

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MAUDIE V. CHAMBERS, BARBARA
HART, JOHN T. ROBERTS, AND
KRISTINA M. SPURGIN,

DOCKET NO.

Plaintiffs,

v.

COMPLAINT

THE STATE OF NORTH CAROLINA; TIM
MOORE, SPEAKER OF THE NORTH
CAROLINA HOUSE OF
REPRESENTATIVES; PHILIP E. BERGER,
PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; AND DAMON CIRCOSTA,
CHAIR OF THE NORTH CAROLINA
STATE BOARD OF ELECTIONS,

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

Defendants.

Plaintiffs Maudie V. Chambers, Barbara Hart, John T. Roberts, and Kristina M. Spurgin (collectively, “Plaintiffs”), by and through their undersigned counsel, hereby bring this action against Defendants the State of North Carolina; Tim Moore, Speaker of the North Carolina House of Representatives; Philip E. Berger, President Pro Tempore of the North Carolina Senate; the North Carolina State Board of Elections; and Damon Circosta, Chair of the North Carolina State Board of Elections (collectively, “Defendants”), under the North Carolina Constitution and Declaratory Judgment Act, to enjoin and declare unconstitutional the provisions of North Carolina law requiring that each voter submitting a mail-in absentee ballot have at least one other individual witness and sign their ballot envelope (together, the “Witness Requirements”),¹ even during the COVID-19 pandemic. Plaintiffs allege as follows:

¹ N.C. Gen. Stat. § 163-231; 2020 North Carolina Laws S.L. 2020-17 (H.B. 1169) (hereinafter “SL 2020-17”).

NATURE OF THE ACTION

1. North Carolina is in the throes of a pandemic. A respiratory disease known as the coronavirus disease 2019 (“COVID-19”), caused by the spread of a novel coronavirus, SARS-CoV-2, continues to spread throughout the State. There is no end in sight, as COVID-19 regularly sets new high-water marks for daily deaths and hospitalizations. For all North Carolinians, especially those who face heightened risk of severe illness based on age, health status, or other factors, contracting the disease can be a matter of life and death.

2. The right to vote is a fundamental right under the North Carolina Constitution. As elected officials make decisions of extraordinary impact on the lives and welfare of the State’s residents, the pandemic has only magnified the critical importance of the right to participate in our elections.

3. While the COVID-19 pandemic persists, North Carolina’s Witness Requirements unduly burden North Carolinians’ exercise of their right to vote. North Carolina recently passed a law that temporarily reduces the requirement from two witnesses to one for purposes of “an election held in 2020,” but the adoption of this temporary regime does not ameliorate the severe health risks caused by witnessing ballots during the pandemic and merely reflects an acknowledgement by the State that the Witness Requirements jeopardize public health. Both the original and temporary Witness Requirements necessitate face-to-face and hand-to-hand interaction between voters and others who pose a potentially fatal risk to the voter’s health. Thus, the Witness Requirements threaten to disenfranchise countless North Carolinians—without serving any valid governmental interest that could conceivably warrant such a significant incursion on citizens’ right to vote.

4. North Carolina is one of only twelve states that require an individual submitting an absentee ballot to have a witness sign their ballot envelope.² It is one of only three states that require two witness signatures on absentee ballots.³ Some of these states have recently suspended these requirements, or have been required to suspend them, because they unduly burden the right to vote.⁴ Legal challenges to signature requirements for absentee ballots in light of the COVID-19 pandemic are pending in various states, including North Carolina.⁵

5. Plaintiffs bring this action under the North Carolina Constitution to safeguard the fundamental right to vote during the State's ongoing public health crisis. Specifically, Plaintiffs seek an order (1) declaring that the Witness Requirements are unconstitutional and invalid under the Free Elections Clause, Art. I, § 10, the Equal Protection and Law of the Land Clauses, Art. I, § 19, and provisions collectively construed to protect the fundamental right to vote, Art. I, §§ 12, 14 and 19, of the North Carolina Constitution; (2) enjoining Defendants from enforcing the Witness Requirements during the COVID-19 pandemic; and (3) directing Defendants to issue

² See Chart, "Processing, Verifying and Counting Absentee Ballots," *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, Nat'l Conf. of State Legislatures (June 22, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>; cf. Ala. Code § 17-11-7; Alaska Stat. §§ 15.20.030, 15.20.066, 15.20.081; La. R.S. 18:1306(E)(2)(a); Minn. Stat. § 203B.07, subdiv. 3, Minn. St. § 204B.45 - .46, and Minn. Admin. R. 8210.3000; Miss. Code §§ 23-15-627, 23-15-633, 23-15-635; Mo. Stat. § 115.291; N.C. Gen. Stat. § 163-231; Okla. Stat. tit. 26, § 14-108; R.I. Gen. Laws § 17-20-23; S.C. Code §§ 17-15-380, 17-15-385; Va. Code §§ 24.2-706, 24.2-707; Wis. Stat. § 6.87(4)(b)(1).

³ See Ala. Code § 17-11-7; N.C. Gen. Stat. § 163-231; R.I. Gen. Laws § 17-20-23.

⁴ See, e.g., *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at *30 (D.S.C. May 25, 2020) (granting preliminary injunction to enjoin defendants from enforcing South Carolina's witness requirement); *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *14 (W.D. Va. May 5, 2020) (approving a consent decree removing the witness requirement for absentee ballots in Virginia for its June primaries); *People First of Alabama v. Merrill*, No. 2:20-CV-00619-AKK, 2020 WL 3207824, at *29 (N.D. Ala. June 15, 2020) (granting in part preliminary injunction to prevent defendants from enforcing witness requirement); *League of Women Voters of Oklahoma v. Ziriaux*, 2020 OK 26, 26 (2020) (ordering state to accept un-notarized absentee ballots).

⁵ *Michael Stringer, et al. v. The State of North Carolina, et al.*, Case No. 20-CVS-005615 (Wake Cty. Sup. Ct.) (seeking to enjoin enforcement of, among other things, North Carolina's witness requirement); *Democracy North Carolina, et al. v. The North Carolina State Board of Elections, et al.*, Case No. 20-cv-457 (M.D.N.C.) (same); see also, e.g., *Clark v. Edwards*, No. 3:20-CV-00308-SDD-RLB (M.D. La.); *Missouri NAACP v. Missouri*, No. 20AC-CC00169 (Mo. 19th Cir. Ct.); *Goldin v. Restrepo*, No. 20-262 (D.R.I.).

appropriate guidance and modify election materials to reflect the elimination of the Witness Requirements during the COVID-19 pandemic.

6. Plaintiffs therefore pray that, under Article I, §§ 10, 12, 14, and 19 of the North Carolina Constitution, the Court enter judgment against Defendants and issue the requested relief to protect the right of all eligible voters to participate in elections during the COVID-19 pandemic.

PARTIES

7. Plaintiff Maudie V. Chambers is a U.S. citizen and is registered to vote in Hertford County, North Carolina. She is a 69-year-old retiree who lives alone. Ms. Chambers has been self-isolating since the beginning of the COVID-19 pandemic. Ms. Chambers had a heart attack about 18 months ago, which resulted in the insertion of a stent. More recently, in late June and early July 2020, Ms. Chambers was admitted to the hospital due to issues with her heart and, as a result, she had a cardiac catheterization. Ms. Chambers also has high blood pressure. As a result of her medical history and her age, Ms. Chambers is at higher risk of severe illness if she contracts COVID-19. Ms. Chambers has been diligently social distancing since the beginning of the pandemic and wears a mask and gloves when she interacts with others. Ms. Chambers limits her grocery store trips to once a week, and makes use of senior hours. In the past, Ms. Chambers has voted in-person, and she served as a poll worker in February 2020. Due to COVID-19, Ms. Chambers plans to vote via absentee ballot in the November 2020 general election and does not intend to serve as a poll worker. Ms. Chambers is concerned that the Witness Requirements will require her to risk her health by interacting with another individual during the pandemic.

8. Plaintiff Barbara Hart is a U.S. citizen and is registered to vote in Asheville, Buncombe County, North Carolina. She is a 73-year-old retired accountant who lives alone. Ms. Hart has a history of breast and lung cancer, and chemotherapy for her breast cancer damaged her heart. Because of her health history, Ms. Hart is particularly at-risk of severe illness if she

contracts COVID-19 and, relying on the advice of her doctors, she has been diligently self-isolating since the pandemic began in March. Ms. Hart recalls voting in every election since she was old enough to vote, and wants to vote in the November 3, 2020 general election. Ms. Hart typically votes early in-person. To limit her exposure to COVID-19, Ms. Hart intends to vote by mail-in absentee ballot in the November 2020 general election and in subsequent primaries or elections while the pandemic continues to present a risk to her health; however, she is concerned that the Witness Requirements would force her to break her self-isolation practices and come into close contact with someone else, jeopardizing her health.

9. Plaintiff John T. Roberts is a U.S. citizen and is registered to vote in Chapel Hill, Orange County, North Carolina. He is a 45-year-old Associate Director of Regulatory Affairs and Compliance in the Office of Human Research Ethics at the University of North Carolina at Chapel Hill. Though Mr. Roberts typically lives in Chapel Hill, he has been living alone in Charleston, South Carolina since the pandemic began. Mr. Roberts has a pre-existing medical condition, and is diligent about self-isolating. He does not know anyone in Charleston, and limits his trips outside the home so as to avoid encountering others to the extent possible. When he leaves his home, Mr. Roberts wears a face covering and maintains distance from others. In the past, Mr. Roberts has voted in-person; however, due to COVID-19, he would vote via absentee ballot in the November 2020 general election, at least, but is concerned that the Witness Requirements would necessitate a risky interaction with another individual during the pandemic.

10. Plaintiff Kristina M. Spurgin is a U.S. citizen and is registered to vote in Siler City, Chatham County, North Carolina. She is a 44-year-old librarian at a non-profit company based out of Atlanta, Georgia. She lives alone in a rural area of the State and has been self-isolating since the beginning of the COVID-19 pandemic. As a result of a previous lung infection, Ms. Spurgin has permanent lung damage and uses an inhaler, which places her at higher risk of severe

illness if she contracts COVID-19. She has been diligently social distancing since the beginning of the pandemic, limiting forays outside her home to trips for food approximately every other week. When Ms. Spurgin does leave her home, she wears a face covering and maintains her distance from others. In the past, Ms. Spurgin has voted in-person; however, due to COVID-19, she intends to vote via absentee ballot in the November 2020 general election, at least. Ms. Spurgin is concerned that the Witness Requirements will force her to risk her health by interacting with another individual during the pandemic.

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

12. Defendant Tim Moore is the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity, as agent for the State of North Carolina through the General Assembly pursuant to Rule 19(d) of the North Carolina Rules of Civil Procedure.

13. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Mr. Berger is sued in his official capacity, as agent for the State of North Carolina through the General Assembly pursuant to Rule 19(d) of the North Carolina Rules of Civil Procedure.

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

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

JURISDICTION AND VENUE

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

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

18. Under N.C. Gen. Stat. §§ 1-81.1(a1) and 1-267.1, a three-judge panel must be convened because this action involves a determination as to the facial validity of acts of the General Assembly.

BACKGROUND

A. COVID-19 and Public Health Guidelines

19. SARS-CoV-2 is a novel coronavirus that causes the deadly disease commonly known as COVID-19. Since the first case was recorded in China late last year, COVID-19 has spread to nearly every country in the world and was declared a global pandemic by the World Health Organization (the “WHO”).⁶

20. According to official counts, COVID-19 has now infected more than 12 million people worldwide, killing over half a million.⁷ COVID-19 is ravaging the United States with particular severity: as of the date of this filing, the United States leads the world in both the number of confirmed cases (over 3 million) and the number of deaths linked to the virus (132,963).⁸ There is no vaccine or cure.

21. The WHO estimates that approximately 20 percent of those infected by SARS-CoV-2 require hospitalization.⁹ This is because COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.¹⁰

⁶ Betsy McKay *et al.*, *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

⁷ The New York Times, *Coronavirus Map: Tracking the Global Outbreak*, <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (updated July 9, 2020, 6:19 p.m. E.T.).

⁸ *Id.*

⁹ World Health Organization, *Q&A on Coronaviruses (COVID-19)*, “What are the symptoms of COVID-19?” (Apr. 17, 2020) <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

¹⁰ CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (Updated June 30, 2020).

Despite some initial comparisons to seasonal influenza, COVID-19 has resulted in anywhere from two to five times as many deaths in the United States as the seasonal flu caused during the 2019-2020 winter.¹¹

22. While people of all ages have contracted and died from COVID-19, it is particularly fatal for older individuals.¹² Preliminary reports based on WHO data show a 3.6% mortality rate for individuals between 60-69 years old, an 8% mortality rate for those 70-79 years old, and a 14.8% mortality rate for those who are 80 years old or older.¹³

23. COVID-19 also poses greater risks for people with preexisting heart and respiratory conditions, individuals with compromised immune systems, and those with many other conditions.¹⁴ North Carolina's Department of Health and Human Services ("NCDHHS") has warned certain individuals that they are at higher risk, including those who are 65 years of age or older, live in a nursing home or long-term care facility or have a high-risk condition, such as heart disease, asthma or a compromised immune system.¹⁵ This is particularly true for cancer patients. According to a recent study of over 900 patients, cancer patients are more likely to die from

¹¹ Lisa Lockerd Maragakis, M.D., M.P.H., *Coronavirus Disease 2019 vs. the Flu*, Johns Hopkins, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-disease-2019-vs-the-flu> (Updated July 8, 2020).

¹² Robert Verity, Ph.D., *et al.*, *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, THE LANCET: INFECTIOUS DISEASES 6 (March 30, 2020), [https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(20\)30243-7.pdf](https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(20)30243-7.pdf).

¹³ CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (Updated June 30, 2020).

¹⁴ CDC, *People Who Need Extra Precautions / Who Is at Increased Risk of Severe Illness? / People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (Updated June 25, 2020).

¹⁵ NCDHHS, *Individuals at Higher Risk* (June 22, 2020), <https://covid19.ncdhhs.gov/information/individuals-families-communities/individuals-higher-risk>.

COVID-19 than the general public.¹⁶ Cancer patients have a 13% chance of dying from COVID-19 within 30 days.¹⁷

24. Further, “[l]ong-standing systemic health and social inequities have put some members of racial and ethnic minority at increased risk of getting COVID-19 or experiencing illness, regardless of age.”¹⁸ In particular, the hospitalization rate for Latinx persons with COVID-19 is four times as high as the hospitalization rate for white persons, and the hospitalization rate for Black and Native Americans is five times as high as the hospitalization rate for white persons.¹⁹ Black Americans account for nearly a quarter of COVID-19 related deaths in the United States despite constituting about 13 percent of the country’s population.²⁰ Data recently released by the CDC reveal that “Black and Latino people have been disproportionately affected by the coronavirus in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups.”²¹

25. Because “[t]he virus that causes COVID-19 is spreading very easily and sustainably between people,”²² each person-to-person interaction carries a transmission risk. The Centers for Disease Control and Prevention (“CDC”) advises that “[t]he best way to prevent illness is to

¹⁶ Nicole M Kuderer, *et al.*, *Clinical Impact of COVID-19 on Patients With Cancer (CCC19): a Cohort Study*, THE LANCET (May 28, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31187-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31187-9/fulltext).

¹⁷ *Id.*

¹⁸ CDC, *COVID-19 in Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (Updated June 25, 2020).

¹⁹ *Id.*

²⁰ CDC, *Provisional Death Counts for Coronavirus Disease (COVID-19): Weekly State-Specific Updates*, <https://data.cdc.gov/NCHS/Provisional-Death-Counts-for-Coronavirus-Disease-C/pj7m-y5uh> (Updated July 8, 2020).

²¹ Richard A. Oppel Jr., *et al.*, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

²² CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (Updated June 16, 2020).

avoid being exposed to this virus”²³ and that, “[i]n general, the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread.”²⁴

Therefore, social distancing measures (such as leaving the home as little as possible and maintaining at least six feet of space between people) are critical to public health, especially in light of the fact that there is no vaccine and no cure for COVID-19. According to the CDC, “[l]imiting face-to-face contact with others is the best way to reduce the spread” of COVID-19.²⁵

26. The effects of the pandemic on daily life are continuing into the summer of 2020 and are anticipated to last much longer.²⁶ Public health experts indicate that COVID-19 “will face less immunity and thus transmit more readily even outside of the winter season,” and that seasonal changes are “unlikely to stop transmission.”²⁷ Further, even those who develop an immune response to the virus after an infection are not necessarily safe from reinfection, as we do not yet have sufficient data about how long immunity to the virus will last.²⁸ Experts predict that COVID-19 will likely surge in the fall with the return of cold and flu season.²⁹ In April, Dr. Anthony Fauci,

²³ CDC, *How to Protect Yourself & Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (Updated April 24, 2020) (emphasis in original).

²⁴ CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (Updated June 16, 2020) (emphasis in original).

²⁵ CDC, *Social Distancing: Keep a Safe Distance to Slow the Spread*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited July 8, 2020).

²⁶ Lydia Denworth, *How the COVID-19 Pandemic Could End*, SCIENTIFIC AMERICAN, <https://www.scientificamerican.com/article/how-the-covid-19-pandemic-could-end1/> (June 1, 2020) (“[I]t will take a vaccine to stop transmission. That will take time—probably a year from now.”).

²⁷ Marc Lipsitch, DPhil, Professor of Epidemiology and Director, Center for Communicable Disease Dynamics, Harvard T.H. Chan School of Public Health, *Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?*, <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/> (last visited July 8, 2020).

²⁸ Apoorva Mandavilli and Katie Thomas, *Will an Antibody Test Allow Us to Go Back to School or Work?*, N.Y. TIMES (Apr. 11, 2020), <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>.

²⁹ See, e.g., Kristine A. Moore et al., *Part 1: The Future of the COVID-9 Pandemic: Lessons Learned from Pandemic Influenza*, in COVID-19: THE CIDRAP VIEWPOINT 6 (Ctr. for Infectious Disease Research and Policy, 2020), https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.

head of the National Institute of Allergy and Infectious Diseases, said that he “can’t guarantee” in-person voting will be safe in November, because of a potential resurgence of COVID-19 in the fall.³⁰

27. The CDC has issued guidelines concerning voting during the COVID-19 pandemic specifically. Among other things, the CDC recommends that states “offer alternative voting methods that minimize direct contact and reduce crowd size at polling stations.”³¹ Previously, the CDC recommended “mail-in methods of voting” to the extent jurisdictions allow, to minimize voters’ direct contact with other people.³²

28. These recommendations make sense, given the relative risks of voting in person during the pandemic versus voting by mail. There is no evidence that SARS-CoV-2 can be spread through the mail, and the U.S. Postal Service has changed its policies to “eliminate the requirement that customers sign our Mobile Delivery Devices for delivery,” and now permits the customer “to step back a safe distance or close the screen door/door so that [the mail carrier] may leave the item in the mail receptacle or appropriate location by the customer door.”³³

29. In contrast, the risks associated with interpersonal interaction while voting have already begun to manifest. In Illinois, a person who worked at a Chicago polling place during a

³⁰ Jason Silverstein, *Fauci says he “can’t guarantee” in-person voting in November will be safe*, CBSNEWS.COM (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?ftag=CNM-00-10aac3a>.

³¹ CDC, *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (updated June 22, 2020).

³² CDC, *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (Mar. 27, 2020).

³³ United States Postal Service, *Media Statement – COVID-19* (Apr. 30, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from CDC and Surgeon General).

March 17 primary died from COVID-19,³⁴ while another tested positive after voting in person.³⁵ During Florida's recent primary, two Broward County poll workers tested positive for COVID-19, one of whom was handling driver's licenses as part of the identification verification process.³⁶ In Milwaukee and Green Bay, Wisconsin, voters recently experienced multi-hour waits and long lines because Wisconsin lacked a straightforward vote-by-mail process for all voters in its primary.³⁷ Wisconsin state officials have since reported that at least 71 people who voted in-person or worked at the polls in that primary have been diagnosed with COVID-19.³⁸

30. In a recent study, the National Bureau of Economic Research confirmed the link between in-person voting and the spread of COVID-19.³⁹ The study also found a negative relationship between absentee voting and positive COVID-19 tests.⁴⁰ With respect to the recent Wisconsin election, the researchers found a "statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election,"

³⁴ Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, NBC CHICAGO (Apr. 13, 2020, 10:59 AM), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

³⁵ Dee J. Hall, *Study: Poll closings, COVID-19 fears, kept many Milwaukee voters away*, *Wisconsin Watch*, <https://www.wisconsinwatch.org/2020/06/study-poll-closings-covid-19-fears-kept-many-milwaukee-voters-away/> (June 24, 2020); NBC Chicago, *Gov. Pritzker Encourages Illinoisans to Vote by Mail After In-Person Voter Tests Positive for Coronavirus*, <https://www.nbcchicago.com/news/local/gov-pritzker-encourages-illinoisans-to-vote-by-mail-in-upcoming-general-election/2254687/> (Apr. 12, 2020, 6:07 PM).

³⁶ Anthony Man, *Two Broward poll workers, including one who handled voters' driver licenses, test positive for coronavirus*, S. FLA. SUN SENTINEL (Mar. 26, 2020), <https://www.sun-sentinel.com/coronavirus/fl-ne-broward-elections-poll-workers-coronavirus-20200326-wmgj775dvjc5jis2oagxlpmlule-story.html>.

³⁷ Parker Schorr, *Wisconsin's pandemic election: Long waits, face masks as voters go to polls*, THE CAP TIMES (Apr. 8, 2020), https://madison.com/ct/news/local/govt-and-politics/wisconsin-s-pandemic-election-long-waits-face-masks-as-voters-go-to-polls/article_bfd2c391-f390-5364-8c14-a88b548fe017.html; Benjamin Swasey, *Wisconsin Vote Ends As Trump Blames Governor For Long Lines*, NPR (Apr. 7, 2020 12:23 PM), <https://www.npr.org/2020/04/07/828835153/long-lines-masks-and-plexiglas-barriers-greet-wisconsin-voters-at-polls>.

³⁸ *The Latest: 52 positive cases tied to Wisconsin election*, ASSOCIATED PRESS (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>.

³⁹ Chad D. Cotti, et al., *The Relationship Between In-Person Voting, and COVID-19: Evidence from the Wisconsin Primary*, NAT'L BUREAU OF ECON. RESEARCH (Revised June 2020), <https://www.nber.org/papers/w27187.pdf>.

⁴⁰ *Id.*

which “suggests that in-person voting was related to approximately 700 more COVID-19 cases in Wisconsin during the weeks following the election.”⁴¹

B. COVID-19 in North Carolina

31. The COVID-19 pandemic has spread to all 100 counties in North Carolina. As of the date of this filing, there are 79,349 lab-confirmed confirmed cases of COVID-19 in North Carolina; 1,461 North Carolinians have died; and a record 1,034 more are currently hospitalized with the disease, fighting for their lives.⁴²

32. *Social Distancing Orders and Other State Responses.* Since early March, North Carolina Governor Roy Cooper has taken a series of actions in response to the growing threat that COVID-19 poses to public health and the economy, including issuing an emergency declaration and numerous executive orders.

33. On March 10, 2020, Governor Cooper declared a state of emergency “based on the public health emergency posed by COVID-19,”⁴³ which remains in effect as of this filing.

34. On March 14, 2020, Governor Cooper issued an executive order closing public schools statewide, prohibiting mass gatherings, and imposing social distancing guidelines.⁴⁴ With respect to social distancing, the executive order stated that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”⁴⁵ On March 17,

⁴¹ *Id.*

⁴² NCDHHS, *COVID-19 North Carolina Dashboard*, <https://covid19.ncdhhs.gov/dashboard#%20cases-over-time> (Updated July 9, 2020 at 11:50 a.m. E.T.); Governor Roy Cooper, July 9, 2020 press briefing, *available at* <https://abc11.com/health/latest-gov-cooper-holding-covid-19-update-at-2-pm/6308523/> (last visited July 9, 2020).

⁴³ Governor Roy Cooper, Exec. Order 116 (Mar. 10, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>.

⁴⁴ Governor Roy Cooper, Exec. Order 117 (Mar. 14, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO117-COVID-19-Prohibiting-Mass-Gathering-and-K12-School-Closure.pdf>.

⁴⁵ *Id.*

2020, Governor Cooper issued an executive order that limited the operations of restaurants and bars and expanded unemployment insurance in response to COVID-19.⁴⁶

35. On March 25, 2020, the President of the United States approved a Major Disaster Declaration for the state of North Carolina.⁴⁷

36. On March 27, 2020, Governor Cooper issued an executive “stay-at-home” order in an effort to curb the spread of COVID-19 within North Carolina.⁴⁸ The stay-at-home order stated that, “to mitigate community spread of COVID-19 and to reduce the burden on the state’s health care providers and facilities, it is necessary to limit unnecessary person-to-person contact in workplaces and communities . . . such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19.”⁴⁹

37. On March 23, 2020, Governor Cooper issued an executive order restricting “visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations” at long term care facilities, including skilled nursing facilities, adult care homes and family care homes (“Long Term Care Facilities”).⁵⁰

38. On April 23, 2020, Governor Cooper extended the North Carolina stay-at-home order through May 8, 2020.⁵¹

⁴⁶ Governor Roy Cooper, Exec. Order 118 (Mar. 17, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO118.pdf>.

⁴⁷ Press Release, FEMA, *President Donald J. Trump Approves Major Disaster Declaration for North Carolina* (March 25, 2020), <https://www.fema.gov/news-release/2020/03/25/president-donald-j-trump-approves-major-disaster-declaration-north-carolina>.

⁴⁸ Governor Roy Cooper, Exec. Order 121 (Mar. 27, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>.

⁴⁹ *Id.*

⁵⁰ Governor Roy Cooper, Exec Order 120 (Mar. 23, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO120.pdf>.

⁵¹ Governor Roy Cooper, Exec. Order 135 (Apr. 23, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO135-Extensions.pdf>.

39. On May 4, 2020, Governor Cooper signed into law SL 2020-3, an omnibus bill passed in response to the COVID-19 crisis (the “Omnibus Bill”). Among other things, the Omnibus Bill removes requirements related to certain in-person activities in recognition of the risks associated with in-person interactions during the COVID-19 pandemic. For example, the Omnibus Bill allows the first examination of a respondent facing involuntarily commitment due to substance use disorder to be conducted via teleconference rather than in-person;⁵² extends the validity of DMV credentials for five months so as to obviate the need for in-person DMV appointments;⁵³ and allows for the issuance of marriage licenses via remote audio-video communication.⁵⁴

40. Notably, the Omnibus Bill also temporarily allows notaries to conduct emergency video notarizations of certain records using video conference technology⁵⁵ and allows for “[e]mergency video witnessing” of records that ordinarily require an in-person witness.⁵⁶ Under the Omnibus Bill, a person who witnesses the signature of a record through direct, real-time audio and video interaction is considered an “in-person” witness “[n]otwithstanding any general or special law to the contrary.”⁵⁷

41. But while the relaxation of certain witness requirements reflects the State’s acknowledgement that witness requirements pose an unnecessary risk to public health during the

⁵² SL 2020-3 § 3F.1.(b).

⁵³ SL 2020-3 § 4.7. Separately, the North Carolina DMV announced that it “is temporarily waiving road tests for those drivers seeking a limited provisional license.” North Carolina Department of Transportation, *NCDMV Services in Response to COVID-19* (Updated Jun. 19, 2020), <https://www.ncdot.gov/dmv/offices-services/locate-dmv-office/Pages/dmv-offices-closed.aspx>.

⁵⁴ SL 2020-3 § 4.13.(a).

⁵⁵ SL 2020-3 § 4.1.(c).

⁵⁶ SL 2020-3 § 4.2.(a).

⁵⁷ *Id.*

COVID-19 pandemic, the Omnibus Bill provides no relief to voters: the witness provisions in the Omnibus Bill expire on August 1, 2020,⁵⁸ and the provision concerning video notarizations expressly excludes the Witness Requirements.⁵⁹

42. *Attempts at Reopening and Recent Events.* On May 5, 2020, Governor Cooper announced modifications to the stay-at-home order and a transition to Phase One of slowly easing certain COVID-19 restrictions on economic activity.⁶⁰ Even as certain restrictions are lifted, however, “[p]eople who are at high risk of severe illness from COVID-19 continue to be strongly encouraged to stay home and travel only for absolutely essential purposes.”⁶¹ Governor Cooper emphasized, “The [CDC] defines high-risk individuals as people 65 years or older, **and people of any age who have serious underlying medical conditions** including people who are immunocompromised, or with chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, with chronic kidney disease undergoing dialysis, or liver disease.”⁶² In light of this, Governor Cooper extended the prohibition of all visitors and non-essential health care personnel to Long Term Care Facilities.⁶³ Governor Cooper further emphasized, “COVID-19 is still a serious threat to our state, and Phase 1 is designed to be a limited easing of restrictions that can boost parts of our economy while keeping important safety rules in place.”⁶⁴

⁵⁸ SL 2020-3 § 4.1.(c); SL 2020-3 § 4.2.(a).

⁵⁹ SL 2020-3 § 4.1.(c).

⁶⁰ Governor Roy Cooper, Exec. Order 138 (May 5, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Press Release, *Governor Cooper Announces Modified Stay At Home Order and Transition to Phase 1 of Easing Restrictions* (May 5, 2020), <https://governor.nc.gov/news/governor-cooper-announces-modified-stay-home-order-and-transition-phase-1-easing-restrictions>.

43. On May 20, 2020, Governor Cooper announced Phase Two of slowly easing certain COVID-19 restrictions.⁶⁵ In announcing Phase Two, however, the Governor noted that “the continued increases in daily case counts signal a need to take a more modest step forward in Phase [Two] than originally envisioned.”⁶⁶ Governor Cooper’s executive order again stated that “[p]eople who are at high risk of severe illness from COVID-19 are very strongly encouraged to stay home and travel only for absolutely essential purposes.”⁶⁷ Governor Cooper also reiterated, “The [CDC] defines high-risk individuals as people 65 years or older, **and people of any age who have serious underlying medical conditions** including people who are immunocompromised, or with chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, with chronic kidney disease undergoing dialysis, or liver disease.”⁶⁸ And Governor Cooper again extended the prohibition on all visitors and non-essential health care personnel to Long Term Care Facilities.⁶⁹ North Carolina’s guidance for its reopening procedures states that, “[d]epending on state COVID-19 trends, restrictions may be lifted more slowly or some restrictions may have to be reinstated to ensure the health and safety of North Carolinians.”⁷⁰

44. On June 4, 2020, Governor Cooper issued an executive order addressing the disproportionate impact of COVID-19 on communities of color.⁷¹ The executive order states that

⁶⁵ Governor Roy Cooper, Exec. Order 141 (May 20, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>.

⁶⁶ Press Release, *As Key Indicators Remain Stable, North Carolina Moves to Safer At Home Phase 2* (May 20, 2020), <https://governor.nc.gov/news/key-indicators-remain-stable-north-carolina-moves-safer-home-phase-2>.

⁶⁷ Governor Roy Cooper, Exec. Order 141 (May 20, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Phase 2 FAQs*, NC.gov (June 22, 2020), <https://www.nc.gov/covid-19/staying-ahead-curve/phase-2-faqs#does-this-order-lift-the-governor's-stay-at-home-order>.

⁷¹ Governor Roy Cooper, Exec. Order 143 (June 4, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>.

“as of June 1, 2020, African Americans make up 22 percent of North Carolina’s population, but account for 30 percent of confirmed COVID-19 cases and 34 percent of COVID-19 deaths in cases where race is known in the state.”⁷² Similarly, “Hispanics make up 39 percent of COVID-19 confirmed cases, in cases where ethnicity is known, while only accounting for about 10 percent of the population.”⁷³ Governor Cooper further stated, “the [CDC] acknowledges that social and economic differences often create health differences in communities of color, and that public health emergencies can isolate communities of colors [sic] from necessary resources,” and that “the COVID-19 pandemic is exposing racial disparities that are entrenched in our health care and economic institutions for communities of color.”⁷⁴

45. Following the easing of restrictions on economic and social activity, North Carolina experienced a significant spike in COVID-19 cases. On June 6, 2020, two weeks after North Carolina entered Phase Two of its reopening process and allowed a limited reopening of dine-in restaurants and personal care businesses, the State recorded its highest single-day increase of confirmed COVID-19 cases (1,370).⁷⁵ That record was shattered on June 12, when North Carolina reported a single-day increase of 1,768 cases.⁷⁶

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Mackenzie Wicker, *Coronavirus: NC return to stay-at-home order possible as cases surge, health secretary says*, ASHEVILLE CITIZEN TIMES (June 12, 2020), <https://www.citizen-times.com/story/news/local/2020/06/12/coronavirus-nc-stay-home-order-could-reinstated-cases-surge/3174430001/>.

⁷⁶ *Id.*

46. In the two-week period before June 12, 2020, North Carolina saw a 62% increase in confirmed COVID-19 cases and an increase in positive test rate to about 10% (placing North Carolina among the highest state percentages in the nation).⁷⁷

47. On June 19, 2020, Governor Cooper vetoed a bill aiming to temporarily reopen gyms and bars in North Carolina, stating that the bill was “dangerous, especially when case counts and hospitalizations are rising.”⁷⁸ That same day, Apple, Inc. announced that it re-closed its stores in North Carolina amid concerns over North Carolina’s spike in COVID-19 cases.⁷⁹

48. On June 20, 2020, the North Carolina Department of Health and Human Services reported a record high number of COVID-19 hospitalizations—for the fifth day in a row.⁸⁰ That number of hospitalizations (883) represented a 65% increase from the number of hospitalizations recorded when Governor Cooper began the transition to Phase One of North Carolina’s reopening plan on May 5, 2020; 90% of the increase occurred after North Carolina relaxed its stay-at-home order on May 22, 2020.⁸¹

49. As a result of these worsening infection and hospitalization rates, Governor Cooper issued an executive order on June 24, 2020 extending the duration of Phase Two of North

⁷⁷ *Id.*; Dylan Scott, *The new coronavirus spikes, explained*, VOX (June 12, 2020), <https://www.vox.com/2020/6/12/21288090/covid-19-coronavirus-us-cases-update-texas-arizona-florida>; NCDHHS, *COVID-19 North Carolina Dashboard*, <https://covid19.ncdhhs.gov/dashboard#%20cases-over-time> (Updated June 20, 2020 at 11:55 a.m.).

⁷⁸ Gary D. Robertson, *NC reopening: Gov. Cooper vetoes 2nd reopen bill, this one for gyms, bars*, Citizen Times (June 20, 2020), <https://www.citizen-times.com/story/news/local/2020/06/20/nc-reopening-gov-cooper-vetoes-2nd-bill-one-gyms-bars/3228909001/>.

⁷⁹ Mark Gurman, *Apple to Close Some U.S. Stores Again as Covid-19 Spikes*, Bloomberg (June 19, 2020), <https://www.bloomberg.com/news/articles/2020-06-19/apple-to-close-some-u-s-stores-again-as-covid-19-cases-spike?sref=9hGJIFio>.

⁸⁰ WRAL.com, *For five days in a row this week, NC saw record number of hospitalizations* (June 20, 2020), <https://www.wral.com/coronavirus/for-five-days-in-a-row-this-week-nc-saw-record-number-of-hospitalizations/19153392/>.

⁸¹ NCDHHS, *COVID-19 North Carolina Dashboard*, <https://covid19.ncdhhs.gov/dashboard#%20cases-over-time> (Updated June 20, 2020 at 11:55 a.m.).

Carolina’s reopening plan until at least July 17, 2020, and instituting—for the first time during the COVID-19 pandemic—a statewide requirement that the majority of North Carolinians wear face coverings in many public settings.⁸²

50. On July 9, 2020, the North Carolina Department of Health and Human Services reported its second-highest single-day increase in COVID-19 cases (2,039) and reported for the first time since the start of the pandemic that over 1,000 North Carolinians are currently hospitalized with COVID-19.⁸³

C. Absentee Voting in North Carolina

51. Since 2001, North Carolina has allowed for “no-excuse” mail-in absentee voting whereby voters can petition their board of elections for an absentee ballot without needing to provide a reason for doing so. N.C. Gen. Stat. § 163-226(a). Following this and other reforms aimed at alleviating crowds at the polls on election day and at expanding access to the franchise, overall voter participation in North Carolina increased by five percent—from 59 to 64 percent—between the 2000 and 2004 general elections.⁸⁴ North Carolina also achieved a drastic increase in vote by mail: in 2000, before adoption of no-excuse absentee voting, 72,447 North Carolinians

⁸² Governor Roy Cooper, Exec. Order No. 147: Extension of Phase 2 Order and New Measures to Save Lives in the COVID-19 Pandemic (June 24, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO147-Phase-2-Extension.pdf>.

⁸³ NCDHHS, COVID-19 North Carolina Dashboard, <https://covid19.ncdhhs.gov/dashboard#%20cases-over-time> (Updated July 9, 2020 at 11:50 a.m. E.T.); ABC11.com, *COVID-19 information and resources page, Noon update*, <https://abc11.com/health/latest-gov-cooper-holding-covid-19-update-at-2-pm/6308523/> (July 9, 2020).

⁸⁴ *Compare* North Carolina State Board of Elections, *Election Voter Turnout, Absentee Voting, and Other Information*, *available at* https://dl.ncsbe.gov/index.html?prefix=ENRS/2000_11_07/ (data for 2000 general election) *with* North Carolina State Board of Elections *North Carolina Voter Turnout 2004 General Election* *available at* https://s3.amazonaws.com/dl.ncsbe.gov/ENRS/2004_11_02/voter_turnout_data_20041102.pdf (data for 2004 general election).

cast their ballots for the general election by mail.⁸⁵ That number increased by thousands of voters in 2004, and nearly tripled (215,258) by the 2008 presidential election.⁸⁶

52. Traditionally, approximately 4-5% of North Carolina voters cast their vote by absentee ballot.⁸⁷ But given the ongoing COVID-19 pandemic and examples from states like Wisconsin—where absentee ballot requests were five times higher in this year’s primary than in the 2016 primary⁸⁸—North Carolina will almost certainly experience a massive increase in absentee voting requests this year. Indeed, on April 22, 2020, Karen Bell, Executive Director of the North Carolina State Board of Elections, informed Governor Cooper and legislative leaders in North Carolina that the State Board of Elections projects a 30-40% voter absentee-by-mail participation rate in this year’s general election.⁸⁹ Assuming the same number of voters participate in the November 2020 election as participated in the 2016 general election, approximately 1.4 to 1.8 million voters would cast absentee ballots.

53. North Carolina law currently contains two mail-in absentee voting regimes: (1) a permanent regime; and (2) a temporary regime, signed into law on June 12, 2020, which applies

⁸⁵ North Carolina State Board of Elections, *Election Voter Turnout, Absentee Voting, and Other Information*, available at https://dl.ncsbe.gov/index.html?prefix=ENRS/2000_11_07.

⁸⁶ North Carolina State Board of Elections, *2008 General Election Absentee States for 11/04/2008*, available at https://dl.ncsbe.gov/index.html?prefix=ENRS/2008_11_04.

⁸⁷ Karen Brinson Bell, *CARES Act Request and Clarification to Recommendation to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections, at 2 (April 22, 2020), <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

⁸⁸ *Compare* Wisc. Election Comm’n, *Absentee Ballot Report - April 7, 2020 Spring Election and Presidential Preference Primary*, <https://elections.wi.gov/node/6833> (reporting over 1.28 million absentee ballots requested for April 7, 2020 primary) *with* Riley Vetterkind, *Absentee ballot requests in Wisconsin already exceed number in recent spring elections*, Wisc. State Journal (Mar. 18, 2020), https://madison.com/wsj/news/local/govt-and-politics/absentee-ballot-requests-in-wisconsin-already-exceed-number-in-recent-spring-elections/article_dfb34fc5-6aa8-5428-90c3-26c3f82a1d70.html (noting that just under 250,000 absentee ballots were requested for spring 2016 Wisconsin primary).

⁸⁹ Karen Brinson Bell, *CARES Act Request and Clarification to Recommendation to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections, at 2 (April 22, 2020), <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

only to certain elections held in 2020—principally, the upcoming general election—and expires on December 31, 2020. The adoption of a temporary regime reflects the State’s recognition that under pandemic conditions, witnessing of ballots poses a severe health risk to voters, that more health-protective alternatives are necessary, and that continuation of or reversion to the permanent regime is not necessary to advance North Carolina’s interest in free and fair elections. Still, each of the two regimes includes a stringent witness requirement that presents an unconstitutional obstacle to voting during the COVID-19 pandemic.

54. ***Permanent Regime.*** To vote by mail in North Carolina under the permanent regime, a voter must first submit a written absentee ballot request form for each election in which the voter wishes to vote absentee. An absentee ballot request can only be made by mail or in person; requests cannot be made online, faxed, or emailed. *See* N.C. Gen. Stat. § 163-230.2(c)(3). Further, ballot request forms must be returned by the voter, the voter’s “near relative or verifiable legal guardian,” or by “[a] member of a multipartisan team trained and authorized by the county board of elections.” *Id.* If anyone other than a near relative or legal guardian assists a voter in filling out an absentee ballot request form, they must list their name and address on the form. *Id.*

55. Once the voter receives their absentee ballot, the voter must complete their ballot “[i]n the presence of two persons who are at least 18 years of age” and not otherwise barred from serving as a witness. N.C. Gen. Stat. § 163-231(a). Notably, “an owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident” is disqualified from serving as a witness. *Id.* at § 163-226.3(4). Once the voter marks their ballot, “[f]old[s] each ballot separately,” places the folded ballot in the container-return envelope, seals the envelope, and completes the separate application and certificate of eligibility printed on the envelope, the two witnesses must sign the envelope “certify[ing] that the voter is

the registered voter submitting the marked ballots,” and provide their addresses. N.C. Gen. Stat. § 163-231(a).

56. As an alternative to the two-witness requirement, the voter may complete their ballot before one witness, but only if that witness is a notary public, “affix[es] a valid notary seal to the envelope,” and “include[s] the word[s] ‘Notary Public’ below his or her signature.” *Id.*

57. To be counted, an otherwise valid and completed absentee ballot must be transmitted to the Board of Elections “by mail or by commercial courier service, at the voter’s expense, or delivered in person, or by the voter’s near relative or verifiable legal guardian.” N.C. Gen. Stat. § 163-231(b). North Carolina’s absentee voting law makes it a felony for anyone other than a near relative or verifiable legal guardian to possess or deliver the absentee ballot of any voter. *See* N.C. Gen. Stat. § 163-226.3(a)(5). A voter must either mail the absentee ballot or deliver it in person by no later than 5 p.m. on Election Day (the “Receipt Deadline”). *See id.* at § 163-231(b)(1).⁹⁰

58. Military or overseas voters are exempt from the witness requirement because North Carolina codified the Uniform Military and Overseas Voters Act, which allows military and overseas voters to use a federal write-in absentee ballot that does not require a witness signature. *See* N.C. Gen. Stat. § 163-258.11. North Carolina law eliminates “nonessential requirements” for military and overseas voters, providing that “[a]n authentication . . . is not required” for the voter’s ballot to be counted. N.C. Gen. Stat. § 163-258.17. Instead, “[e]ach military-overseas ballot shall include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under

⁹⁰ Absentee ballots returned by mail will be accepted if they are postmarked “dated on or before the day of the . . . general election . . . and are received by the county board of elections not later than three days after the election by 5:00 p.m.” N.C. Gen. Stat. § 163-231(b)(2)(c).

the laws of the United States or this State.” N.C. Gen. Stat. § 163-258.13; *see* N.C. Gen. Stat. § 163-258.17 (“The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.”).

59. **Temporary Regime.** Karen Brinson Bell, Executive Director of NCSBE, twice sent written recommendations to Governor Roy Cooper, Speaker Tim Moore, President Pro Tempore Phil Berger, Joint Legislative Elections Oversight Committee, Joint Legislative Oversight Committee on General Government, House Select Committee on COVID-19, and Continuity of State Operations Working Group asking the General Assembly to “consider making [certain] statutory changes to address the impacts of the coronavirus pandemic on [North Carolina’s] elections.”⁹¹ These recommendations include, *inter alia*, “reduc[ing]” or “eliminat[ing]” the witness requirement for absentee ballots, noting that “[e]liminating the witness requirement altogether is another option and would further reduce the risk[s related to COVID-19].”⁹²

60. Ms. Bell’s recommendations also included a temporary modification to the prohibition of “an owner, director, manager, or employee of a hospital, clinic, nursing home, or adult care home” from serving as a witness to a patient’s or resident’s absentee ballot, recognizing that the prohibition on visitors to such facilities means “it may not be possible . . . for others who would traditionally assist facility residents[] to provide assistance,” and that, absent modification,

⁹¹ Karen Brinson Bell, *Recommendations to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections (March 26, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf; Karen Brinson Bell, *CARES Act Request and Clarification to Recommendation to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections (April 22, 2020), <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

⁹² Karen Brinson Bell, *Recommendations to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections (March 26, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf.

these voters “may effectively be disenfranchised.”⁹³ In her April 22, 2020 letter, Ms. Bell emphasized that “[i]t is necessary to make this change as soon as possible to designate and train appropriate individuals to serve in facilities.”⁹⁴

61. On June 12, 2020, Governor Cooper signed into law SL 2020-17, enacting certain limited changes to North Carolina’s absentee voting process. Upon signing the law, Governor Cooper stated, “Making sure elections are safe and secure is more important than ever during this pandemic, and this funding is crucial to that effort. This legislation makes some other positive changes, **but much more work is needed to ensure everyone’s right to vote is protected.**”⁹⁵

62. With respect to the process for requesting an absentee ballot, SL 2020-17 creates “an online portal” where voters can apply for absentee ballots and permits North Carolinians to “call the State Board of Elections . . . and request that the blank [absentee ballot] request form be sent to the voter by mail, e-mail, or fax.” N.C. Gen. Stat. § 163-230.2(a); N.C. Gen. Stat. § 163-230.3(a) (“a qualified voter who is eligible to vote by absentee ballot . . . or that voter’s near relative or verifiable legal guardian, may submit a request for absentee ballots online.”). An individual working as part of a multipartisan team trained and authorized by the county board of elections “may assist any voter in the completion of a request form for absentee ballots or in delivering a completed request form for absentee ballots.” SL 2020-17 § 1.(c). However, SL 2020-17 provides that “[u]nder no circumstances shall the Executive Director or the State Board of Elections have the authority to . . . [d]eliver absentee ballots to an eligible voter who did not

⁹³ *Id.*

⁹⁴ Karen Brinson Bell, *CARES Act Request and Clarification to Recommendation to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections (April 22, 2020), <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

⁹⁵ Press Release, *Governor Cooper Signs Five Bills into Law* (Jun. 12, 2020), <https://governor.nc.gov/news/governor-cooper-signs-five-bills-law>.

submit a valid written request form for absentee ballots” or “[o]rder an election to be conducted using all mail-in absentee ballots.” SL 2020-17 § 6; N.C. Gen. St. § 163-27.1(d). Notably, SL 2020-17 criminalizes the act of sending unrequested or improperly requested ballots to voters, making it “a Class I felony” for a member or employee of a state or county board of elections to “knowingly send[] or deliver[] an absentee ballot to any person who has not” properly requested one. N.C. Gen. Stat. § 163-237(d).

63. Once the voter receives their absentee ballot – and only for “an election held in 2020” – SL 2020-17 reduces the absentee ballot witness requirement from two witnesses to one. *See* SL 2020-17 § 1.(a). Even under the temporary regime, an absentee voter must complete their ballot “in the presence of at least one person who is at least 18 years of age” and who is not otherwise disqualified from serving as a witness. *Id.* Just as under the permanent regime, after the voter marks the ballot in front of the witness, folds and places their ballot in the container-return envelope, seals the envelope, and completes the application and certificate printed on the envelope, the witness must sign the application and certificate and print their name and address on the container-return envelope. And just as under the permanent regime, a voter must either return in-person or mail the absentee ballot by no later than 5 p.m. on Election Day. N.C. Gen. Stat. § 163-231(b)(1).

64. SL 2020-17 does not meaningfully relax restrictions on who may serve as a witness. For example, it retains a prohibition against using as a witness “an owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident.” N.C. Gen. Stat. § 163-226.3(4). Even under the temporary regime, a voter hospitalized with COVID-19 cannot use a care-provider or facility personnel as witness, and therefore still may have to cause someone to visit the hospital to witness their ballot. For voters at a nursing home or other long term care facility, procuring a valid witness may prove impossible given that Governor

Cooper’s Executive Order No. 120 restricts visitation “of all visitors and non-essential health care personnel.”⁹⁶ The NCSBE has recognized that as a practical matter, under the Witness Requirements and visitation restrictions, voters in these care facilities “may effectively be disenfranchised.”⁹⁷ While SL 2020-17 seemingly acknowledges this challenge by directing NCDHHS and the State Board of Elections to develop guidance, by August 1, 2020, “to safely allow multipartisan teams to assist registered voters within hospitals, clinics, nursing homes, assisted living or other congregate living situations in the 2020 elections during the COVID-19 pandemic in accordance with law,”⁹⁸ this as-yet undeveloped guidance cannot make the Witness Requirements as safe for any voter as not interacting with a witness (and a potential carrier of COVID-19) at all.

D. North Carolina’s Witness Requirements Impose an Undue Burden on the Right to Vote During the COVID-19 Pandemic

65. North Carolina’s absentee voting Witness Requirements present unconstitutional obstacles to voting during the COVID-19 pandemic because they force voters to choose between participating in our democracy and protecting their health and welfare, without advancing a legitimate State interest.

66. As discussed *supra*, North Carolina is currently experiencing a significant spike in COVID-19 cases that is unlikely to abate in the coming months. In all likelihood, cases will continue to surge as the November 2020 general election nears, with unpredictable impacts on all aspects of life in North Carolina.

⁹⁶ Governor Roy Cooper, Exec. Order 120 (Mar. 23, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO120.pdf>.

⁹⁷ Karen Brinson Bell, *CARES Act Request and Clarification to Recommendation to Address Election-Related Issues Affected by COVID-19*, North Carolina State Board of Elections (April 22, 2020), <https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

⁹⁸ SL 2020-17 § 2.(b).

67. Even in the absence of a dramatic surge in cases, the basic facts of this pandemic will not change any time soon. North Carolinians will be preparing to vote in the November 2020 general election—and any future elections that occur while COVID-19 spreads through the State—at a time when contact between persons poses a serious threat to health, welfare, and life. Since the deadline to request an absentee ballot is October 27, 2020,⁹⁹ voters may well be facing a surge of COVID-19 cases just as they are receiving their ballots.

68. In light of COVID-19, the State Board of Elections projects a staggering increase to a 30-40% voter absentee-by-mail participation rate in this year's general election. Assuming voter participation comparable to the 2016 general election, this means that as many as 1.8 million voters will be relying on the State's absentee voting process in order to exercise their right to vote, most of them for the first time. In-person voting exposes voters to inherent risk, and no voter should be forced to incur that risk to exercise this fundamental right.

69. Of course, some voters (such as voters without reliable U.S. Mail service) will not be able to vote by mail. But while COVID-19 continues to spread through North Carolina, the need to provide in-person polling locations for some North Carolinians makes it all the more imperative that as many voters as possible vote remotely by mail in order to limit lines, preserve social distancing, operate safe and disinfected polling places, and protect both voters and election workers who staff the polls. Further compounding these issues, “[e]lection workers often consist of retirees and older members of a community—groups at higher risk during the COVID-19 pandemic.”¹⁰⁰ A decrease in the number of election workers, combined with social distancing and

⁹⁹ North Carolina State Board of Elections, *Absentee Voting in North Carolina*, <https://www.ncsbe.gov/Voting-Options/Absentee-Voting> (last accessed June 22, 2020).

¹⁰⁰ Press Release, *Election Officials Searching for Democracy Heroes, Launch New Portal* (June 19, 2020), https://www.ncsbe.gov/Press-Releases?udt_2226_param_detail=2211.

disinfecting measures, is likely to result in long wait times at in-person voting sites and may lead even more individuals to endeavor to cast absentee ballots.

70. Thus, during the COVID-19 pandemic, the ability of all North Carolinians to safely exercise their constitutionally-protected right to vote will depend on the ability of many voters to participate safely in the State’s mail-in absentee voting system. The Constitution cannot tolerate suppressing access to the ballot box by forcing citizens to endanger their lives to vote.

71. If North Carolina’s Witness Requirements remain in force during the COVID-19 pandemic, however, North Carolina will force voters to choose between protecting themselves and others from the spread of COVID-19, and exercising their right to vote. According to the CDC, “[l]imiting face-to-face contact with others is the best way to reduce the spread” of COVID-19. Each person-to-person interaction poses a transmission risk, and “the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread.”

72. Yet, to comply with the Witness Requirements during the COVID-19 pandemic, voters—especially individuals who live alone and/or face high risk of severe illness from COVID-19—must put their health at risk by having another individual participate with them in the absentee voting process. Even under the temporary regime in place for the 2020 general election, North Carolina law requires each absentee voter to procure a qualified witness to watch over the voter as the voter marks their ballot, folds each ballot separately, places the folded ballot in the container-return envelope, seals the envelope, and completes the information and certificate printed on the envelope. *See* SL 2020-17 § 1(a). The witness must then sign the application and certificate and print their name and address on the voter’s container-return envelope. *Id.* The risk of transmission is compounded in the context of North Carolina’s permanent absentee voting regime, which requires two witnesses (or a notary public) and will apply to all elections at the start of next year regardless of whether COVID-19 continues to spread through the State.

73. Further, under North Carolina law, election officials currently have no discretion to count an unwitnessed absentee ballot—they must reject such a ballot, regardless of whether the voter could safely procure a witness. Voters who cannot fully comply with the requirement are thus at serious risk of disenfranchisement. Given the number of voters who are projected to request absentee ballots during the COVID-19 pandemic, enforcing the Witness Requirements in an environment in which COVID-19 is still being transmitted will likely prevent many North Carolinians who are eligible to vote from casting ballots or having their votes counted.

74. Even worse, this burden on the right to vote will fall more heavily on certain groups—older voters, voters with disabilities, and communities of color. As noted above, older individuals and communities of color already face higher rates of infection and death from COVID-19, further magnifying its impact. And the CDC has found that “some people with disabilities might be at a higher risk of infection or severe illness because of their underlying medical conditions.”¹⁰¹ According to the North Carolina Department of Health and Human Services, as of 2018, 18% of North Carolinians are aged 65 or older.¹⁰² Of those individuals, 26.5% live alone, and 35.8% have a disability.¹⁰³ Further, of the North Carolinians aged 65 or older who were surveyed in 2018, “84% had at least one chronic disease” and “55% of them had 2 or more chronic diseases.”¹⁰⁴

75. The Witness Requirements thus threaten to disenfranchise countless North Carolinians, like Plaintiffs, who cannot risk contact with other individuals to vote in person or obtain a witness signature on their absentee ballot. For many voters, obtaining a witness signature

¹⁰¹ CDC, *People Who Need Extra Precautions: People with Disabilities*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last visited Apr. 15, 2020).

¹⁰² NCDHHS Division of Aging and Adult Services, NC State Aging Profile 2018, *available at* <https://files.nc.gov/ncdhhs/documents/files/NC%20State%20Aging%20Profile%202018.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

presents an undue obstacle to voting even under normal circumstances; during a pandemic it poses a direct threat to voters' health because of the risk of COVID-19 transmission. And for ballots cast close in time to the election, the Receipt Deadline and the lack of an opportunity to cure a missing or incomplete witness signature further compounds the burden.

E. Maintaining North Carolina's Witness Requirements During the COVID-19 Pandemic Serves No Valid Purpose

76. While a state has a significant interest in protecting election integrity and preventing the improper use of absentee ballots, maintaining the Witness Requirements during the COVID-19 pandemic does not serve those interests, let alone present a narrowly tailored method of doing so. And even if the Witness Requirements did serve these or any other governmental interests, any benefit they provide is substantially outweighed by (a) the burden imposed on North Carolina voters who are forced to choose between heightened risk of exposure to a potentially fatal disease and the exercise of their fundamental right to vote; and (b) the fact that other North Carolina procedures serve the same interests.

77. The State's interest in enforcing the Witness Requirements is minimal at best because witness signature requirements are ineffective fraud-prevention measures. While North Carolina election officials check for the presence of a signature and address, they do nothing to verify this information. *See* N.C. Gen. Stat. § 163-231; SL 2020-17. Thus, as a practical matter, the Witness Requirements pose no obstacle to deter an individual who is willing to commit perjury and cast an absentee ballot fraudulently.¹⁰⁵ Even the stringent two-witness requirement under North Carolina's permanent absentee voting regime failed to prevent the type of fraud that North

¹⁰⁵ The South Carolina Election Commission recently conceded that the state's similar witness requirement offers "no benefit" to election officials because officials "have no ability to verify the witness's signature." *Thomas v. Andino*, 2020 WL 2617329, at *30 (D.S.C. May 25, 2020) (granting preliminary injunction to enjoin defendants from enforcing South Carolina's witness requirement).

Carolina experienced in recent elections. Only eleven other states have a witness requirement,¹⁰⁶ yet the states without it still have effective absentee balloting systems not undermined by fraud.¹⁰⁷ Rather than prevent fraud, the Witness Requirements impose a heavy burden on those who attempt to follow the letter of the law and thereby risk COVID-19 exposure, or who simply cannot follow it and will thereby be forced to forego their voting rights for the foreseeable future.

78. The fact that the State does not impose the Witness Requirements upon military voters or overseas voters registered in North Carolina confirms that the burdens placed on other North Carolina voters are substantial, but unreasonable. Indeed, as the COVID-19 pandemic has confirmed, obtaining a witness signature is less safe and therefore more burdensome in the U.S., and in North Carolina in particular, than it would be abroad.¹⁰⁸

79. Similarly, the fact that the North Carolina General Assembly recently voted to reduce the witness requirement in light of COVID-19 reflects recognition that Witness Requirements can and should be assessed against the backdrop of the pandemic, and reduced to avoid undue risk to voters' health. As described above, the NCSBE—presumably the most qualified judge of the measures needed to maintain electoral integrity in North Carolina—recommended reducing the required number of witnesses or eliminating the witness requirement altogether. In a recent interview about voting amid the COVID-19 pandemic, Defendant Damon

¹⁰⁶ See Chart, “Verifying Authenticity of Absentee/Mailed Ballots,” *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, Nat’l Conf. of State Legislatures (Apr. 3, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

¹⁰⁷ A database from the partisan Heritage Foundation shows that 31 out of the 146 total documented voting fraud convictions concerning absentee balloting have occurred in the twelve states with witness signature requirements. See The Heritage Foundation, Election Fraud Cases, https://www.heritage.org/voterfraud/search?combine=&state=All&year=&case_type=All&fraud_type=24489 (last visited July 8, 2020).

¹⁰⁸ See The New York Times, *Coronavirus Map: Tracking the Global Outbreak*, <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (updated July 2, 2020, 8:48 p.m. E.T.) (showing that the United States leads the world in COVID-19 cases and deaths).

Circosta, Chair of the NCSBE, stated that reducing the required number of witnesses makes voting “more secure” because “one of the issues we had with absentee vote-by-mail in the past was too many people were involved in your ballot. **The fewer the better.**”¹⁰⁹ Thus, neither the body requesting SL 2020-17’s version of the witness requirement, nor the body enacting it, have treated the requirement as necessary.

80. North Carolina also has several other, less burdensome mechanisms to both confirm the legitimacy of the absentee ballot cast and deter fraudulent use of absentee ballots.

81. First, voters must already certify that they are eligible to vote and voted their ballot lawfully. N.C. Gen. Stat. § 163-231(a). North Carolina laws make it a Class I felony “to impersonate falsely another registered voter for the purpose of voting in the stead of the other voter.” N.C. Gen. Stat. § 163-275(1). It is also a Class I felony to “swear falsely with respect to any matter pertaining to any primary or election.” N.C. Gen. Stat. §§ 163-275(4).

82. Second, absentee ballot request forms require the voter to provide several pieces of identifying information about themselves—such as their first and last name, house number, street name or rural route address, city, and zip code, as well as either their state identification or driver’s license number or their social security number—in order to receive a valid absentee ballot. *See* N.C. Gen. Stat. § 163-230.2(a).

83. Third, to further protect against unauthorized issuance of absentee ballots, North Carolina recently made it a Class I felony for a member or employee of a state or county board of elections to “knowingly send[] or deliver[] an absentee ballot to any person who has not” properly requested one. N.C. Gen. Stat. § 163-237(d).

¹⁰⁹ NCSBE, *State Board Chair Damon Circosta discusses voting amid the COVID-19 pandemic with the NC Free Enterprise Foundation*, <https://www.ncsbe.gov/coronavirus> (published June 17, 2020).

84. In light of these attestation and verification requirements and criminal penalties associated with misusing absentee ballots, the additional step of requiring a witness signature that itself cannot be verified adds little — if any — protection.

85. The burden on the voting rights of the many thousands of North Carolinians who will be prevented from either casting their ballots safely or having them counted by retaining the Witness Requirements far outweighs any purpose served by the requirement.

CAUSES OF ACTION

COUNT I

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

86. Plaintiffs repeat, re-allege and incorporate by reference paragraphs 1 through 84 above as if fully set forth herein.

87. Article I, § 10 of the North Carolina constitution states: “All elections shall be free.” This provision has no counterpart in the U.S. Constitution.

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

89. As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the

Declaration of Rights “are commands and not mere admonitions” for proper conduct by the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 639 (1982) (internal quotations omitted).

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

91. The constitutional obligation to ensure that elections are both free and fair and reflect the will of the people, at a minimum, requires that the State ensure that all North Carolinians have a reasonable opportunity to vote—that is, not only to cast their ballots but to also have their ballots counted—without risk to their health and safety.

92. The Witness Requirements, especially in the context of the COVID-19 pandemic, will deny the franchise to eligible voters and obfuscate the will of North Carolinians, particularly those who—because of health concerns, family care responsibilities, or medical vulnerabilities—are unable to overcome the dramatically increased risks and burdens of participating in the political process during the COVID-19 pandemic. North Carolina’s restrictions violate the Free Elections Clause.

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

93. Plaintiffs repeat, re-allege and incorporate by reference paragraphs 1 through 91 above as if fully set forth herein.

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

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

96. Article I, §§ 12 and 14 of the North Carolina Constitution protect the rights of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote. “Voting . . . constitutes ‘expressive activity’ that ‘express[es] [a] view’ about the State’s laws and policies.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *119 (N.C. Super. Sep. 03, 2019) (quoting *Winborne v. Easley*, 136 N.C. App. 191, 198 (1999)); *Evans v. Cowan*, 122 N.C. App. 181, 184 (1996), *aff’d*, 345 N.C. 177 (1996).

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

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

99. Voting by mail expands access to the franchise for eligible voters for whom in-person voting is difficult or impossible, and, for many North Carolinians, provides the only feasible opportunity to vote safely, without putting their health at risk during the COVID-19 pandemic.

100. The Witness Requirements create an unconstitutional burden on the fundamental rights of North Carolinians to participate in our democracy.

101. Because the challenged absentee voting restrictions impose severe burdens on the fundamental right to vote, especially in light of COVID-19, and because the restrictions cannot be

justified by any sufficiently important State interest, the Witness Requirements violate the North Carolina Constitution.

COUNT III
Violation of North Carolina Constitution
Art. I, § 19
(Equal Protection)

102. Plaintiffs repeat, re-allege and incorporate by reference paragraphs 1 through 100 above as if fully set forth herein.

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

104. North Carolina’s Equal Protection Clause affords broader protection to its citizens in the voting rights context than the United States Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 681 S.E.2d 759, 763 (N.C. 2009).

105. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Stephenson*, 562 S.E.2d at 393 (internal quotation marks omitted). “[I]t is the right to participate in elections on an *equal* basis that is substantial.” *Holmes v. Moore*, 840 S.E.2d 244, 253 (N.C. Ct. App. 2020). Thus, whether North Carolinians “could conceivably still participate in the elections”—by meeting the Witness Requirements—“is, in and of itself, not determinative of whether or not [the Witness Requirements] negatively affect[] the substantial right claimed by Plaintiffs in this case.” *Id.*

106. The Witness Requirements, especially in the context of the COVID-19 pandemic, will disparately impact the most vulnerable North Carolinians’ ability to vote, particularly those who—because of health concerns, family care responsibilities, or medical vulnerabilities—are unable to overcome the dramatically increased risks and burdens of participating in the political process during the COVID-19 pandemic.

107. These vulnerable populations include the elderly and communities of color. As of 2018, 18% of North Carolinians are aged 65 or older, and at least a third of those voters either live alone or suffer from a disability. As of late 2016, seniors constituted 20.5 percent of North Carolina’s voting age population.¹¹⁰

108. Further, as discussed *supra*, “the COVID-19 pandemic is exposing racial disparities that are entrenched in our health care and economic institutions for communities of color.”¹¹¹ As Governor Cooper recognized, “African Americans make up 22 percent of North Carolina’s population, but account for 30 percent of confirmed COVID-19 cases and 34 percent of COVID-19 deaths in cases where race is known in the state.”¹¹² African Americans account for approximately 21.4 percent of registered voters in North Carolina.¹¹³ Similarly, “Hispanics make up 39 percent of COVID-19 confirmed cases, in cases where ethnicity is known, while only accounting for about 10 percent of the population.”¹¹⁴ Hispanics constitute 3.1 percent of North Carolina’s registered voters.¹¹⁵

109. The Witness Requirements force already disadvantaged communities to choose between their health and exercising their right to vote, thereby denying them the right to vote on an equal basis. If the Witness Requirements are not enjoined, they could disenfranchise a

¹¹⁰ United States Census Bureau, *Citizen Voting-Age Population: North Carolina*, https://www.census.gov/library/visualizations/2016/comm/citizen_voting_age_population/cb16-tps18_nc.html.

¹¹¹ Governor Roy Cooper, Exec. Order 143 (June 4, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>.

¹¹² *Id.*

¹¹³ North Carolina State Board of Elections, *Voter registration Statistics, Reporting Period: 06/20/2020*, <https://vt.ncsbe.gov/RegStat/Results/?date=06%2F20%2F2020>.

¹¹⁴ Governor Roy Cooper, Exec. Order 143 (June 4, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>.

¹¹⁵ North Carolina State Board of Elections, *Voter registration Statistics, Reporting Period: 06/20/2020*, <https://vt.ncsbe.gov/RegStat/Results/?date=06%2F20%2F2020>.

significant number of North Carolinians, including many from vulnerable populations and already disadvantaged communities.

110. Because the Witness Requirements violate the most vulnerable North Carolinians' right to vote on an equal basis, and because the restrictions cannot be justified by any sufficiently important State interest, the Witness Requirements violate the North Carolina Constitution.

PRAYER FOR RELIEF

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

- i. Declare, under N.C. Gen. Stat. § 1-253, et seq., that the Witness Requirements are unconstitutional and invalid during the COVID-19 pandemic because they violate the rights of Plaintiffs and all North Carolina voters under the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19;
- ii. Preliminarily and permanently enjoin enforcement of the Witness Requirements during the COVID-19 pandemic;
- iii. Order Defendants to issue guidance instructing all state and local election officials to count otherwise validly cast absentee ballots that do not comply with the Witness Requirements, for all North Carolina primary, municipal, and general elections during the COVID-19 pandemic;
- iv. Order Defendants to modify election materials, including absentee ballots, to reflect the elimination of the Witness Requirements during the COVID-19 pandemic, and conduct a public information campaign informing North Carolina voters about the elimination of the Witness Requirements and the availability of absentee ballots for the November 2020 general election and other primary,

municipal, and general elections, in coordination with local officials before and during the absentee balloting period;

- v. Award Plaintiffs their costs and expenses, under applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20 and 1-263; and
- vi. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: July 10, 2020

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