

20CY 89947

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DSCC; DCCC; and NORTH CAROLINA
DEMOCRATIC PARTY,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD
OF ELECTIONS; DAMON CIRCOSTA,
CHAIR OF THE NORTH CAROLINA
STATE BOARD OF ELECTIONS; and
KAREN BRINSON BELL, EXECUTIVE
DIRECTOR OF THE NORTH CAROLINA
STATE BOARD OF ELECTIONS,

Defendants.

DOCKET NO.

COMPLAINT

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. This lawsuit challenges the North Carolina State Board of Elections's ("the State Board") unlawful practice of rejecting absentee ballots based on irrelevant technicalities, and then arbitrarily denying certain voters the opportunity to address these minor errors—a particular concern in the context of a global pandemic where voting by mail provides a lifeline to the franchise for many. While Defendants the State Board, Damon Circosta, and Karen Bell have made efforts to implement processes to guard against this result, their solution remains constitutionally inadequate and illusory: a ballot with a missing voter signature, for instance, is curable by email, fax, or in-person, while a ballot with only a missing witness signature or address cannot be cured at all, and the voter must wait to receive and cast a new absentee ballot.

This is just one example of several arbitrary distinctions in the State Board’s newly-adopted cure procedures memorandum which violate numerous provisions of the North Carolina Constitution.

2. The failure to provide for uniform state cure process for these and other absentee ballot issues has already been found unconstitutional. On May 22, 2020, Democracy North Carolina, the League of Women Voters of North Carolina, and 6 individual voters sued, among others, Defendants the State Board and Damon Circosta in federal court, seeking declaratory and injunctive relief holding that the enforcement of numerous North Carolina elections statutes in the November 2020 election violated numerous federal constitutional rights, including the right to vote protected by the First and Fourteenth Amendments to the United States Constitution and the right to procedural due process protected by the Fourteenth Amendment. *See Compl.*, ECF No. 1, *Democracy N.C., et.al. v. N.C. State Bd. of Elections*, No. 1:20-cv-457 (M.D.N.C. May 22, 2020). On August 4, 2020, Judge William Osteen Jr. partially granted Plaintiffs’ motion for a preliminary injunction, enjoining Defendants the State Board and Mr. Circosta from, among other things, rejecting absentee ballots until they implemented a law or rule “which provides a voter with notice and an opportunity to be heard before an absentee ballot with a material error subject to remediation is disallowed or rejected.” *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20-cv-457, 2020 WL 4484063, at *64 (M.D.N.C. Aug. 4, 2020).

3. In compliance with this directive and in order to provide statewide uniformity regarding the review of absentee ballots, on August 21, 2020, Defendant the State Board and Defendant Karen Bell issued Numbered Memo 2020-19 (the “Cure Memo”) “direct[ing] the procedure county boards must use to address deficiencies in absentee ballots,” doing so pursuant to the Board’s general supervisory authority over elections as set forth in N.C. Gen. Stat. § 163-22(a) and the authority of the Executive Director contained in N.C. Gen. Stat. § 163-26. Ex. A at

1. The Cure Memo sought to address the cure process for certain errors occurring on an absentee ballot, including lack of a voter signature, a voter signature in the wrong place, an unsealed or apparently resealed ballot, and various failures to comply with the requirement that a voter have one witness print their name and address and sign the back of the absentee ballot envelope (the “Witness Requirement”).¹

4. But the cure remedy for absentee ballots in the Cure Memo is incomplete and constitutionally deficient, leaving a broad swath of voters at risk of arbitrary disenfranchisement. Specifically, the Cure Memo replaces the previous lack of any cure process with the arbitrary creation of four classes of absentee voters with purported errors on their ballots, providing absentee voters more or less opportunity to have their vote counted based on nothing more than random happenstance and factors largely outside their control.

5. First and faring best are voters who failed to include their own signature or signed their name in the wrong place, as regardless of when their error is identified (including even after the election) they need only receive an affidavit (which can be emailed to them, unlike a ballot) and return it by 5 p.m. on November 12 through email, fax, in person, or by mail or commercial carrier to cure their ballot and ensure it is counted. Ex. A at 3.

6. Voters whose error involves an unsealed or resealed envelope or whose absentee ballots do not demonstrate strict compliance with the Witness Requirement (including not printing the witness’s name, not printing the witness’s address, failure of the witness to sign, or having the witness sign on the wrong line) make up the next three classes, and their ability to

¹ Pursuant to N.C. Gen. Stat. §163-231(a)(4), an absentee ballot generally requires the presence and signature of two witnesses, including their addresses. On June 12, 2020, Governor Roy Cooper signed H.B. 1169 which, in light of the ongoing coronavirus pandemic, lowers this requirement to one witness for all elections held in 2020. H.B. 1169, 2019-2020 Sess. (N.C. 2020).

access the franchise and cure their ballot depends largely on when the county board identifies their error. If the error is identified prior to October 30, these voters must vote a new ballot that will be sent to them in the mail. *Id.* But if the same error is identified between October 30 and November 3, these voters can no longer utilize absentee voting and must instead cast a ballot in person or contest the status of their ballot at the county canvass. *Id.*

7. Those voters whose witness requirement error is identified after November 3 fare worst of all, as contesting the rejection of their ballot at the county canvass is their sole means to have their vote potentially counted. *Id.*² And the ability to contest their ballot at the county canvass is hardly any recourse, as a voter can only contest the grounds on which their ballot was rejected at the county canvass hearing, but cannot *cure* a deficient absentee ballot return envelope. *Id.* at 4.

8. These arbitrary differentiations violate the North Carolina Constitution's guarantees of equal protection, due process, and the right to vote and participate in a free and fair election. The requirement that voters whose ballots do not include a witness's address must cast an *entirely new ballot*, rather than cure their original ballot, violates North Carolina's Free Elections Clause. Plaintiffs DSCC, DCCC, and the North Carolina Democratic Party bring this lawsuit to ensure that these unconstitutional restrictions do not cause them, their members, or their constituencies severe and irreparable harm in the coming November election.

PARTIES

9. Plaintiff DSCC is the national senatorial committee of the Democratic Party, as defined by 52 U.S.C. § 30101(14), and its mission is to elect candidates of the Democratic Party

² The county canvass occurs when the county board of elections meets “at 11:00 A.M. on the tenth day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” N.C. Gen. Stat. §163-182.5.

to the United States Senate, including in North Carolina. DSCC works to accomplish its mission across the country and in North Carolina by, among other things, making expenditures for, and contributions to, Democratic candidates for U.S. Senate and assisting state parties throughout the country, including in North Carolina.

10. In 2020, DSCC has already invested millions of dollars to support Cal Cunningham, the Democratic nominee for United States Senate, and it intends to dedicate further substantial resources towards his election. This includes substantial investments in get out the vote (“GOTV”) efforts, voter education, and informing voters about the ability to cast votes by mail. DSCC will be harmed absent relief because the lack of an adequate curing mechanism will frustrate its core mission to turn out Democratic voters, and DSCC will have to dedicate significantly more resources (diverting them from other mission critical efforts in North Carolina and other Senate battleground states) towards its GOTV efforts, including by educating voters in greater detail on the potential reasons for rejection of absentee ballots, and following up with voters whose ballots are rejected to guide them through the process of curing or re-submitting their ballots. Defendants’ actions also injure voters who support Cal Cunningham, who are among DSCC’s members and constituents and for whom DSCC provides the means by which they express their collective views and protect their collective interests.

11. Plaintiff DCCC is the national congressional committee of the Democratic Party, as defined by 52 U.S.C. § 30101(14). DCCC’s mission is electing Democratic candidates to the U.S. House of Representatives from congressional districts across the United States, including from North Carolina’s 13 congressional districts. DCCC works to accomplish its mission across the country and in North Carolina by, among other things, making expenditures for, and

contributions to, Democratic candidates for U.S. Congress and assisting state parties throughout the country, including in North Carolina.

12. In 2020, DCCC has already invested millions of dollars to support congressional candidates in North Carolina, and it intends to dedicate further substantial resources towards his election. This includes substantial investments in GOTV efforts, voter education, and informing voters about the ability to cast votes by mail. DCCC will be harmed absent relief because the lack of an adequate curing mechanism will frustrate its core mission to turn out Democratic voters, and DCCC will have to dedicate significantly more resources (diverting them from other mission critical efforts in North Carolina and other states) towards its GOTV efforts, including by educating voters in greater detail on the potential reasons for rejection of absentee ballots, and following up with voters whose ballots are rejected to guide them through the process of curing or re-submitting their ballots. Defendants' actions also injures voters who support Democratic candidates for Congress, who are among DCCC's members and constituents and for whom DCCC provides the means by which they express their collective views and protect their collective interests.

13. Plaintiff the North Carolina Democratic Party ("NCDP") brings this action on its own behalf and on behalf of its members who are registered voters in North Carolina and have voted or intend to vote using absentee voting. The NCDP is a political party as defined in N.C. Gen. Stat. § 163-96. Its purposes are: (i) to bring people together to develop public policies and positions favorable to NCDP members and the public generally, (ii) to identify candidates who will support and defend those policies and positions, and (iii) to persuade voters to cast their ballots for those candidates. The NCDP has members in every county in North Carolina. The NCDP will be harmed absent relief because the lack of an adequate curing mechanism will

frustrate its core mission to turn out voters for Democratic candidates, and the NCDP will have to dedicate significantly more resources (diverting them from other mission critical efforts) towards its GOTV efforts, including by educating voters in greater detail on the potential reasons for rejection of absentee ballots, and following up with voters whose ballots are rejected to guide them through the process of curing or re-submitting their ballots. Defendants' actions also injures NCDP's members who will be denied the right to cast a ballot due to Defendants' lack of any cure mechanism for errors involving the Witness Requirement.

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

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

16. Defendant Karen Brinson Bell is the Executive Director of the North Carolina State Board of Elections. Ms. Bell is sued in her official capacity.

JURISDICTION AND VENUE

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

18. Under N.C. Gen. Stat. § 1-77 (2), venue for this action is proper in Wake County Superior Court because the cause of this action arose in Wake County.

FACTUAL ALLEGATIONS

A. COVID-19 has upended North Carolina, including its elections.

19. COVID-19 has caused widespread disruption to daily lives and routines across the globe, including impacting elections around the country and in North Carolina.

20. As of September 3, 2020, North Carolina has had 172,209 lab-confirmed cases of COVID-19, including at least one case in every one of its 100 counties, and over 2,800 deaths officially attributed to the virus. On September 1st alone, the state reported 1,977 new cases, and the average number of new cases in the state reported for the last seven days is currently over 1,500.³

21. For months the virus shuttered businesses and schools. Many school districts partially reopened in August with strict social distancing measures in place, and the result has already been confirmed COVID-19 cases reported in the schools, with several having to shut down for at least 24 hours to be deep cleaned before students could return. The three largest school districts, including Wake County, Charlotte-Mecklenburg Schools (“CMS”), and Guilford County determined that the social distancing and other remedial measures in place elsewhere were not sufficient and instead have opted for all-remote until the districts decide it is safe for students and teachers to return in person. There is a state-wide mask mandate in place. Press Release, North Carolina Department of Health and Human Services, *Requirement for the Use of Face Coverings and Masks* (Aug. 27, 2020), available at <https://files.nc.gov/covid/documents/guidance/Coverings.pdf>. NCDHHS-Interim-Guidance-on-Face-

22. These are just a few of the ways in which COVID-19 has drastically impact day-to-day life in North Carolina, where a large portion of the population continues to engage in

³ North Carolina Department of Health and Human Services, *COVID-19 by Date of Specimen Collection*, <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#cases-over-time> (last updated Sept. 3, 2020 at 2:10 p.m.); see also <https://www.nytimes.com/interactive/2020/us/north-carolina-coronavirus-cases.html>.

strict social distancing, to keep themselves and their loved ones safe from this highly contagious virus.

23. Not surprisingly, the coronavirus has also dramatically impacted both the administration of elections and the way people exercise their right to vote.

24. Because polling places draw large numbers of individuals into relatively small places and at times generate long lines, in-person voting during the COVID-19 pandemic imposes a risk of transmission which, notwithstanding the implementation of health and safety measures, will remain too high for a considerable proportion of North Carolinians. Thus, vote by mail will be essential to ensuring meaningful access to the franchise in the November 2020 election.

25. The State Board has already announced that it expects a surge in mail ballots from approximately five percent during previous elections to 40 percent by Election Day, and it accordingly asked the General Assembly to eliminate certain restrictions that reduce access to voting by mail. In part pursuant to that request, on June 12, 2020, Governor Cooper signed H.B. 1169, which makes certain changes to ease North Carolina's voting processes solely for elections held in 2020. These include, among other things, requiring that only one—rather than two—witnesses sign an absentee ballot, that all absentee ballot requests include a bar code so that voters and county boards can track them, and that the State Board create an online portal for voters to send absentee ballot requests. The bill also provided the State Board additional funds to respond to COVID-19.

B. Increased absentee voting will lead to increased errors (many of them immaterial), requiring a constitutionally sound cure process.

26. For an absentee ballot to be counted in an election occurring in 2020, the voter must sign the ballot container envelope before one witness who must certify the voter's identity,

print their name and address, and sign the back of the absentee ballot envelope, following which the voter must submit their ballot to their county board of election “by mail or by commercial courier service, at the voter’s expense, or delivered in person, or by the voter’s near relative or verifiable legal guardian.” N.C. Gen. Stat. §§ 163-231(b)(1), 163-229(b), 163-231(b).⁴

27. North Carolina law requires an absentee ballot to be rejected for failing to comply with many of these requirements, including failing to include the voter’s signature, the voter’s signature being placed on the wrong line, failing to include the witness’s signature, failing to print the witness’s signature, the witness signing on the wrong line, or the witness not signing. *See* N.C. Gen. Stat. §§ 163-231, 164-234(1).

28. Increasing the ease of requesting and returning absentee ballots does nothing to increase access to the franchise if those ballots are not counted. Absentee ballots are already significantly more likely to be thrown out than ballots cast in-person due to minor errors. *See generally* Michael R. Alvarez, Thad E. Hall, & Betsy Sinclair, *Whose Absentee Votes Are Returned and Counted: The Variety and Use of Absentee Ballots in California*, 27 Electoral Studies 673, 673-83 (2008). And this will no doubt be particularly true of those cast by first time absentee voters, whose numbers will dramatically increase in the November 2020 election due to COVID-19, and who lack previous familiarity with the absentee voting process.

29. North Carolina’s March 2020 primary is a particularly salient representation of this. Evidence presented in federal court demonstrates that around 15% of absentee mail-in ballots were rejected in North Carolina’s March 2020 primary, and that “at least 41% . . . of all rejected mail in ballots were rejected due to noncompliance with form requirements,” meaning

⁴ As noted above, an absentee ballot generally requires the presence and signature of two witnesses, including their addresses, but H.B. 1169 lowers this requirement to one witness for all elections held in 2020. *See supra* note 1.

that those 41% “could presumably have been cured.” *Democracy N. Carolina*, No. 1:20-cv-457, 2020 WL 4484063, at *17.

30. Recognizing that nearly half of the state’s rejected absentee ballots in the March 2020 primary included curable issues, Judge Osteen enjoined Defendants the State Board and Mr. Circosta from, among other things, rejecting absentee ballots until they implemented a law or rule “which provides a voter with notice and an opportunity to be heard before an absentee ballot with a material error subject to remediation is disallowed or rejected.” *Id.* at *64.

C. The Cure Memo does not provide a constitutionally adequate cure process for voters.

31. Prior to Judge Osteen’s ruling in *Democracy North. Carolina*, North Carolina had no uniform process for voters to have notice and an opportunity to be heard regarding errors concerning their failure to follow the absentee ballot requirements.

32. The Cure Memo sought to implement such a process by creating a multi-step system. First the county board must identify whether the deficiency is one the State Board has determined is curable with an affidavit, or is instead a deficiency that requires the ballot to be spoiled. Ex. A at 2.

33. Under the procedure laid out by the Cure Memo, the failure of a voter to sign the ballot, or a voter signature placed in the wrong location, is curable by an affidavit; in contrast, a ballot must be spoiled if it fails to comply with the witness requirements (including that the witness print their name or their address, or that the witness enter their signature on the designated line) or if the envelope is unsealed or appears to have been resealed. *Id.*

34. In order to avoid disenfranchisement, voters whose ballots are spoiled must be provided with—and timely vote—an entirely new ballot, either absentee or in person. This imposes severe burdens on voters, regardless of where in the election cycle the issue is

identified. But for many voters with ballots where the issue is not identified until close to or even after election day, the result is complete disenfranchisement with no opportunity to cure.

35. A voter whose absentee ballot has a deficiency which the State Board has determined is curable by an affidavit will receive notice sent within one business day to the address at which they requested their ballot. If they have an email address on file with the county board, they will also receive notice by email. *Id.* at 3. A voter with a curable error can then submit their affidavit to cure their ballot by fax, email, in person, or by mail or commercial carrier or, if they prefer, appear at the county canvass to contest the status of their ballot. *Id.* A cure affidavit must be received by the county board by no later than 5 p.m. on November 12.

36. A voter whose absentee ballot has a deficiency related to the Witness Requirement—which the State Board has decided is not curable by an affidavit—is less fortunate, and the processes provided for allowing their vote to be counted will in practice likely prove illusory. If the county board identifies their error prior to October 30, within one business day the county board is instructed to mail a written notice to the address at which the voter requested their absentee ballot, identifying the deficiency with the ballot and enclosing a new ballot. Ex. A at 3. This, of course, assumes that the voter will receive a new absentee ballot in time to cast it, which—given the current issues with the United States Postal Service (“USPS”), *see infra ¶ 37*—is far from certain. If the county board identifies their error between October 30 and November 3, within one business day the county board is instructed to notify the voter by phone or email, if available, providing them information about voting in-person at early voting or on Election Day, and also to provide them with notice by mail detailing their ability to contest the status of their absentee ballot at the county canvass. *Id.* Of course, many voters will undoubtedly not have phone numbers or email addresses on file with the county board, and

hence only receive the notice by mail. Finally, any voter whose Witness Requirement error is identified after Election Day must be notified by phone or email (if available) as well as by mail of their ability to contest the status of their absentee ballot at county canvass. *Id.* But the ability to contest the status of their absentee ballot at county canvass hardly provides relief, as a voter can contest that their ballot was marked deficient but cannot cure a deficient absentee ballot return envelope at the hearing. *Id.* at 4.

37. As noted above, recent well-chronicled issues with the USPS cast doubt on the ability for voters to receive and timely cast a second ballot even if their error is identified prior to October 30 and they are sent a new ballot, making this remedy insufficient. See, e.g., Press Release, House Committee on Oversight and Reform, *New Postal Service Documents Show Nationwide Delays Far Worse Than Postal Service Has Acknowledged* (Aug. 22, 2020), available at <https://oversight.house.gov/news/press-releases/new-postal-service-documents-show-nationwide-delays-far-worse-than-postal> (noting that there has been a marked decline in service standards at USPS since July 2020).

38. The cure process implemented by the Cure Memo thus will inevitably result in a substantial number of voters being disenfranchised due to minor errors concerning their failure to strictly comply with the Witness Requirement without a constitutionally adequate opportunity to be heard or cure their error. This lack of adequate process—which will entirely disenfranchise some voters—is a significant burden on the right to vote.

39. The State’s interest in strictly enforcing precise compliance with the Witness Requirement is minimal at best. Witness signature requirements are ineffective fraud-prevention measures, illustrated by the fact that North Carolina does not impose the same requirement upon uniformed-service voters or overseas voters registered in North Carolina. Moreover, the point of

the Witness Requirement is to confirm the voter's identity, and this same purpose can be achieved through an adequate cure process.

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

41. Moreover, even assuming that the Witness Requirement is somehow useful in verifying a voter's identity, that utility is unrelated to the inclusion of the witness's address. It is particularly constitutionally problematic that the cure process implemented by the Cure Memo requires spoliation of a ballot solely for failure to include a witness's address, which is not only easily curable, but is also entirely unrelated to a voter's eligibility or a ballot's authenticity.

CAUSES OF ACTION

COUNT I Violation of the North Carolina Constitution Art. I, § 19 (Deprivation in Violation of the Law of the Land)

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

43. Article I, section 19 of the North Carolina Constitution provides: "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land." N.C. Const. art. I, § 19. The expression "the law of the land" as used in article I, section 19 of the North Carolina Constitution, is synonymous with the expression "due process of law." *State v. Ballance*, 51 S.E.2d 731, 734 (N.C. 1949).

44. The right to due process of law embodied in article I, section 19 requires that government action depriving a person of life, liberty, or property is implemented in a fair manner. *State v. Thompson*, 508 S.E.2d 277, 282 (N.C. 1998). This includes the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* at 286.

45. North Carolina law vests registered North Carolina voters with the right to vote by mail-in absentee ballot. N.C. Gen. Stat. § 163-226(a). Having authorized all voters to utilize absentee ballots, the state must afford appropriate due process protections to the use of mail-in absentee balloting and its deprivation.

46. The Cure Memo's cure process violates the right to procedural due process embodied in article I, section 19 of the North Carolina Constitution by depriving those voters who do not strictly comply with the Witness Requirement of their right to utilize an absentee ballot without an adequate opportunity to cure or be heard.

COUNT II
Violation of the North Carolina Constitution
Art. I, § 19
(Infringement on Right to Equal Protection of the Laws)

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

48. Article I, section 19 of the North Carolina Constitution provides that “[n]o person shall be denied the equal protection of the laws.” Because the right to vote on equal terms is a fundamental right, any classifications made between and among voters must be necessary to promote a compelling governmental interest. *See Northampton Cnty. Drainage Dist. No. One v. Bailey*, 392 S.E.2d 352, 356 (N.C. 1990).

49. The Cure Memo's cure process violates article I, section 19's promise of equal protection by arbitrarily conditioning voters' right to have their vote counted on the date by

which a county board recognizes any purported error in an absentee ballot, as well as the type of error the board recognizes. Specifically, voters whose errors involve the Witness Requirement have their right to vote treated differently, and even within this subset of voters there are arbitrary distinctions on a voter's ability to equally exercise the franchise. These distinctions are not justified by a sufficiently compelling government interest, violating article I, section 19's promise of equal protection.

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

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

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

52. 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).

53. 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*, 286 S.E.2d 89, 97 (N.C. 1982) (internal quotations omitted).

54. “[T]he object of all elections is to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 86 S.E. 351, 356 (N.C. 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*, 26 S.E. 132, 134 (N.C. 1896).

55. The constitutional obligation to ensure that elections are both free and fair and reflect 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.

56. The cure process implemented by the Cure Memo violates this right by making absentee ballots that present errors involving the Witness Requirement incurable and therefore subjecting a large swath of voters to substantial burdens, if not outright disenfranchisement.

57. The requirement that failure to include a witness’s address invalidates a ballot is particularly violative of the rights protected by the Free Elections Clause. The North Carolina Supreme Court has made clear that failure to strictly comply with the strictures of the state’s absentee ballot requirements is not sufficient in “itself to invalidate these votes because it is inconceivable that the legislature intended so to glorify form and crucify substance.” *Owens v. Chaplin*, 47 S.E.2d 12, 18 (N.C. 1948). The cure process implemented by the Cure Memo plainly violates this admonition and the rights protected by the Free Elections Clause.

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

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

59. Article I, section 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.”

60. Article I, section 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.”

61. Article I, sections 12 and 14 of the North Carolina Constitution protect the rights of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote. “Voting, like donating money to a candidate or signing a petition for a referendum, constitutes ‘expressive activity’ that ‘express[es] [a] view’ about the State’s laws and policies.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *119 (N.C. Super. Sep. 3, 2019) (quoting *Winborne v. Easley*, 136 N.C. App. 191, 198 (N.C. Ct. App. 1999)); *Evans v. Cowan*, 468 S.E.2d 575, 577 (N.C. Ct. App. 1996), *aff’d*, 477 S.E.2d 926 (N.C. 1996).

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

63. 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.

64. The Cure Memo's cure process creates an unconstitutional burden on the fundamental rights of North Carolinians to participate in our democracy unjustified by any sufficiently important State interest, violating the North Carolina Constitution.

PRAYER FOR RELIEF

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

- a. Declaring, under N.C. Gen. Stat. §§ 1-253, *et seq.*, that Defendants failure to allow for an affidavit to cure errors related to the Witness Requirement is unconstitutional and invalid because it violates the rights of Plaintiffs and all North Carolina voters to procedural due process under article I section 19 of the North Carolina Constitution, violates the right to equal protection under article I section 19 of the North Carolina Constitution, violates the Free Elections Clause of the North Carolina Constitution, and constitutes an undue burden on the right to vote in violation of article I sections 12, 14, and 19 of the North Carolina Constitution;
- b. Preliminarily and permanently enjoining the State and all county boards of elections from rejecting absentee ballots due to errors related to the Witness Requirement unless the voter is provided reasonable notice and an opportunity to cure the alleged Witness Requirement defect, similar to the opportunity afforded those voters with errors on their absentee ballots related to the voter's signature;
- c. Awarding Plaintiffs their costs and expenses, under applicable statutory and common law, including N.C. Gen. Stat. Ann. §§ 6-20 and 1-263; and
- d. Granting Plaintiffs such other and further relief as the Court deems necessary.

Respectfully submitted,

Dated: September 8, 2020

By: 

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Attorneys for Plaintiffs

Marc Erik Elias*
Uzoma N. Nkwonta*
John M. Geise*
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654.6211
MElias@perkinscoie.com
UNkwonta@perkinscoie.com
JGeise@perkinscoie.com

Attorneys for Plaintiffs

*Seeking Pro Hac Vice Admission