURCH; COVENANT PRESBYTERIAN CHURCH; BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC.; ROSANELL EATON; ARMENTA EATON; CAROLYN COLEMAN; JOCELYN FERGUSON-KELLY; FAITH JACKSON; MARY PERRY; and MARIA TERESA UNGER PALMER,	)	
Plaintiffs,	)	
v.	)	1:13CV658
PATRICK LLOYD MCCRORY, in his official capacity as Governor of North Carolina; KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections; RHONDA K. AMOROSO, in her official capacity as Secretary of the North Carolina State Board of Elections; JOSHUA D. MALCOLM, in his official capacity as a member of the North Carolina State Board of Elections; JAMES BAKER, in his official capacity as a member of the North Carolina State Board of Elections; and MAJA KRICKER, in her official capacity as a member of the North Carolina State Board of Elections,	)	
Defendants.	)	
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; A. PHILIP RANDOLPH INSTITUTE; UNIFOUR ONESTOP COLLABOARATIVE; COMMON CAUSE NORTH CAROLINA; GOLDIE WELLS; KAY BRANDON; OCTAVIA RAINEY; SARA STOHLER; and HUGH STOHLER,	)	

Plaintiffs,	
and	
LOUIS M. DUKE; ASGOD BARRANTES; JOSUE E. BERDUO; CHARLES M. GRAY; NANCY J. LUND; BRIAN M. MILLER; BECKY HURLEY MOCK; MARY-WREN RITCHIE; LYNNE M. WALTER; and EBONY N. WEST,	
Plaintiff-Intervenors,	
v.	1:13CV660
THE STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, in his official capacity as a member of the State Board of Elections; RHONDA K. AMOROSO, in her official capacity as a member of the State Board of Elections; JOSHUA D. MALCOLM, in his official capacity as a member of the State Board of Elections; PAUL J. FOLEY, in his official capacity as a member of the State Board of Elections; MAJA KRICKER, in her official capacity as a member of the State Board of Elections; and PATRICK L. MCCRORY, in his official capacity as the Governor of the State of North Carolina,	
Defendants.	
UNITED STATES OF AMERICA,	
Plaintiff,	
v.	1:13CV861
THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and KIM W. STRACH,	

in her official capacity as)
Executive Director of the North)
Carolina State Board of Elections,)
)
Defendants.)
_____)

JUDGMENT AND INJUNCTION

In accordance with the Memorandum Opinion, Judgment, and Mandate of the Fourth Circuit Court of Appeals entered this date,

IT IS ORDERED AND ADJUDGED that Defendants in the above-captioned cases, their officers, agents, servants, employees, and attorneys, as well as any other person acting in active concert or participation with the Defendants are **ENJOINED** from implementing Session Law 2013-381's and Session Law 2015-103's requirements for photo ID and changes to early voting, same-day registration, out-of-precinct voting, and preregistration:

- The photo ID requirement contained in Part 2 of Session Law 2013-381, as amended by Session Law 2015-103, is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The removal of preregistration contained in Part 12 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The elimination of same-day registration contained in Part 16 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in

full force;

- The changes to early voting contained in Part 25 of Session Law 2013-381 are enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The elimination of out-of-precinct voting contained in Part 49 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force.

Any motion for recovery of costs and/or attorneys' fees shall be governed by the Federal Rules of Civil Procedure, this court's Local Rules, and any other applicable rule.

/s/ Thomas D. Schroeder
United States District Judge

July 29, 2016

NORTH CAROLINA
State Board *of* Elections

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KIM WESTBROOK STRACH
Executive Director

NUMBERED MEMO 2016-12

TO:	County Boards of Elections
FROM:	Kim Strach, Executive Director
RE:	Deadlines for One-stop Early Voting Plans
DATE:	August 16, 2016

We are aware that a number of counties have not yet submitted a one-stop implementation plan through the process outlined in Numbered Memo 2016-11. With the conference taking a significant part of your week last week, we want to ensure counties have adequate time to complete this process. Accordingly, we have amended the deadlines associated with the submission process as follows:

Wednesday, August 24 (11:59 p.m.):	Unanimous Plans
Wednesday, August 24 (11:59 p.m.):	Majority Proposed Plan and Petition
Thursday, August 25 (5:00 p.m.):	Minority Proposed Plan and Petition

As discussed at the conference, data is a valuable tool for election preparation. You can find data specific to your county on the FTP site or by following this link: http://goo.gl/a9akbi. Because G.S. § 163-227.2(g) requires that the State Board consider "factors including geographic, demographic, and partisan interests of the county" when establishing a plan for non-unanimous counties, county specific data will be provided to the State Board for any non-unanimous plan that will be subject to their consideration.

Open meetings law requires that boards provide notice of a special session at least 48 hours in advance of the meeting. G.S. § 143-318.12(b)(2). Best practice is to count business days, though the statute permits weekends to count towards the 48-hour notice requirement.

IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

STATE OF NORTH CAROLINA, *et al.*,
Applicant,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP,
Respondents,

v.

LEAGUE OF WOMEN VOTERS, *et al.*,
Respondents,

v.

LOUIS M. DUKE, *et al.*,
Intervenors-Respondents,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents,

CERTIFICATE OF SERVICE

I, Paul D. Clement, a member of the Supreme Court Bar, hereby certify that three copies of the attached Reply In Support of Emergency Application to Recall and Stay Mandate of the United States Court of Appeals for the Fourth Circuit Pending Disposition of a Petition for Writ of Certiorari filed by hand-delivery to the United States Supreme Court, were served via Next-Day Service on the following parties listed below on this 29th day of August, 2016:

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Service was made by first-class mail on August 29, 2016.

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