UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

North Carolina Alliance for Retired Americans, North Carolina Asian Americans Together, Down Home North Carolina, Vaeme Afokpa, and Raquel Nelson,

Plaintiffs,

v.

North Carolina State Board of Elections; Sam Hayes, *in his official capacity as Executive Director of the North Carolina State Board of Elections*; Francis X. De Luca, *in his official capacity as Chair of the North Carolina State Board of Elections*; Stacy Eggers IV, *in his official capacity as Secretary of the North Carolina State Board of Elections*; Jeff Carmon, Angela Hawkins, and Siobhan O'Duffy Millen, *in their official capacities as members of the North Carolina State Board of Elections*; Durham County Board of Elections; David K. Boone, *in his official capacity as Chair of the Durham County Board of Elections*; Pamela A. Oxendine, *in her official capacity as Secretary of the Durham County Board of Elections*; James P. Weaver, Dawn Y. Baxton, and Natalie F. Beauchaine, *in their official capacities as members of the Durham County Board of Elections*; Guilford County Board of Elections; Eugene Lester III, *in his official capacity as Chair of the Guilford County Board of Elections*; and Carolyn Bunker, Felita Donnell, Kathryn Skeen Lindley, and Peter Francis O'Connell, *in their official capacities as members of the Guilford County Board of Elections*,

Defendants.

Case No. 1:26-cv-965

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs North Carolina Alliance for Retired Americans (the "Alliance"), North Carolina Asian Americans Together ("NCAAT"), Down Home North Carolina ("Down Home"), Vaeme Afokpa, and Raquel Nelson, by and through their undersigned attorneys, file this Complaint for Declaratory and Injunctive Relief against Defendants North Carolina State Board of Elections ("NCSBE" or the "State Board"); Sam Hayes, in his official capacity as Executive Director of the State Board; Francis X. De Luca, in his official capacity as Chair of the State Board; Stacy Eggers IV, in his official capacity as Secretary of the State Board; and Jeff Carmon, Angela Hawkins, and Siobhan O'Duffy Millen, all in their official capacities as members of the State Board; Durham County Board of Elections; David K. Boone, in his official capacity as Chair of the Durham County Board of Elections; Pamela A. Oxendine, in her official capacity as Secretary of the Durham County Board of Elections; James P. Weaver, Dawn Y. Baxton, and Natalie F. Beauchaine, all in their official capacities as members of the Durham County Board of Elections; Guilford County Board of Elections; Eugene Lester III, in his official capacity as Chair of the Guilford County Board of Elections; and Carolyn Bunker, Felita Donnell, Kathryn Skeen Lindley, and Peter Francis O'Connell, all in their official capacities as members of the Guilford County Board of Elections. Plaintiffs hereby allege as follows:

NATURE OF THE ACTION

1. In this very moment, thousands of North Carolinians are preparing to cast their votes in the 2026 general election. More than *81,000* voters have already submitted

requests for absentee ballots—a secure and reliable method to vote that North Carolina has offered its citizens for decades.

2. When a North Carolinian casts an absentee ballot, they rely on their county board of elections, and ultimately the North Carolina State Board of Elections ("State Board"), to ensure their ballot is counted and their voice heard. The North Carolina General Assembly has delegated substantial authority to the State Board to implement the election code with procedures that safeguard both North Carolinians' constitutional right to vote and election security. In recent elections, the State Board has used its authority to ensure the right to vote, including by absentee ballot.

3. But on September 4, 2026—amidst a national assault on mail voting, and on the same day that North Carolina began issuing absentee ballots to voters—the State Board dramatically upended the status quo. The Board's new Republican majority rushed to implement eleventh-hour absentee ballot restrictions that will inevitably disenfranchise scores of North Carolina voters. They did so without meaningful public notice and over the fierce objections of dissenting members.

4. The State Board's new policies will require counties to invalidate absentee ballots for innocuous, technical errors unrelated to individuals' eligibility to vote.

5. *First*, counties must now disqualify a ballot if the voter returns their absentee-ballot package with an unsealed *inner* envelope—even if the package is otherwise properly sealed. Since the state implemented its voter identification requirement in 2023, the State Board has required counties to provide absentee voters with both (a) an inner envelope for

the voter to enclose their ballot, with the absentee voter application printed on the outside ("inner application envelope"); and (b) an outer return envelope for the voter to enclose the application envelope, along with a copy of their photo identification. The State Board previously directed counties to accept absentee ballots if the outer return envelope arrived sealed—even if the inner application envelope was unsealed. This commonsense approach prevented disenfranchisement based on immaterial mistakes.

6. But under the State Board's new policies, if a voter returns their ballot in an unsealed inner application envelope, or does not place their ballot within the inner application envelope at all (a so-called "naked ballot"), county boards must discard the ballot as defective—even if the outer return envelope is sealed and contains a completed inner application envelope, a marked ballot, and required identification documentation. The voter has no opportunity to cure the ballot to save it from rejection, even though the State Board's policies allow voters to cure other materially indistinguishable issues. The State Board offered no sufficient explanation or justification for this unprecedented policy.

7. *Second*, the new policies impose a signature-verification requirement that was previously prohibited. In imposing the new requirement, the State Board defined neither clear standards nor any instructions to guide county boards' discretion in how to verify signatures. Nor does it instruct a county how to respond if it determines it cannot verify a signature. This state-sanctioned free-for-all will inevitably subject ballots to varying scrutiny between and within counties—resulting in unequal treatment of voters and arbitrary disenfranchisement.

8. Worse, the State Board's new policies also eliminate its prior ban on signature *matching*—that is, the process of confirming a voter's identity by comparing the signature on their inner application envelope with other signatures available from the same voter. Signature matching is notoriously fraught with error, even when there are articulable standards governing the process—which are entirely absent here.

9. The signature-verification requirement serves no legitimate purpose. As the State Board once made clear, an absentee voter's identity is confirmed through *both* a photo-identification requirement and a requirement that the voter complete their ballot in the presence of two witnesses (along with a host of other security measures).

10. Even so, in recent elections, some county officials have attempted to conduct signature matching as a redundant identity check—but the State Board's prohibition on the practice stood in their way. That path has now been cleared, enabling counties to implement new signature-matching regimes without any training or governing standards.

11. The State Board's late-breaking policies threaten to disenfranchise North Carolinians for immaterial mistakes with envelope sealing and based on the arbitrary decisions of untrained election officials reviewing their signatures. If a voter's absentee ballot is tossed out under the new policies, their vote will be counted only if they cast a replacement ballot. A voter's ability to cast a replacement ballot will depend on many factors beyond their control, including the time it takes the county board to notify the voter of the purported deficiency and the speed of the mail. In many circumstances, voters will not receive replacement ballots in time to return them; others will not receive notice in time

to make arrangements to vote in person (if they are even capable of doing so). After all, many people who vote by mail do so because their circumstances make it difficult or impossible to vote in person. And voters whose absentee ballots are invalidated after polls close on Election Day have no recourse at all—they are disenfranchised.

12. As the Fourth Circuit recently affirmed, "once the state makes absentee-by-mail voting available, it may not allocate access to it in a manner forbidden by the Constitution." *Grant v. Belangia*, No. 25-1413, 2026 WL 2409681, at *11 (4th Cir. Aug. 18, 2026). Yet the State Board's new policies do precisely that. They deny North Carolina's absentee voters constitutional due process by invaliding their ballots without a meaningful opportunity to cure purported deficiencies. They deny voters equal protection of the laws by allowing local election officials to exercise arbitrary, standardless discretion to invalidate lawfully cast ballots. And they unconstitutionally burden North Carolinians' right to vote through disparate treatment of similarly situated voters. In the face of each of these severe harms, the State Board provides no legitimate justification for its new requirements.

13. Moreover, by requiring county boards to reject otherwise-valid absentee ballot applications, and the votes contained therein, for immaterial errors, the State Board's directive deprives North Carolinians of the rights secured to them by the Materiality Provision of the Civil Rights Act.

14. To ensure that North Carolina voters, including the individual Plaintiffs and Plaintiff organizations' members, will not be unconstitutionally denied the right to vote or

have that right unduly burdened, Plaintiffs ask this Court to enjoin the State Board's policies in the upcoming election and all future elections.

PARTIES

15. Plaintiff North Carolina Alliance for Retired Americans (the "Alliance") is a 501(c)(4) nonprofit, social-welfare organization incorporated in North Carolina. The Alliance has approximately 52,000 members across North Carolina and is a chartered state affiliate of the Alliance for Retired Americans, a grassroots organization with more than 4.4 million members nationwide. The Alliance's mission is to ensure social and economic justice and full civil rights for retirees after a lifetime of work. A core aspect of this mission is ensuring that their members are able to vote and have their votes counted. The Alliance advances this mission through a broad range of initiatives, including tabling, canvassing, and communications focused on voter education. The Alliance's members are primarily older, retired Americans, many of whom experience challenges associated with advanced age, including disability, trouble with mobility, vision, and difficulty reading or writing. As a result, many Alliance members rely on absentee voting to avoid the difficulties of voting in person, such as travelling to a polling place or waiting in line. Many Alliance members, such as Alexander P. McCoy, intend to vote in the November 2026 general election by casting an absentee ballot.

16. Plaintiff North Carolina Asian Americans Together ("NCAAT") is a nonpartisan, 501(c)(3) nonprofit organization that serves and mobilizes its members and constituents in Southeast, South, and East Asian communities across the state of North

Carolina. NCAAT has over 6,000 members across the state. NCAAT's mission is to work toward equity and justice for all by fostering community among Asian Americans and allies in North Carolina through civic engagement, leadership development, grassroots mobilization, and political participation. NCAAT effectuates its mission in part by helping as many of its members and constituencies as possible to vote and have those votes counted. To that end, NCAAT provides numerous voter-education programs and services, including hosting voter-registration drives, organizing get-out-the-vote canvassing, operating an election-protection hotline, and educating voters on how to vote, including how to vote by absentee ballot. NCAAT's members and the broader Asian American communities that NCAAT serves rely heavily on absentee ballots to vote. Many of NCAAT's members, such as Renu Shah, intend to vote absentee in the November 2026 election.

17. Plaintiff Down Home North Carolina ("Down Home") is a 501(c)(4) nonprofit social welfare organization that was formed in 2020 to build power with rural, working people in North Carolina's small towns and rural communities to ensure that they can live with dignity, security, and inclusion. Down Home has hundreds of members statewide and across its 13 local chapters, including in Alamance, Cabarrus, and Johnston Counties. An integral part of Down Home's mission is to protect democracy and ensure that working-class people in North Carolina can access the franchise and have their votes counted. Down Home's members and constituents are particularly reliant on absentee voting, as they include rural voters who do not reside near polling places, as well as low-income voters with limited access to transportation and relatively less flexible work

schedules, which can make voting in person more difficult. Many of Down Home's members intend to vote absentee in the November 2026 election. Therefore, to further its mission, Down Home implements several programs focused on ensuring its members and constituents are able to vote by absentee ballot, including by hosting phone banks to contact voters whose absentee ballots require additional documentation to be counted and to help them collect and submit that documentation.

18. Plaintiff Vaeme Afokpa is a registered voter in Durham County, North Carolina. Ms. Afokpa is the External Engagement Lead in the Secretary General's Office of the International Chamber of Commerce. She is also the President of World Faith, Inc., a 501(c)(3) nonprofit committed to ending religious violence worldwide. Due to the frequent domestic and international travel her work demands, as well as childcare responsibilities, Ms. Afokpa planned to vote absentee by mail in the November 2026 election until the State Board issued its new policies. Due to the State Board's new policies, Ms. Afokpa now fears that her absentee ballot may be invalidated by her county board of elections based on immaterial errors or arbitrary judgments. She will instead attempt to vote in person but, because of frequent work-related travel and childcare responsibilities, she is not sure that she will be able to do so.

19. Plaintiff Raquel Nelson is a registered voter in Guilford County, North Carolina. Ms. Nelson is 19 years old and an enrolled student at University of North Carolina–Greensboro ("UNC-G"), where she resides in on-campus housing. The Guilford County Board of Elections, which has historically operated an on-campus early voting site

at UNC-G, will not operate an early voting site at UNC-G for the November 2026 election. Ms. Nelson does not have a personal vehicle and, as an out-of-state student from Washington state, does not have family who reside in North Carolina that can provide her with transportation to vote early in person. Ms. Nelson is unable to vote in person on Election Day due to her academic class schedule and professional responsibilities. Ms. Nelson therefore intends to vote by absentee ballot in the November 2026 election. Due to the State Board's revised policies, Ms. Nelson fears that her absentee ballot may be invalidated by her county board of elections based on immaterial errors or arbitrary judgments.

20. Defendant the North Carolina State Board of Elections is the state agency with "general supervision over the primaries and elections in the State." N.C. Gen. Stat. § 163-22(a). The State Board has statutory authority to make "rules and regulations with respect to the conduct of primaries and elections," *id.*, and to provide "instruction to the county boards of elections" concerning absentee ballots, *id.* § 163-230.1(g). The State Board adopted revisions to Numbered Memo 2021-03 on September 4, 2026, by a majority vote.

21. Defendant Sam Hayes is the Executive Director of the State Board. Mr. Hayes is North Carolina's "Chief State Election Official," N.C. Gen. Stat. § 163-82.2, and is "responsible for staffing, administration, and execution of the State Board's decisions and orders," *Id.* § 163-27(c). The revised Numbered Memo 2021-03 was issued by Defendant Hayes. He is sued in his official capacity.

22. Defendant Francis X. De Luca is the State Board's chair. He is sued in his official capacity.

23. Defendant Stacy "Four" Eggers IV is the State Board's secretary. He is sued in his official capacity.

24. Defendant Jeff Carmon is a member of the State Board. He is sued in his official capacity.

25. Defendant Angela Hawkins is a member of the State Board. She is sued in her official capacity.

26. Defendant Siobhan O'Duffy Millen is a member of the State Board. She is sued in her official capacity.

27. Defendant the Durham County Board of Elections oversees election administration in the county of Durham. *See* N.C. Gen. Stat. §§ 163-166.1, 163-182.17(c), 163-33. It is the duty of the Durham County Board of Elections to "[c]ount absentee" ballots "required to be initially counted by the county board of elections" in Durham County. *See id.* § 163-182.17(c)(1). It is also the responsibility of the Durham County Board of Elections to complete a canvass of the votes cast in Durham County and prepare an abstract authenticating the election results to transmit to the State Board. *Id.* § 163–182.5(b). The Durham County Board of Elections is governed by the rules and procedures set by the State Board in counting ballots. *See id.* § 163-182.2(b).

28. Defendant David K. Boone is the Durham County Board of Elections' chair. He is sued in his official capacity.

29. Defendant Pamela A. Oxendine is the Durham County Board of Elections' secretary. She is sued in her official capacity.

30. Defendant James P. Weaver is a member of the Durham County Board of Elections. He is sued in his official capacity.

31. Defendant Dawn Y. Baxton is a member of the Durham County Board of Elections. She is sued in her official capacity.

32. Defendant Natalie F. Beauchaine is a member of the Durham County Board of Elections. She is sued in her official capacity.

33. Defendant the Guilford County Board of Elections oversees election administration in the county of Guilford. *See* N.C. Gen. Stat. §§ 163-166.1, 163-182.17(c), 163-33. It is the duty of the Guilford County Board of Elections to "[c]ount absentee" ballots "required to be initially counted by the county board of elections" in Guilford County. *See id*. § 163-182.17(c)(1). It is also the responsibility of the Guilford County Board of Elections to complete a canvass of the votes cast in Guilford County and prepare an abstract authenticating the election results to transmit to the State Board. *Id.* § 163–182.5(b). The Guilford County Board of Elections is governed by the rules and procedures set by the State Board in counting ballots. *See id*. § 163-182.2(b).

34. Defendant Eugene Lester III is the Guilford County Board of Elections' chair. He is sued in his official capacity.

35. Defendant Carolyn Bunker is a member of the Guilford County Board of Elections. She is sued in her official capacity.

36. Defendant Felita Donnell is a member of the Guilford County Board of Elections. She is sued in her official capacity.

37. Defendant Kathryn Skeen Lindley is a member of the Guilford County Board of Elections. She is sued in her official capacity.

38. Defendant Peter Francis O'Connell is a member of the Guilford County Board of Elections. He is sued in his official capacity.

JURISDICTION AND VENUE

39. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of law of rights secured by the U.S. Constitution, specifically by the First and Fourteenth Amendments, and of rights secured by the Civil Rights Act of 1964, 52 U.S.C. § 10101.

40. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 because the matter in controversy arises under federal law and the Constitution of the United States.

41. This Court has personal jurisdiction over Defendants. The North Carolina State Board of Elections is a state agency located in Raleigh, North Carolina. The Durham County Board of Elections is a local government agency located in Durham, North Carolina. The Guilford County Board of Elections is a local government agency located in Greensboro, North Carolina. The individual Defendants are State Board members, Durham County Board of Elections members, and Guilford County Board of Elections members

sued in their official capacities only, all of whom work and reside in the state of North Carolina.

42. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendants the Durham County Board of Elections, David K. Boone, Pamela A. Oxendine, James P. Weaver, Dawn Y. Baxton, and Natalie F. Beauchaine reside in Durham County, North Carolina and Defendants the Guilford County Board of Elections, Eugene Lester III, Carolyn Bunker, Felita Donnell, Kathryn Skeen Lindley, and Peter Francis O'Connell reside in Guilford County, North Carolina.

43. This Court has the authority to enter declaratory and injunctive relief under Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

STATEMENT OF FACTS AND LAW

I. Absentee voting in North Carolina is safe and secure.

44. All registered North Carolina voters are eligible to request and cast absentee ballots. N.C. Gen. Stat. § 163-226; N.C. H.B. 977, Gen. Assemb., 2001-2002 Sess. (N.C. 2001). Absentee voting allows North Carolinians to exercise their fundamental right to vote, and it is especially important for North Carolinians who face obstacles to voting in person, including disability, illness, and economic barriers. North Carolina law includes many safeguards to ensure that absentee voting is accurate and secure.

45. Over the past two general elections, hundreds of thousands of North Carolina voters have relied on absentee voting to cast their ballots. During the midterm elections in

November 2022, over 187,000 North Carolina voters cast absentee ballots.[1] Those numbers grew substantially in the November 2024 election, where North Carolinians cast more than 298,000 absentee ballots.[2]

A. Statutory background

46. Before a voter may receive and vote an absentee ballot in North Carolina, they must submit an absentee ballot request form to their county board of elections. N.C. Gen. Stat. §§ 163-230.1(a), 163-230.2. The request form requires the voter to provide their name, address, driver's license or partial social security number, and date of birth. *Id.* § 163-230.2(a). "Upon receiving a completed request form for absentee ballots, the county board shall confirm that voter's registration," and then, simultaneously, send the voter a package containing an absentee ballot application, as well as the ballot itself. *Id.* §§ 163-230.1, 163-230.2(d).

47. To vote their absentee ballot, a voter must (1) mark their ballot, (2) fold it, "(3) [p]lace the folded ballot[] in the container-return envelope and securely seal it," (4) complete the absentee ballot application and certificate that is "printed on the container-return envelope," (5) and have the application either notarized or signed by two witnesses who certify that "the voter is the registered voter submitting the marked ballot[]." *See id.* §§ 163-231(a), 163-230.1(d).

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[1] *See Absentee and Provisional Data*, NCSBE.gov (last visited Sep. 21, 2026), https://perma.cc/P5F6-TA5H.

[2] *Id.*

48. Before 2023, absentee ballots in North Carolina were returned inside a single "container-return envelope," the outside of which contained the absentee ballot application and had space for the required witness signatures and certifications. *See id.* §§ 163-229(b); 163-230.1.

49. In 2023, North Carolina implemented a voter-identification requirement, which, as relevant here, requires an absentee voter to provide a copy of their photo identification with their absentee ballot or a form demonstrating the voter qualifies for an exception to the requirement. N.C. Gen. Stat. §§ 163-230.1(f1), 163-166.16(d). Accordingly, absentee voters must "attach additional documentation necessary to comply with the identification requirements" when returning their absentee ballot. *Id.* § 163-229(b)(8).

50. To implement this requirement, the State Board now requires county boards to provide voters two envelopes with their absentee-ballot package: an inner application envelope, along with an outer return envelope, so voters can enclose a copy of their identification with the inner application envelope without compromising their privacy. *See* Revised Numbered Memo, Ex. A at 1–2; *see also* N.C. Gen. Stat. § 163-82.10(a1).

51. Completed absentee ballots can be returned by mail or in person. N.C. Gen. Stat. § 163-231(b)(1). North Carolina law requires all absentee ballots to be returned to voters' respective county boards of elections no later than 7:30 P.M. on Election Day. *Id.* § 163-231(b)(1)(b).

52. After an absentee ballot is returned, the county board's election staff conduct an initial review to identify any deficiencies. *See id.* § 163-230.1(e); Revised Numbered Memo, Ex. A at 1.

53. North Carolina law identifies a non-exhaustive list of "curable deficiencies"—that is, "deficiencies that can be cured with supplemental documentation or attestation provided by the voter." N.C. Gen. Stat. § 163-230.1(e1). Curable deficiencies include, for example, failure to sign the voter certification or failure to include required photo identification. *See id.* For these issues, the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." *Id.* Voters have until noon on the fifth business day following Election Day to provide cure documentation to the county board. *Id.* The only *non-curable* deficiency North Carolina law identifies is the failure to "identif[y] the two persons witnessing the casting of the absentee ballot." *Id.*

B. Regulatory background

54. The General Assembly has delegated significant authority to the State Board to implement the election code. *See* N.C. Gen. Stat. § 163-22(a) ("The State Board shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.").

55. The State Board principally acts through one of two regulatory approaches: formal rulemaking proceedings, *see id.*, and directives to county boards, *see id.* § 163-22(c) ("The State Board shall advise the county boards of elections as to the proper methods of conducting primaries and elections.").

56. North Carolina law mandates lengthy procedures that state agencies, like the State Board, must follow to promulgate formal rules—including public notice and comment, as well as review and approval by the state's Rules Review Commission. *See id.* § 150B-21.2(a), (g). If the Rules Review Commission receives ten or more written objections, the rule is subject to a period of legislative approval or disapproval. *See id.* § 150B-21.3(b2).

57. The State Board's directives to county boards, on the other hand, typically take the form of "Numbered Memos," from the State Board's Executive Director to county boards of elections regarding election administration. The Numbered Memos are not required to undergo public notice or comment and are not reviewed by the state's Rules Review Commission or the General Assembly. Rather, they are adopted through a majority vote of the State Board and are then typically implemented immediately.

58. As relevant here, the State Board has used Numbered Memos to designate certain "ballot application deficiencies" as "curable" and others as "requir[ing] the ballot to be spoiled," that is, invalidated. *See* Prior Numbered Memo, Ex. B at 5–6, 9.

II. The State Board raced to impose new restrictions on absentee voting on the same day that absentee ballots were mailed out for the 2026 general election.

59. The State Board disrupted North Carolina's regime for processing absentee ballots just as voting began for the 2026 general election, adopting sweeping new policies through a rushed process.

60. For months, the State Board had attempted to erect barriers to absentee voting ahead of the 2026 general election. First, it pursued formal rulemaking, proposing a slate of new rules restricting absentee voting in April 2026. The State Board adopted those rules in July 2026.[3]

61. The State Board's rules passed the Rules Review Commission in August 2026.[4] But the Commission received enough objections to delay their enactment to subject them to legislative review under North Carolina law. *See* N.C. Gen. Stat. § 150B-21.3(b2). The rules will thus not take effect until at least 2027. *See id.* § 150B-21.3(b1).[5]

62. Having failed to push through their rulemaking in time for the November 2026 election, the State Board switched gears. On September 1, 2026, the State Board's

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[3] Notice of Meeting at 1, N.C. State Bd. of Elections Mtg. (Apr. 16, 2026), https://perma.cc/MM2H-T2EM; *see* N.C. State Bd. of Elections Mtg. (July 20, 2026), https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2026-07-20/State%20Board%20of%20Elections%20Meeting%20July%2020%2C%202026.mp4

[4] Rules Rev. Comm'n Mtg. Agenda (Aug. 27, 2026), available at https://www.oah.nc.gov/news/events/rrc-meeting-agenda-august-2026.

[5] *See also* N.C. State Bd. of Elections, Bd. Mtg. Documents (July 20, 2026), available at https://dl.ncsbe.gov/?prefix=State_Board_Meeting_Docs/2026-07-20/Absentee%20Voting%20Rules/.

Executive Director Sam Hayes shared with the State Board members—but not with the public—proposed revisions to Numbered Memo 2021-03 and another Numbered Memo, not relevant here.[6] The revised Numbered Memo 2021-03 imposed new rules governing county boards' processing of absentee ballots, including new reasons ballots must be invalidated. Specifically, it introduced new, non-curable deficiencies based on (1) trivial issues with the inner application envelope, and (2) an election official's discretionary judgment about the authenticity of a voter's signature on the absentee ballot application. *See infra* Section III.

63. When the State Board met on September 4 to discuss the proposed changes, Democratic members raised alarm about the negative impact the changes would have on voters, particularly because of the State Board's haste in adopting the new procedures at such a late date, while the first absentee ballots were being sent out.

64. Defendant State Board Member O'Duffy Millen emphasized that the revised Numbered Memo would "affect[] whether your ballot counts."[7] She warned that by adding new reasons to invalidate ballots, rather than counting the ballots or offering an opportunity for cure, the State Board was "making hurdles for the voter that are unnecessary" and not

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[6] *See* N.C. State Bd. of Elections Mtg. (Sep. 2, 2026), at 4:34–40, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2026-09-02/State%20Board%20of%20Elections%20Meeting%20September%202%2C%202026.mp4.

[7] N.C. State Bd. of Elections Mtg. (Sep. 4, 2026), at 20:03–09, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2026-09-02/Continuation%20of%20Meeting%2C%20held%20Sep.%204%2C%202026.mp4.

"required by statute."[8] She emphasized that voters "care not just whether they sent a ballot in, but whether it ended up counting."[9]

65. Defendant State Board Member Carmon expressed concern that specific groups of voters would be disproportionately harmed by the proposed changes—voters "who do not have access to internet," "who are working with the elderly," and who "are overwhelmed by all of these processes we're putting in place."[10]

66. Defendants Carmon and O'Duffy Millen both questioned why the State Board was issuing revised policies just as the 2026 general election was beginning.[11] Defendant Carmon stressed that similar changes to the absentee ballot procedures were already proceeding through the formal rulemaking process but were not yet final.[12] He expressed "shock[]" that the State Board was reversing course on its previous decision to undertake formal rulemaking and instead forcing the changes through a Numbered Memo.[13]

67. Defendant O'Duffy Millen also questioned why the public was not afforded adequate time to review and provide input on the new rules. She noted that the revised

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[8] *Id.* at 22:09–18.

[9] *Id.* at 20:17–20.

[10] *Id.* at 34:12–42.

[11] *See, e.g.*, *id.* at 6:16–39.

[12] *Id.* at 6:16–33, 8:17–40.

[13] *Id.*

Numbered Memo had been made available to the public at 7:09 A.M. on the morning of September 4, just shy of two hours before the State Board's meeting began, leaving almost no time for review or input.[14] The State Board likewise gave no indication that it consulted any county board of elections or local election official on the impact the changes would have on voters or on the county boards themselves.

68. Ignoring these concerns, the Republican majority of the State Board approved the revised Numbered Memo 2021-03 on September 4, 2026, the same day that North Carolina law required county boards of elections to begin sending out absentee ballots for the November 2026 general election.[15]

III. The State Board's new policies will disenfranchise voters based on immaterial issues and arbitrary decisions by local elections officials.

69. Revised Numbered Memo 2021-03 introduces two major changes to North Carolina's processing of absentee ballots (collectively, the "challenged provisions"), both of which will inevitably disenfranchise voters.

70. *First*, county boards must invalidate an absentee ballot if the voter returns the ballot in an unsealed inner application envelope or does not place the ballot within the inner application envelope, even if the outer return envelope is sealed (the "Sealing Requirement"). The revised Numbered Memo designates either circumstance a *non-*

[14] *Id.* at 8:33–48.

[15] *Id.* at 26:50–27:04.

curable defect. If the inner application envelope appears to have been opened and resealed, counties must record the issue as a curable defect and offer the voter an opportunity to cure.

71. *Second*, under the revised Numbered Memo, county officials are required to affirmatively verify that the signature on an absentee ballot application belongs to the voter. But the State Board provided no standards for how counties should go about doing so. The revised Numbered Memo thus authorizes counties to invalidate ballots if, in a reviewer's untrained opinion, a voter's signature on the inner application envelope does not match the voter's name (the "Signature Verification Requirement").

72. By creating new reasons to invalidate ballots, these eleventh-hour policies stand to disenfranchise eligible North Carolina voters.

A. Sealing Requirement

73. The Sealing Requirement requires county election officials to discard absentee ballots if (1) the inner application envelope is unsealed or (2) the ballot is not inside the inner application envelope—even though the outer return envelope is sealed. *See* Revised Numbered Memo, Ex. A at 14.

74. Separately, if a county board receives a *sealed* outer return envelope, but the inner application envelope "appears to have been opened and re-sealed," the voter may cure the ballot "with an attestation from the voter about how they sealed the [inner application envelope]." *Id.* at 13. The State Board did not explain why this particular circumstance is a "curable" deficiency, while the other envelope anomalies require

invalidating ballots—and there is no sensible reason why these categories should be treated differently.

75. Under the State Board's prior policy, absentee ballots were counted so long as the ballot was returned in a sealed outer return envelope; sealing anomalies with the inner application envelope rarely required disqualification. *See* Prior Numbered Memo, Ex. B at 3–4. So long as the outer return envelope arrived sealed, the ballot was counted without any further action from the voter even if the inner application envelope was unsealed, the inner application envelope appeared to have been opened and re-sealed, or the ballot was not inside the inner application envelope at all. *Id.* at 3–4. Ballots were invalidated only if both the inner application *and* outer return envelopes were unsealed and/or "appear[ed] to have been opened and re-sealed." *Id.* at 3.

76. This common-sense approach avoided needlessly disenfranchising voters for issues that had nothing to do with a voter's qualifications or eligibility to vote and that did not suggest any issue with the ballot other than simple user error.

77. The Sealing Requirement will inevitably require county boards to throw out otherwise valid absentee ballots, which will likely require invalidating the ballots of *thousands* of qualified North Carolinian voters. The most damaging impacts will fall on voters whose ballots are found deficient by county boards near, on, or after Election Day, because those voters may not be able to cast replacement ballots by Election Day. *See infra* ¶¶ 107-11.

78. Because county boards have never been required to discard ballots with sealed outer return envelopes before, election officials have not been required to track the frequency of the now-disqualifying errors related to application envelopes. And the State Board appears to have made no formal effort whatsoever to determine how widespread the issue would be before issuing the new Sealing Requirement.

79. Defendant State Board Member O'Duffy Millen warned of the significant and damaging consequences for voters. At the State Board's September 4 meeting, she explained that some county officials estimate the Sealing Requirements could require discarding approximately 3% of all absentee ballots received, which would be *thousands* of votes.[16] For example, 3% of the nearly 300,000 absentee ballots North Carolinians cast in the 2024 election is *9,000* votes.

80. Other states' experiences confirm the Sealing Requirement will have a significant impact on voters. The few states that have instituted similar requirements—such as Pennsylvania and Massachusetts, among others—have disqualified *thousands* of ballots for lacking a sealed inner envelope in recent elections. There is no reason whatsoever to believe that these ballots were cast by anyone other than lawful voters who made a simple mistake.

[16] N.C. State Bd. of Elections Mtg. (Sep. 4, 2026), at 20:57–21:06, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2026-09-02/Continuation%20of%20Meeting%2C%20held%20Sep.%204%2C%202026.mp4.

81. The State Board has offered almost no explanation—much less any legitimate state interest—for taking this extraordinary eleventh-hour action to implement new rules that are sure to disenfranchise voters. There is no legitimate justification for disqualifying an absentee ballot simply because the inner application envelope arrives unsealed—as long as the *outer* return envelope is properly sealed, whether the *inner* application envelope is sealed or unsealed has no impact on a county's ability to assess an elector's qualifications to vote.

82. Additionally, even if the State Board could properly treat an unsealed inner application envelope as a defect, it certainly lacks any defensible interest in treating it as a *non-curable* defect that necessitates discarding the ballot, instead of as a curable defect—as it is authorized to do under North Carolina law. *See* N.C. Stat. § 163-230.1(e1). Indeed, the State Board has recognized that similar errors "can be cured with supplemental documentation or attestation provided by the voter" by allowing precisely that remedy for absentee ballots that arrive with an inner application envelope that appears to have been unsealed and resealed. *See* Revised Numbered Memo, Ex. A at 2. There is no legitimate reason to treat these two categories of ballots differently, and the State Board has provided none.

83. The only explanation the State Board offered was its view that the Sealing Requirement was meant to bring the State Board's policy in line with statutory

requirements.[17] But that justification is pretextual—the Sealing Requirement contradicts the governing statutes and is inconsistent with the State Board's own recent interpretation of those same statutes.

84. Just seven months ago, in February 2026, the State Board considered a challenge to the prior version of Numbered Memo 2021-03. After analyzing its statutory authority, the State Board acknowledged that the relevant statutes "envision the voter sending back their ballot in only one envelope." *In re: Request for Declaratory Ruling on Absentee Ballot Errors* at 6, N.C. State Bd. of Elections (Feb. 2, 2026), Ex. C. It concluded that North Carolina law does not require discarding a ballot placed in a sealed outer return envelope but an unsealed inner application envelope. *See id.* Rather, "the issue should be documented and an attempt to contact the voter should be made so the county board can make an informed decision on how next to proceed." *Id.* at 7.

85. In an about-face, the Sealing Requirement treats both an unsealed inner application envelope and an inner application envelope not enclosing the ballot as a uniformly *non-curable* defect. The State Board has not explained its newfound view, and it identifies no provision of North Carolina law that requires discarding such ballots or prohibits allowing the voter to submit cure documentation.

[17] *See* N.C. State Bd. of Elections Mtg. (Sept. 4, 2026), at 23:58–24:01 (statement by Defendant Hawkins), https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2026-09-02/Continuation%20of%20Meeting%2C%20held%20Sep.%204%2C%202026.mp4.

86. The State Board offered no further justification or state interest supporting the Sealing Requirement—for example, there was no suggestion that its prior policies undermined election administration, efficiency, or security. Nor has the State Board explained why it waited to implement these new procedures until voting was set to begin.

87. It is not surprising that the State Board has failed to identify any genuine state interest in the Sealing Requirement—the new policy is inconsistent with most other states' approaches nationwide. Generally, imperfect compliance with absentee-ballot-envelope rules does not result in automatic disqualification. *See, e.g.*, Tex. Elec. Code § 86.005(c) ("Failure to use the official ballot envelope does not affect the validity of the ballot."); Va. Code § 24.2-7099(A) (ballot is not void where inner envelope is "imperfectly sealed" so long as outer envelope is sealed); Minn. Stat. Ann. § 203B.121(2)(c)(1) ("[f]ailure to place the ballot within the ballot envelope . . . is not a reason to reject an absentee ballot"); Ark. Code § 7-5-416(b)(1)(i) ("[f]ailure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter"); Mont. Code § 13-13-241(2) (election administrator "shall place the ballot in a secrecy envelope" where voter did not); *see also* N.J. Stat. Ann. § 19:63-17(a) (mandatory cure for missing or unsealed inner envelope).

B. Signature Verification Requirement

88. On the very same day that counties began sending absentee ballots out, the State Board also imposed a new signature-verification regime that the prior Numbered Memo 2021-03 had expressly disavowed. In doing so, the State Board failed to provide

reasonable standards to guide county boards' discretion in executing this requirement, inviting arbitrary implementation from county to county and even from reviewer to reviewer. Compounding the risk of inconsistent treatment of voters statewide, the State Board also struck its longstanding prohibition on signature *matching*, clearing the path for county boards to use a demonstrably unreliable method that risks erroneous disenfranchisement.

89. The prior Numbered Memo 2021-03 clearly stated there was "No Signature Verification" requirement to count an absentee ballot, including because "[v]erification of the voter's identity is completed through the witness requirement," Prior Numbered Memo, Ex. B at 2, as well as a host of other security measures. Accordingly, the prior Numbered Memo 2021-03 likewise prohibited any type of signature matching, stating that, "[t]he voter's signature on the [application] envelope *shall not* be compared with the voter's signature in their registration record, on their request form, or on their photocopy of photo ID or Photo ID Exception Form." Prior Numbered Memo, Ex. B at 2.

90. The State Board previously offered a clear, reasonable explanation for this policy, recognizing that signature-verification practices are often unreliable, error prone, and subject to legal challenges. Indeed, the State Board explained that, without a "uniform and nondiscriminatory system" for implementing signature verification, it likely would not be able to "avoid obvious equal protection and due process complaints." *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot*

Envelopes, N.C. State Bd. of Elections (July 22, 2022), Ex. D at 5 (citing *Bush v. Gore*, 531 U.S. 98, 106 (2000)).

91. The new Signature Verification Requirement unravels these common-sense protections for voters. Revised Numbered Memo 2021-03 removes the provision stating there shall be "No Signature Verification," replacing it with a mandate that "[i]f there is a signature for the voter, then county boards *must review the signature* on the application [envelope] to ensure that the signature on the application [envelope] is the name of the voter assigned the application number on the [application] envelope." Revised Numbered Memo, Ex. A at 3 (emphasis added). It further specifies that staff will "*compare* the signature to the voter's name on the application to confirm whether the signature is the voter's signature." *Id.* at 8 (emphasis added).

92. The only articulable standard the State Board provides is the directive that counties "shall presume that the voter's signature is that of the voter, even if the signature is illegible," "[a]bsent clear evidence to the contrary." But the State Board offers no guidance whatsoever as to what might constitute "clear evidence" that the signature does not belong to the voter or how an election official should go about confirming whether the signature matches the voter's name. Nor does it provide guidance or any limits on the sort of "evidence" county boards may consider. The new policy suggests that legible signatures that do not perfectly match the voter's name—if the voter signs with initials or a nickname, for example—could now be disqualifying.

93. The State Board's silence on clear standards speaks volumes in another way: In addition to *adding* an affirmative signature-verification requirement, the State Board simultaneously *eliminated* its longstanding prohibition on signature *matching*. The State Board offered no explanation for this move, which conspicuously comes on the heels of the State Board implementing a pilot program at the General Assembly's direction to test signature-matching software in select counties during the May 2024 primary election. The revised Numbered Memo leapfrogs that process of legislative deliberation by opening the floodgates to arbitrary and standardless signature matching.

94. There is every reason to expect that at least some of North Carolina's 100 counties will decide to verify an absentee voter's signature through some form of signature matching. In recent elections, some county board members have tried to throw out ballots due to a perceived signature mismatch *even though the State Board prohibited it*.[18]

95. Worse, the Numbered Memo does not clearly instruct county boards how to respond if they believe there is "clear evidence" that the signature on an absentee ballot does not belong to the voter—under whatever procedures the county board opts to deploy. The Numbered Memo states only that a voter's *failure* to sign their application is a "curable deficiency." Revised Numbered Memo, Ex. A at 3. But it does not then clarify whether a signature that the county board cannot verify "is the name of the voter assigned the

[18] *See* Cumberland County Board of Elections, Board Meeting November 4, 2025, 5:00 P.M., https://perma.cc/45RB-BBQA (indicating that a county board member "move[d] to not accept one ballot with exception form where signature d[id] not look similar on ballot affidavit and exception form," and multiple board members voted in favor).

application" on the envelope is similarly curable. *Id*. And it later provides that a county board's determination that the signature is "the name of a person other than the voter" is a *non-curable* deficiency. *Id.* at 8. It is thus not clear from the revised Numbered Memo alone whether county boards should treat an unverified signature as a curable or non-curable defect.

96. By launching a brand-new signature verification regime on the same day absentee voting began for the 2026 general election, without any clear instructions or training on how to implement the requirement, the State Board has effectively guaranteed arbitrary disenfranchisement of lawful North Carolina voters. As numerous courts have recognized, "the task of handwriting analysis by laypersons . . . is fraught with error." *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018); *see also Frederick v. Lawson*, 481 F. Supp. 3d 774, 796 (S.D. Ind. 2020) (explaining that signature verification creates "a real risk of erroneous rejection [of ballots], particularly given the natural variations in a person's handwriting . . . coupled with the absence of safeguards built into the review procedures, such as functional standards, training, or significant oversight."). And "without procedural safeguards," such analysis will inevitably lead to arbitrary disenfranchisement. *See Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018); *see Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1316 (11th Cir. 2019) (explaining that a "signature-match scheme [that] calls on officials who are not required to receive formal training" will be "nearly certain to incorrectly reject the ballots of some legitimate voters").

97. Handwriting analysis is particularly difficult because it is common for individuals' handwriting to change over time. Factors such as age, illness, injury, medication, eyesight issues, and psychological state of mind, as well as mechanical considerations, such as pen type, ink, writing surface and position, and paper quality can all affect a person's handwriting and cause an untrained layperson to misjudge a signature.

98. Voters who are elderly, disabled, suffer from poor health, are young, or are non-native English speakers are particularly likely to have greater signature variability.[19] These groups are thus disproportionately likely to have their ballots invalidated under the State Board's standardless Signature Verification Requirement.

99. Moreover, when election officials conduct signature *matching* specifically, the results can vary significantly based on which comparators are used. The State Board itself has acknowledged that the quality of reference signatures on file for voters varies "widely" depending on factors such as the age of the signature or whether the signature was made using a stylus or trackpad rather than ink on paper.[20]

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[19] Indeed, following the state's pilot signature verification program in 2024, Rowan County's elections director reported that the average age of a voter whose ballot was flagged for additional review was 67. Sarah Michels, *Ghost in the machine: 'Signature verification' program for NC voters has reliability issues, report says*, Carolina Public Press (Feb. 17, 2025), https://perma.cc/Z4PH-LUGN.

[20] NCSBE Supplemental Report on Signature Verification Pilot Program for 2024 Primary at 8 (Jan. 31, 2025), https://drive.google.com/file/d/1At5YVY0fsk9IBR08j8yYZa-q2dy32vD8/view?pli=1; *see also* Lynn Bonner, *Pilot program results raise questions about use of signature verification for absentee ballots*, NC Newsline (Feb. 20, 2025), https://perma.cc/PU8M-43K5.

100. There is no legitimate state interest in subjecting voters' signatures on absentee ballot envelopes to this added scrutiny and risking invalidation of lawfully cast ballots as a result. North Carolina law confirms the absentee voter's identity in several other ways: First, a voter can request an absentee ballot only if they provide personal identifying information including their birth date and either the last four digits of their Social Security number or their driver's license number. N.C. Gen. Stat. § 163-230.2(a). They receive an absentee ballot only if the county board confirms they are registered to vote in the county. *Id.* § 163-230.2(d). Then, the voter must attest to their identity and qualifications when completing the absentee ballot application, *see id.* § 163-229(b)(1)–(2), on a form that explains that fraudulently or falsely completing the declaration is a Class I felony, *see id.* § 163-22(o1). The voter must complete their absentee ballot in the presence of either two witnesses or a notary who must certify under threat of felony "that the voter is the registered voter submitting the marked ballot[]." *Id.* § 163-231(a); *id.* § 163-22(o1). And the voter must submit a copy of photo identification or an alternative affidavit prescribed by the state. *See id.* § 163-230.1(f1). If an individual other than the voter returns the absentee ballot, they must complete a delivery log and confirm that they are among the narrow set of individuals authorized to do so. *Id*. § 163-231(c) (as amended by 2026 N.C. Sess. Law 2026-60 § 1.4); 08 N.C. Admin. Code § 18.0102. As an added guardrail to these specific requirements, North Carolina broadly criminalizes fraud or forgery in connection with absentee voting. *See* N.C. Gen. Stat. § 163-237(d).

101. As recently as last year, the State Board agreed that signature verification was not necessary to confirm the identity of absentee voters. In a report explaining pitfalls of the signature matching "pilot program," *see supra* ¶ 93, the State Board urged the General Assembly to "bear in mind the numerous ways that county boards already confirm the identity of absentee voters."[21]

102. There is no conceivable state interest that would support the State Board's decision to *remove* the uniform principles from the prior Numbered Memo without implementing a principled alternative. The State Board did not identify any defect in its existing procedures, and the new Signature Verification Requirement creates a host of problems that risk disenfranchising voters based on untrained election officials attempting to conduct signature verification. And these new problems will bear differently on voters throughout the state, with one voter's ballot being subjected to different standards than their neighbors', depending on their county of residence and the caprices of their particular reviewer.

C. Voters will almost certainly suffer disenfranchisement because of the challenged provisions.

103. Because of the revised Numbered Memo 2021-03, county boards will "spoil," or *invalidate*, absentee ballots that do not comply with the State Board's new policies. While in theory voters may be able to vote a replacement ballot or vote in person

[21] NCSBE Supplemental Report on Signature Verification Pilot Program for 2024 Primary, *supra* note 20, at 13.

if this occurs, in practice, invalidation of their absentee ballots will almost certainly mean disenfranchisement for large swaths of voters caught up in the State Board's new rules.

104. The options available to a voter after their absentee ballot has been invalidated under the challenged provisions depend on a set of circumstances largely out of the voter's control, such as when the invalidation occurs; whether the county is able to reach the voter; whether a replacement ballot can reach the voter and be sent back to the county by the close of polls on Election Day; and whether the voter can manage to vote in person despite any obstacles that led them to vote absentee in the first place.

105. First, there is no guarantee that county boards will identify non-curable deficiencies immediately. The State Board directs county boards' election staff to review absentee ballots within one business day of receipt, *see* Revised Numbered Memo, Ex. A at 2, but an absentee ballot initially approved by county elections staff could be invalidated by the county board members themselves up to a week later. *See* N.C. Gen. Stat. § 163-230.1(f) (setting forth frequency of county board meetings in the weeks preceding an election).[22]

106. Second, the county may be unable to reach the impacted voter. County boards are directed to send notices to voters by mail, and by phone or email if possible. *See* Revised Numbered Memo, Ex. A at 5. But the county board may not have the latter forms of contact information available.

[22] *See also* N.C. State Bd. of Elections, Numbered Memo 2020-25 at 1 (updated Sep. 18, 2023), https://perma.cc/NV2E-DWDZ.

107. Third, even if the county sends the voter a replacement ballot, the voter may not have sufficient time to receive the ballot, complete it, and send it back to the county by the close of polls on Election Day. USPS recommends that voters mail out their absentee ballot at least 7 days before Election Day to ensure it is received on time to be counted.[23] This means that, using USPS's own estimate, the county board would need to identify a non-curable deficiency and mail a replacement ballot at least *two weeks* before Election Day for the voter to have time to receive, complete, and mail back the replacement ballot by Election Day.

108. By this metric, nearly *two-thirds* of North Carolina absentee voters in recent elections would not have been able to cast a replacement absentee ballot. Approximately 63% of absentee voters during the 2024 general election cast their ballots during the last two weeks before Election Day. Under USPS's own guidance, it simply would not have been possible for these more than 187,000 voters to receive, vote, and send back a replacement absentee ballot in time to be counted if their county board had invalidated their ballot.

109. Fourth, a voter might not be sent a replacement ballot at all. Under revised Numbered Memo 2021-03, if county staff identifies a non-curable deficiency between the Saturday before Election Day and the close of polls on Election Day, a replacement ballot

[23] U.S. Postal Service, *Election Mail*, https://perma.cc/Q2F5-E9L8 (last visited Sep. 21, 2026); *see also* NC Voter.org, *How to Vote Absentee by Mail*, https://perma.cc/DSH4-ZX88 (last visited Sep. 21, 2026).

will not be issued. Revised Numbered Memo, Ex. A at 11–12. Instead, staff must attempt to contact the voter the same day to notify them of the deficiency and to inform them that no replacement ballot will be issued. *Id.* at 11. For a voter in this position, the only way to avoid disenfranchisement is to vote in person—"*if there is still time to do so*." *Id.* at 12 (emphasis added). This process is markedly different than that for curable defects, which allows voters to submit cure paperwork *up to five days after Election Day*. *See id.* at 6; *see also* S.L. 2026-60 (H.B. 834) (revising N.C. Gen. Stat. § 163-230.01(e1)).

110. Many of the North Carolinians that have voted by absentee ballot in recent elections have done so because, for them, voting in person would be exceedingly difficult, if not impossible. As the Attorney General's office recently stated, the "hundreds of thousands of eligible citizens" who vote absentee in North Carolina "include elderly people, people with disabilities, people who are recovering from natural disasters like Hurricane Helene, and servicemembers who are stationed overseas."[24] Many North Carolinians—including students and servicemembers, for example—reside outside of their voting jurisdiction. In 2024, nearly 126,000 North Carolinians requested that an absentee ballot be sent to a mailing address different from their registration address. For these individuals, as well as those who lack transportation, or have restrictive work or school schedules, absentee voting is their only feasible option to access the franchise. For these

[24] Press Release, N.C. Dep't of Just., Attorney General Jeff Jackson Sues Over New Mail-In Ballot Rule That Could Prevent Eligible North Carolinians from Voting (Aug. 26, 2026), https://perma.cc/4964-9UJP.

voters, invalidation of an absentee ballot without the possibility of casting a replacement absentee ballot means outright disenfranchisement.

111. Fifth and finally, the State Board offers no remedy at all for voters whose absentee ballots are invalidated after polls close on Election Day. These voters are necessarily disenfranchised.

112. Thus, in many circumstances, a voter whose ballot is invalidated under the challenged provisions will be unable to cast an effective vote. That has proven true for the *majority* of North Carolinians whose absentee ballots have been disqualified in recent elections. In 2024, *less than 40%* of voters whose absentee ballots were rejected ultimately cast a vote that was counted. The prospect is particularly bleak for North Carolinians residing out of state on Election Day—less than 9% of such voters successfully cast a vote after an initial rejection in 2024.

IV. Defendants' enforcement of the challenged provisions will injure Plaintiffs, their members, and their constituents.

113. The challenged provisions severely harm Plaintiffs by burdening—and likely disenfranchising—North Carolinians, such as Vaeme Afokpa and Raquel Nelson (the "Voter Plaintiffs") and members of the Alliance, NCAAT, and Down Home (the "Organizational Plaintiffs"), who vote by absentee ballot. They also harm the Organizational Plaintiffs directly by frustrating their core missions to promote successful voter participation by their members and constituents and by forcing the organizations to divert resources to ameliorate the challenged provisions' effects.

114. Plaintiff Vaeme Afokpa would vote by absentee ballot in the 2026 general election but for the challenged provisions. Ms. Afokpa is particularly concerned that county board officials will fail to verify her signature and will therefore invalidate her ballot because of lack of familiarity with her name. She will instead attempt to vote in person but, because of frequent work-related travel and childcare responsibilities, she is not sure that she will be able to do so.

115. Plaintiff Raquel Nelson intends to vote absentee because she cannot vote in person on Election Day due to her university class schedule, she no longer has access to on-campus early voting, and she does not have a personal vehicle to reach other early voting locations. Under the challenged provisions, Ms. Nelson's ballot could be invalidated, either because of an envelope-related issue or because an election official wrongly determines that her signature does not appear to match her name. Indeed, young voters like Ms. Nelson are more likely to have signature variations that could cause their ballots to be erroneously invalidated. Because she cannot vote in person, if Ms. Nelson's ballot is invalidated under the challenged provisions, she would be forced to cast a replacement absentee ballot and risk it arriving too late to be counted, leaving her entirely disenfranchised.

116. Similarly, many of the Organizational Plaintiffs' members intend to vote by absentee ballot and will face the serious risk that their ballots will be tossed out as a result of the challenged provisions. Each of the Organizational Plaintiffs' members come from

groups that are uniquely vulnerable to disenfranchisement as a result of the challenged provisions.

117. For example, the Alliance's members disproportionately rely on absentee voting yet are at heightened risk for having their absentee ballots discarded due to an erroneous signature-verification determination. The Alliance's members are of advanced age, and many of them have disabilities, suffer from illnesses, and/or take medications—all characteristics that make them more likely to have significant signature variances that could cause their ballots to be erroneously invalidated.

118. Many of NCAAT's members are non-native English speakers, for whom language barriers make it difficult to navigate the State Board's complex rules related to preparing the absentee-ballot package, including the Sealing Requirement. In addition, studies have shown that non-native English speakers are more likely to exhibit wide ranges of variation in their signature styles, which can increase the likelihood that laypersons will incorrectly reject their signatures. Many of NCAAT's members also have non-English origin names, which studies have shown are more likely to be rejected during signature validation.

119. The challenged provisions separately harm the Organizational Plaintiffs by forcing each to divert resources from other mission-critical activities to ensure their absentee ballot-related programming accurately reflects the new policies and offsets the destructive effects of the challenged provisions on their missions to promote voter participation amongst their members and communities. *See, e.g.*, *Democracy N.C. v. De*

Luca, No. 1:23-CV-878, 2026 WL 836812, at *4 (M.D.N.C. Mar. 26, 2026) (finding voting rights organizations had standing where they were "forced to spend additional time and resources to achieve their mission to educate and register would-be voters"); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 183 (M.D.N.C. 2020); *N.C. State Conf. of NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 400 (M.D.N.C. 2017) (similar).

120. The Organizational Plaintiffs' core, mission-driven activities include ensuring their community members know how to properly vote absentee and are able to cast absentee ballots. The challenged provisions have harmed and will continue to harm these efforts for the November 2026 election and force the Organizational Plaintiffs to divert resources from other mission-critical activities to mitigate the harms that the challenged provisions threaten to inflict on them directly as organizations as well as on their members.

121. Each of the Organizational Plaintiffs will need to develop new voter-education programs and revise their communications, such as websites, social media, and direct outreach campaigns; to assist voters in casting effective ballots despite the challenged provisions' restrictions; and then help their members and constituents recast an absentee ballot or vote by other means if their ballot is thrown out under the challenged provisions. These efforts will divert the Organizational Plaintiffs' limited resources, including staff and volunteer time and funding, away from existing programs promoting voter registration and get-out-the-vote initiatives.

122. For example, prior to the State Board's adoption of the challenged provisions, NCAAT had already sent out a statewide mailer on absentee voting for the 2026 general election that includes now-outdated recommendations. The State Board's late-breaking actions have forced NCAAT to prepare a redesigned second mailer to distribute statewide to warn its members and constituents about the challenged provisions and direct them to contact NCAAT with questions. NCAAT will then need to divert resources to helping these voters navigate the new procedures. NCAAT will also need to forgo a planned text message get-out-the-vote campaign to focus efforts instead on programming to assist absentee voters to counteract the harmful effects of the challenged provisions. And Down Home, which typically operates a phone banking effort to help voters resolve issues with their submitted absentee ballots after Election Day, is reorienting its efforts for this election cycle to assist voters whose ballots have been discarded prior to Election Day due to the challenged provisions.

123. Plaintiffs are navigating these disruptions as voting for the 2026 general election is already underway. As the Supreme Court has repeatedly emphasized, a "bedrock tenet of election law" is that "[w]hen an election is close at hand, the rules of the road must be clear and settled." *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring in the grant of a stay pending appeal). This is because last-minute changes may "work[] a needlessly chaotic and disruptive effect upon the electoral process." *Benisek v. Lamone*, 585 U.S. 155, 161 (2018) (citation omitted). That is precisely the effect that the

challenged provisions are inflicting—they impose novel restrictions on voters in the midst of an active general election.

CAUSES OF ACTION

COUNT I
Violation of Materiality Provision of the Civil Rights Act of 1964 (Sealing Requirement) 52 U.S.C. § 10101(a)(2)(B), 42 U.S.C. § 1983

124. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

125. The Civil Rights Act of 1964 forbids denying the right of any individual to vote in any election "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2).

126. The right to "vote" protected by the statute is defined expansively to include:

> all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.

Id. §§ 10101(a)(3)(A), (e).

127. Defendants are "persons" acting "under color of law" under 52 U.S.C. § 10101(a)(2). *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690–91 (1978) (recognizing a Section 1983 claim against units of local government and local government officials sued in their official capacities); *Johnson v. Baltimore City*, 163 F.4th

808, 821 (4th Cir. 2026) (same); *United States v. Holmes County*, 385 F.2d 145, 148 (5th Cir. 1967) (holding that "person" bears same meaning in both 42 U.S.C. § 1983 and 52 U.S.C. § 10101 (formerly 42 U.S.C. § 1971)).

128. The Sealing Requirement requires North Carolina's elections officials to deny the "right . . . to vote" by refusing to count otherwise-legitimate ballots cast by qualified electors if the absentee ballot is not placed inside the inner application envelope or if the inner application envelope is unsealed. *See* 52 U.S.C. § 10101(a)(2)(B). By invalidating such ballots, Defendants are withholding "action necessary to make a vote effective including . . . action required by State law prerequisite to . . . having such ballot counted and included in the appropriate totals of votes cast." *Id.* § 10101(e).

129. This denial of the right to vote is based upon an "error or omission" on a "record or paper" relating to an "application" to vote absentee. *Id.* § 10101(a)(2)(B). The omission in question is the failure of an elector to seal the inner application envelope and/or to place the ballot inside the inner application envelope. The "record or paper" is the inner application envelope. And the "application" printed on that envelope requires the voter to attest to their eligibility to cast a ballot in the election, precisely the sort of document the Materiality Provision indisputably covers.

130. The Sealing Requirement requires election officials to discard a qualified voter's ballot, even where the ballot and inner application envelope are sealed inside the outer return envelope, solely because the inner application envelope is not sealed or the ballot is not placed within the completed inner application envelope. But whether the voter

seals the inner application envelope is completely irrelevant to any county board's or the State Board's determination that the voter is qualified to vote. This is precisely the type of immaterial paperwork "error or omission" that the Materiality Provision guards against.

131. Just two years ago, the State Board acknowledged that imposing such requirements would violate the Materiality Provision. *See* Defs.' Reply to Plaintiffs' Resp. to Mot. to Dismiss at 3–4, *Wasserberg v. N.C. State Bd. of Elec.*, No. 5:24-cv-00578-M, Dkt. No. 50 (Dec. 11, 2024). In the State Board's words, "[d]irecting county boards to spoil ballots and discard votes simply because those ballots failed to arrive inside of two sealed envelopes would have violated the materiality provision." Mem. of Law in Support of Defs.' Mot. to Dismiss at 18, *Wasserberg v. N.C. State Bd. of Elec.*, No. 5:24-cv-00578-M, Dkt. No. 22 (Oct. 16, 2024); *see also* Prior Numbered Memo, Ex. B at 3 n.11 (warning, in the context of envelope closure issues, of potential violations of the Materiality Provision).

132. The Sealing Requirement is immaterial to determining whether an elector is qualified to vote in North Carolina. Defendants' enforcement of the Sealing Requirement will result in the invalidation of otherwise valid absentee ballots for immaterial errors, thereby depriving North Carolinians of the rights secured to them by 52 U.S.C. § 10101(a)(2)(B).

COUNT II
Denial of Procedural Due Process
(Sealing Requirement and Signature Verification Requirement)
U.S. Const. amend. XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

133. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

134. The Due Process Clause of the Fourteenth Amendment prohibits the deprivation of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

135. "To prevail on a procedural due process claim, a plaintiff must show (1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." *Accident, Inj. & Rehab., PC v. Azar*, 943 F.3d 195, 203 (4th Cir. 2019) (citation modified).

136. "[P]rocedural due process requires fair notice of impending state action and an opportunity to be heard." *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146 (4th Cir. 2014) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)); *see also Am. Acceptance Corp. of SC v. Gietz*, 175 F.4th 502, 506 (4th Cir. 2026).

137. "Notice and the hearing are two distinct features of due process, and are thus governed by different standards." *Snider Int'l Corp.*, 739 F.3d at 146. To assess the constitutional adequacy of notice, courts ask whether the notice was "an effort reasonably calculated to effect actual notice" or instead was "a mere gesture." *Id.*

138. "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous

deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest." *Accident, Inj. & Rehab., PC*, 943 F.3d at 203.

139. The Sealing Requirement and Signature Verification Requirement each deprive North Carolina voters of constitutionally required procedural due process.

140. "The right to vote is a constitutionally protected liberty interest." *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020). Because North Carolina guarantees the right to vote absentee, this constitutionally protected liberty interest includes "the counting of [individuals'] votes when submitted through absentee voting." *Id.*

141. The challenged provisions are state actions that will deprive North Carolinians of the right to vote.

142. Each challenged provision creates a new pathway by which North Carolinians' legitimately cast votes may be invalidated without prior notice or an effective opportunity to cure. The State Board's revised policy directs that absentee ballots be invalidated if they have (1) an unsealed inner application envelope or an inner application envelope that does not enclose the ballot, even if the outer return envelope is sealed or (2) a voter signature that an election official arbitrarily deems in their untrained discretion to not match the voter's name.

143. Voters are not given *any* prior notice or opportunity to cure prior to the spoliation of their ballots. This "complete lack of statewide curing procedure is constitutionally inadequate." *See id.* at 228.

144. In theory, the State Board's revised policy offers at least some voters the possibility of casting a replacement ballot *after* their original ballot has been invalidated, but this possibility is burdensome at best and illusory at worst. A voter whose ballot is invalidated on or after Election Day has no opportunity *at all* to cast an effective vote, either in person or via a replacement absentee ballot.

145. A voter whose ballot is invalidated on or after the Saturday before Election Day is not given a replacement ballot and is thus disenfranchised if they cannot vote in person. *See Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339 (N.D. Ga. 2018) (recognizing that a provided "cure" option was "illusory, particularly for the category of voters who cannot vote in person due to physical infirmity").

146. And a voter whose ballot is invalidated on or before the Friday before Election Day may not receive the replacement ballot in time to ensure it is submitted by 7:30 P.M. on Election Day.

147. The challenged provisions deprive North Carolina voters of their right to vote without adequate due process and thereby violate the Fourteenth Amendment's procedural due process protections.

148. Some courts in the Fourth Circuit have applied the *Anderson-Burdick* framework to assess procedural due process claims in the election context. *See*, *e.g.*, *Voto*

Latino v. Hirsch, 712 F. Supp. 3d 637, 666 (M.D.N.C. 2024). To the extent necessary, Plaintiffs reallege and incorporate by reference all paragraphs related to Count IV, below.

COUNT III
Denial of Equal Protection
(Sealing Requirement and Signature Verification Requirement)
U.S. Const. amend. XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

149. Plaintiffs reallege and incorporate by reference the allegations set forth in all prior paragraphs of this Complaint.

150. The Equal Protection Clause of the Fourteenth Amendment prohibits states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

151. "[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The Equal Protection Clause of the Fourteenth Amendment requires "that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburn Living Ctr.*, 473 U.S. 432, 439 (1985); *see also Bush*, 531 U.S. at 104–05 (2000) (holding that the Equal Protection Clause applies to "the manner of [the] exercise [of the right to vote]" and that "once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another").

152. The Signature Verification Requirement and Sealing Requirement both subject North Carolina voters to arbitrary and disparate treatment based on the standardless discretion of county board officials.

153. The Signature Verification Requirement directs county boards to assess the signature on an absentee ballot and determine whether it matches the voter's name without any training, standards, or direction as to how to make that assessment. Under this scheme, the same ballot might be counted in one county but tossed out in another (or even treated differently by election officials within a county), based on nothing but the unfettered discretion of individual election officials.

154. By requiring county officials to review voters' signatures on a standardless basis, the Signature Verification Requirement creates an impermissible risk that different counties and election officials will apply different standards, procedures, and levels of scrutiny to voters' signatures. *See Dem. Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) (explaining that where a state does not enact "uniform standards" for a signature-review scheme, it effectively "allows each county to apply its own standards and procedures . . . virtually guaranteeing a crazy quilt of enforcement of the requirement from county to county").

155. Given the dearth of guidance from the State Board, some counties will attempt to verify whether a voter's signature on the inner application envelope "is the name of the voter" by looking only at the inner application envelope, while others will likely engage in signature matching now that the State Board has removed its explicit prohibition on that practice. Indeed, officials in some had attempted to engage in signature matching in past elections even though it was prohibited. *See supra* ¶ 10.

156. Subjecting voters to arbitrary and disparate treatment in exercising their right to vote in this way violates the Equal Protection Clause. *See generally Griffin v. N.C. State Bd. of Elections*, 781 F. Supp. 3d 411, 430–31 (E.D.N.C. 2025) (finding that challenges to voters in certain counties resulted in "disparate treatment between similarly situated voters, based solely on their casting of ballots in 'different counties,' [which] amounts to 'a constitutional violation' of the Equal Protection Clause") (quoting *Bush*, 531 U.S. at 107); *see also League of United Latin American Citizens of Iowa*, 2019 WL 6358335, at *16 (finding where "no statutory guidance is provided as to how to determine whether a signature doesn't match" signature-matching provisions "allow[] for similarly situated individuals to be treated differently" in violation of equal protection); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 799 (S.D. Ind. 2020) (similar).

157. In addition, the Sealing Requirement violates the constitutional guarantees of equal protection because it subjects classes of voters to arbitrary and disparate treatment. *See Griffin*, 781 F. Supp. 3d at 430 (holding that ballot-review scheme violated Equal Protection where "two groups of voters [were] in all relevant respects alike but [were] subject to unequal evaluation of their ballots" (citation modified)); *see also Northeast Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (affirming preliminary injunction on grounds that "different treatment of similarly situated provisional ballots likely violates equal protection").

158. Under the Sealing Requirement, county boards must give voters whose inner application envelope appears to have been opened and resealed the opportunity to cure

their ballot. Yet county boards must invalidate voters' ballots if their inner application envelope is unsealed or if their ballot is not placed within the inner application envelope (i.e., a naked ballot). For those voters, there is no opportunity to cure.

159. A voter's "attestation" can "cure[]" an unsealed inner application envelope or naked ballot the same way it cures an unsealed and resealed application envelope. *See* N.C. Gen. Stat. § 163-230.1(e1). The State Board offers no basis for treating the two differently. The distinction between these categories is thus entirely arbitrary and unconstitutional.

COUNT IV
Undue Burden on the Right to Vote
(Sealing Requirement and Signature Verification Requirement)
U.S. Const. amends. I & XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

160. Plaintiffs reallege and incorporate by reference the allegations set forth in all prior paragraphs of this Complaint.

161. The U.S. Constitution guarantees the "precious" and "fundamental" right to vote. *See Harper v. Va. State Bd. Elections*, 383 U.S. 663, 670 (1966).

162. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, a court considering a challenge to a state election law that burdens the right to vote must first carefully balance the character and magnitude of the burden against the justifications put forward by the state for the burdens imposed by the rule. *See Burdick*, 504 U.S. at 434; *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). "It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789. The court "must not only

determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.*

163. "[W]hen a plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters," courts should apply "the flexible standard outlined in [*Anderson-Burdick*]." *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (citation modified). In doing so, the court must "consider the burdensome effects of disparate treatment on the right to vote . . . from the perspective of only affected electors—not the perspective of the electorate as a whole." *Mays v. LaRose*, 951 F.3d 775, 785 (6th Cir. 2020).

164. When a law "facially discriminates between two classes of electors . . . the burden that law places on the right to vote is more than minimal." *Id.* at 786. That is true even if the classification is not otherwise constitutionally suspect. *See id.* (applying this rule to a law that distinguished between "hospital-confined [electors] and everyone else" in establishing deadlines to request absentee ballots).

165. A burden on the right to vote need not be insurmountable before it can be deemed a severe burden. *See, e.g.*, *Perez-Guzman v. Gracia*, 346 F.3d 229, 241 (1st Cir. 2003). Election practices imposing severe burdens on the right to vote "[must] be narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 289 (1992). But even less severe burdens remain subject to balancing: "However slight" the burden on voting rights may appear, "it must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford v.*

Marion Cnty. Election Bd., 553 U.S. 181, 191 (2008) (plurality opinion) (quoting *Norman*, 502 U.S. at 288–89); *see also Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 306 (3d Cir. 2025) ("The relevant burden need not be severe" to trigger *Anderson-Burdick* balancing.). In all cases, the question is whether "the proffered State interests justify the burden the [restriction] imposes." *Eakin*, 149 F.4th at 314.

166. Furthermore, in conceptualizing the burden that a state electoral regulation places on constitutional rights, courts are not limited to considering only the effort needed to comply with the regulation; they also may consider the law's broader ramifications, including the consequences of noncompliance. Federal courts have accordingly recognized that disenfranchising voters for defects in their absentee ballots imposes significant burdens on voting rights even if the effort needed for a voter to complete the ballot correctly appears slight when considered in isolation. *See, e.g.*, *Lee*, 915 F.3d at 1319–20 (stating burdens of absentee ballot signature matching requirement included increased risk of disenfranchisement from perceived signature mismatch); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 631 (6th Cir. 2016) ("Requiring boards of elections to reject the ballots of absentee and provisional voters who fail to accurately complete birthdate and address fields directly and measurably disenfranchises some voters.").

167. The challenged provisions unconstitutionally burden North Carolinians' voting rights, both individually and collectively, by creating new categories of non-curable deficiencies, requiring that a voter's ballot be invalidated, likely disenfranchising the voter.

168. The challenged provisions also apply disparate standards to similarly situated voters. Because of the Sealing Requirement, voters whose inner application envelope appears to have been opened and resealed will have the opportunity to cure their absentee ballot, but voters whose application envelope is unsealed or whose ballot is not placed within the inner application envelope will have their ballot thrown out with no opportunity to cure. This "facial discriminat[ion] between two classes of electors"—that is, voters whose inner application envelopes appear to have been unsealed and resealed versus those that are unsealed—constitutes *at least* a "more than minimal" burden on voters. *Mays*, 951 F.3d at 786.

169. The Signature Verification Requirement similarly invites county boards and election officials to implement their own non-uniform standards for assessing whether the signature on an absentee ballot matches the voter's name—without any training, standards, or direction concerning how to make that assessment. This too will inevitably result in counties and individual election officials applying disparate standards to voters across the state.

170. There is no valid state interest that justifies either challenged provision. Contrary to the State Board's unsubstantiated assertions, nothing in North Carolina law requires election officials to treat an unsealed inner application envelope as a *non-curable* defect that invalidates the ballot. Any other theoretical interest the Sealing Requirement might serve is satisfied by a voter sealing the outer return envelope.

171. No state interest justifies the Signature Verification Requirement, either. The State Board was previously unequivocal that "[v]erification of the voter's identity is completed through the witness requirement," Prior Numbered Memo, Ex. B at 2, and the revised Numbered Memo does not indicate otherwise. Even beyond the witness requirement—which requires absentee voters to have their ballot witnessed and certified by either two witnesses or a notary, *see* N.C. Gen. Stat §§ 163-231(a), 163-22(o1)—North Carolina also verifies an absentee voter's identity and qualifications with the voter's own certification, made under penalty of perjury, *id.* §§ 163-231(a)(4), 163-229(b)(1), 163-22(o1); and absentee ballots must also be accompanied by the voter's photo identification or exception form, *id.* §§ 163-230.1(f1), 163-166.16(d). The Signature Verification Requirement is therefore entirely unnecessary and at any rate, cannot be implemented in a manner that would reliably verify voters' identities. *See supra* ¶¶ 92–99.

172. And even if the State Board was able to identify interests that were "legitimate in the abstract," those interests are insufficient to justify the burdens that the policies impose on the fundamental right to vote "in this case." *Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020).

173. The challenged provisions impose unnecessary hurdles that eligible North Carolinians must surmount to exercise their most fundamental right, resulting in otherwise valid votes being arbitrarily discarded without any sufficient state interest justifying disenfranchisement. They further no governmental interest, and, consequently, the burdens

they impose on voters violate the First and Fourteenth Amendments to the U.S. Constitution.

PRAYER FOR RELIEF

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

A. declare, under the authority granted to this Court by 28 U.S.C. § 2201, that the Sealing Requirement violates the Materiality Provision of the Voting Rights Act, 52 U.S.C. § 10101(a)(2)(B);

B. declare, under the authority granted to this Court by 28 U.S.C. § 2201, that the Sealing Requirement and Signature Verification Requirement violate the First and Fourteenth Amendments to the U.S. Constitution;

C. grant preliminary and permanent injunctive relief barring Defendants, their agents, officers, employees, and successors, and all persons acting in concert with them, under the authority granted to this Court by 28 U.S.C. § 2202, from taking any action to enforce the challenged provisions during the November 2026 general elections and all future elections;

D. award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and

E. grant such other and further relief as the Court deems just and proper.

Dated this 22nd day of September, 2026

Respectfully submitted,

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