
IN THE
United States Court of Appeals
for the Fourth Circuit

No. 16-1468 (L)

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; ROSANELL EATON;
EMMANUEL BAPTIST CHURCH; BETHEL A. BAPTIST CHURCH; COVENANT
PRESBYTERIAN CHURCH; BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH,
INC.; ARMENTA EATON; CAROLYN COLEMAN; JOCELYN FERGUSON-KELLY;
FAITH JACKSON; MARY PERRY; MARIA TERESA UNGER PALMER,

Plaintiffs – Appellants,

and

JOHN DOE 1; JANE DOE 1; JOHN DOE 2; JANE DOE 2; JOHN DOE 3; JANE DOE
3; NEW OXLEY HILL BAPTIST CHURCH; CLINTON TABERNACLE AME ZION
CHURCH; BAHEEYAH MADANY,

Plaintiffs,

v.

PATRICK L. McCRORY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE
OF NORTH CAROLINA; KIM WESTBROOK STRACH, IN HER OFFICIAL CAPACITY
AS A MEMBER OF THE STATE BOARD OF ELECTIONS; JOSHUA B. HOWARD, IN
HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS;
RHONDA K. AMOROSO, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE
BOARD OF ELECTIONS; JOSHUA D. MALCOLM, IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE STATE BOARD OF ELECTIONS; PAUL J. FOLEY, IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; MAJA
KRICKER, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF
ELECTIONS; JAMES BAKER, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants – Appellees.

On Appeal from the United States District Court
for the Middle District of North Carolina (No. 1:13-cv-00658-TDS-JEP)

**BRIEF OF *AMICUS CURIAE* DEMOCRACY NORTH CAROLINA
IN SUPPORT OF APPELLANTS**

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No. 16-1469

CHARLES M. GRAY; ASGOD BARRANTES; MARY-WREN RITCHIE

Intervenors / Plaintiffs,

v.

STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; RHONDA K. AMOROSO, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; JOSHUA D. MALCOLM, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; PAUL J. FOLEY, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; MAJA KRICKER, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; PATRICK L. MCCRORY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NORTH CAROLINA.

On Appeal from [INSERT]

**BRIEF OF *AMICUS CURIAE* DEMOCRACY NORTH CAROLINA
IN SUPPORT OF APPELLANTS**

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No. 16-1474

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE; UNIFOUR ONESTOP COLLABORATIVE; COMMON CAUSE NORTH CAROLINA; GOLDIE WELLS; KAY BRANDON; OCTAVIA RAINEY; SARA STOHLER; HUGH STOHLER,

Plaintiffs – Appellants,

v.

STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; RHONDA K. AMOROSO, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; JOSHUA D. MALCOLM, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; PAUL J. FOLEY, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; MAJA KRICKER, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; PATRICK L. MCCRORY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NORTH CAROLINA,

Defendants – Appellees.

On Appeal from [INSERT]

**BRIEF OF *AMICUS CURIAE* DEMOCRACY NORTH CAROLINA
IN SUPPORT OF APPELLANTS AND URGING REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1, *amicus* Democracy North Carolina discloses the following:

Democracy North Carolina is a non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code. Furthermore,

1. It is not a publicly held corporation or other publicly held entity.
2. It has no parent corporations.
3. It does not issue stock, hence no publicly held company owns 10% or more of its stock.
4. No publicly held corporation or other publicly held entity has a direct financial interest in the outcome of the litigation.
5. It is not a trade association.
6. This case does not arise out of a bankruptcy proceeding.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
IDENTITY OF THE <i>AMICUS</i> , ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
CONCLUSION.....	34
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF FILING AND SERVICE	

TABLE OF AUTHORITIES

**IDENTITY OF THE *AMICUS*, ITS INTEREST IN CASE, AND THE
SOURCE OF ITS AUTHORITY TO FILE¹**

This *amicus curiae* brief in support of Appellants is filed on behalf of Democracy North Carolina (“Democracy NC”), a nonpartisan, nonprofit corporation incorporated in 2001 and organized under Section 501(c)(3) of the Internal Revenue Code.

Democracy NC conducts research, organizing, public education, and advocacy in order to increase voter participation—put simply, it aims to maximize the number of citizens at the polls and the number of eligible ballots counted. The organization has supporters throughout North Carolina who are registered voters and who vote in North Carolina elections. Democracy NC also works for pro-democracy reforms that improve government accountability and ethics and address the issue of money in politics. Through original research, policy advocacy, grassroots organizing, civic engagement, and leadership training, Democracy NC

¹ No party or party’s counsel authored this brief in whole or in part or contributed money intended to fund the preparation or submission of this brief. Furthermore, no person other than the *amicus* or its counsel contributed money intended to fund the preparation or submission of this brief.

seeks to achieve a government that is truly of the people, for the people, and by the people.

When it comes to voting, Democracy NC conducts year-round voter registration drives and trainings across the state, distributes over 500,000 brochures, wallet cards, church bulletin inserts, and other flyers each year to educate the public about the voting process, and speaks at over 100 events a year about voting rights. One of its core efforts is its Poll Monitoring Project (“PMP”). The PMP is Democracy NC’s program to educate individuals, during an election, on their rights to participate in elections. Through the PMP, the *amicus* works with volunteers and community partners to station poll monitors outside individual polling places and early voting locations; the monitors are trained to assist voters who approach them. The monitors fill out “incident reports” describing the voter’s problem and connect the voter via cell phone to a call center, where election experts provide further assistance. As part of the PMP, Democracy NC also analyzes voting data during and after elections to determine if North Carolina registered voters experienced problems voting in an election.

Democracy NC conducted the largest nonpartisan poll monitoring project in the history of North Carolina during the 2016 March Primary Election in North Carolina (“March Primary”), which occurred after the district court’s trial. Over 700 poll monitor volunteers were placed in polling places and early voting locations in over 50 counties, including the ten most populous counties in North Carolina.

Furthermore, during and after the March Primary, Bob Hall—the Executive Director of Democracy NC—collected publicly-available data from the State Board of Elections and county boards of elections on a variety of voting procedures and results, including: the number of North Carolina voters who successfully used Same Day Registration to register and vote during the early voting period in the March Primary; the number of North Carolina registered voters who successfully used Out-of-Precinct Provisional voting to cast ballots in precincts other than their assigned precincts in the March Primary, and later had those ballots counted in whole or in part; and cases of registered voters who were disenfranchised in the March Primary due to the implementation of the photo identification requirement, passed in 2013 and amended in 2015. Furthermore, Mr. Hall reviewed all of the “incident reports” that

Democracy NC collected when voters reported problems with voting to its PMP volunteers.²

Democracy NC is interested in this case because the District Court's judgment directly affects the number of citizens who will go the polls and whose ballots will be counted. It also affects the uniform and fair administration of election law and the integrity of the voting process.

Counsel for all of the parties in the cases have consented to the filing of this brief, and therefore the authority to file is based on Rule 29(a) of the Federal Rules of Appellate Procedure.

SUMMARY OF ARGUMENT

The March Primary demonstrated the importance of Same Day Registration (SDR) and Out of Precinct voting (OOP) to ensuring that voters can vote, especially African Americans and young voters. The District Court acknowledged that SDR and OOP were critical to those

² Facts in this brief about the March Primary come from the Declaration of Robert H. Hall, which has been filed in this appeal and in the District Court below as part of Appellants' motion to stay the judgment of the District Court. Such facts are commonly and properly outlined in *amicus* briefs. See, e.g., Michael Abramowicz & Thomas B. Colby, Notice-and-Comment Judicial Decisionmaking, 76 U. CHI. L. REV. 965, 987 (2009).

groups, based on results from earlier elections, but it improperly disregarded that fact.

The March Primary also demonstrated something new: the “reasonable impediment” exception to the photo ID requirement, which North Carolina implemented shortly before trial in order to save the law, and on which the District Court relied in its opinion, did not work as it was supposed to. Implementation of the “reasonable impediment” exception was arbitrary and riddled with errors. Even aside from the problems with the reasonable impediment exception, the March Primary demonstrated that the photo ID requirement undermines the integrity of the elections process.

At the core of this case is a simple question: was House Bill 589 designed to protect the integrity of elections and prevent the fraud of voter impersonation, or was it designed to make it harder for African Americans (and youth and other groups) to vote, in order for its sponsors and supporters to gain partisan advantage? The trial record shows that it’s the latter.

ARGUMENT

I. THE MARCH PRIMARY DEMONSTRATED—AGAIN—THAT AFRICAN AMERICANS AND LATINOS DISPROPORTIONATELY RELY ON SAME-DAY REGISTRATION AND OUT-OF-PRECINCT VOTING.

The data from the March Primary show that 22,855 voters successfully used SDR and therefore were able to cast votes that counted in the March Primary. In Wake County alone, almost 2,000 voters used SDR successfully. Almost 2,000 voters in Durham County and almost 1,000 voters in Guilford County used SDR successfully. African Americans and Latinos used SDR in many North Carolina counties at a rate significantly higher than their share of the population in the county. Had SDR not been in place during the March Primary, none of these votes would have counted.

In the March Primary, 6,327 voters successfully used Out-of-Precinct (“OOP”) provisional voting to have their votes counted in full or in part. OOP is the ability of a voter to cast a provisional ballot at any polling place in his or her county on Election Day and have that vote counted for all races for which the voter is eligible to vote. OOP voting allows a voter to use a polling place in the county that is readily accessible on Election Day, whether it is closest to the voter’s home, workplace,

school, or child's school or daycare. African Americans and Latinos used OOP in many North Carolina counties at a rate significantly higher than their share of the population in the county.

The District Court acknowledged that SDR and OOP have disproportionately been used by African Americans. *See, e.g.*, JA24647 (Op. 163); JA 24663 (Op. 179). It disregarded that fact, however, through various factual and legal errors that Appellants have outlined in their brief. Democracy NC will not repeat those arguments here. It simply notes that the March Primary demonstrated again the importance of SDR and OOP to ensuring that voters can vote, especially African Americans and young voters.

SDR and OOP act as safety net provisions to protect the right to vote for citizens who, for example, believe that the NC Division of Motor Vehicles correctly processed their voter registration when it did not, or who believe that the polling place they used in a previous election is still the right place to vote when it is not. Democracy NC has documented hundreds of cases of voters who would have been silenced, through no fault of their own, if SDR and OOP were not available. Their numbers dwarf any claim made about the scale of voter fraud. In the March

Primary, more than 29,000 citizens had their right to vote saved by SDR and OOP. The importance of preserving these safety net protections will increase greatly in the fall General Election, which will have turnout far exceeding that of the March Primary.³

II. THE MARCH PRIMARY DEMONSTRATED THAT THE PHOTO ID REQUIREMENT DISENFRANCHISES MANY, PARTICULARLY AFRICAN AMERICANS, AND THAT THE “REASONABLE IMPEDIMENT” EXCEPTION IS RIDDLED WITH PROBLEMS.

While the March Primary only reinforced the undisputed fact that the elimination of SDR and OOP disproportionately harms African Americans, the primary did shed light on something new: the “reasonable impediment” process that North Carolina enacted shortly before the July 2015 trial. North Carolina offered that process as a failsafe, a way to reduce or eliminate the instances where an eligible voter could not vote because of the photo ID requirement; the District Court accepted that offering and relied on it heavily in its opinion upholding the photo ID requirement. *See* JA24809-23 (Op. 325-339). The March Primary was

³ Democracy NC did a similar analysis in connection with the 2014 General Election, and SDR and OOP proved crucial in that election as well. *See* Isela Gutierrez and Bob Hall, *Alarm Bells from Silenced Voters*, available at <http://nc-democracy.org/downloads/SilencedVoters.pdf>.

the first time that the process was used, however, and the result are now in: the “reasonable impediment” process did not work for several reasons, and the voices of more than 1,400 voters were not heard because of the photo ID requirement.

In the March Primary, 1,419 provisional ballots cast because a voter did not have acceptable photo ID to vote were not counted. Based on racial data for the photo ID-related provisional ballots (excluding voters whose race is undesignated), 34% of photo ID-related provisional ballots that were not counted in the March Primary were cast by African-Americans; by contrast, only 23% of the registered voters in March with an identified race were African American. The fact that a photo ID requirement disproportionately harms minorities is undisputed, as the District Court recognized. *See* JA24585-86 (Op. 101-02). But the District Court had faith that the photo ID requirement presented no real burden and that the “reasonable impediment” exception would mitigate or eliminate the problem for voters without an acceptable ID. *See* JA24809-23 (Op. 325-339). Given the results from March, that faith was misplaced.

Why didn't the "reasonable impediment" exception work as it was supposed to? Democracy NC found several reasons:

First, numerous voters who did not have an acceptable ID for voting were not offered a reasonable impediment provisional ballot, and instead were offered a regular provisional ballot. The difference is critical because voters without acceptable photo ID who are given regular provisional ballots must, despite not having acceptable photo ID, go to the county board of elections before noon the day before the canvass and present valid photo ID for their votes to count. When poll workers did not offer those voters the reasonable impediment provisional ballot, but instead the regular provisional ballot, numerous voters were disenfranchised because they did not have an acceptable photo ID in their possession to take to the county board of elections.

Second, even when a voter cast a reasonable impediment provisional ballot, the decision about whether to accept or reject the ballot varied wildly from county to county, and ballots were counted in an inconsistent and arbitrary manner. For example, while the reasonable impediment provisional ballot lists several pre-printed impediments—"lost or stolen photo ID," "lack of transportation," etc.—it

also includes the category “other” with a blank line for further description. Some counties rejected voters who wrote in for “other” that their ID had expired, that they had forgotten to bring it, that they did not have an ID because they did not drive, that they had an out-of-state ID, or that their acceptable ID was in another state. But other counties counted ballots of voters with the same wording.

The impediment about the ID being in another state is particularly noteworthy, because Democracy NC twice confirmed with the State Board of Elections before the primary that checking “other” and writing in that “my passport is in another state” would be a reasonable impediment. Relying on that assurance, Democracy NC included that information in its pocket card about voting rules, which it distributed to at least 150,000 people before the primary, including on many campuses. Yet the ballots of many registered voters who indicated that their passport was in another state, including college students, were not counted in some counties but were counted in others.

Third, some county boards of election violated state law and systematically rejected ballots that should have counted. For example, the State Board of Elections issued a memo to county boards of elections

before the primary stating that checking “other” and writing in something related to a “school schedule” would be a reasonable impediment because that was similar to the pre-printed impediment of “work schedule.” After the March Primary, the executive director of the State Board of Elections repeated that directive in an email response to a question from the director of the Mecklenburg County Board of Elections about the treatment of voters who gave “attending college” or similar words as their reasonable impediment. Those ballots should be counted, the State Board said, unless the county board decided to challenge the factual basis of the statement through a due process hearing.

Despite this clear guidance, the Chair of the Mecklenburg County Board of Elections effectively overruled the law, publicly declared that attending college was not a reasonable impediment, led her fellow board members to reject the ballots of students providing that explanation, and in one day disenfranchised more voters than have been accused of impersonating another voter in the past decade. Even after Democracy NC exposed this mistake and the State Board scolded the County Board Chair, Mecklenburg County election officials continued to state that the

“other” category on the reasonable impediment declaration form was confusing and made little sense, which makes it vulnerable to continued arbitrary interpretation by local election officials.

Fourth, Democracy NC’s PMP and post-election analysis revealed that the simplest mistake or omission on the reasonable impediment declaration form would cause a person’s ballot to be rejected. The most elementary guidance from a poll worker would have corrected the problem, but assistance and knowledge of the reasonable impediment process by poll workers was extremely poor. For example, many reasonable impediment ballots were rejected because the voter forgot to check one of the boxes, answer a question, or sign the form; a poll worker reviewing the form could have encouraged the voter to fix the problem.

These problems were compounded by the fact that the State Board of Elections allowed at least four different variations of the form to be used, each of which had different formatting and ordering of information. One form, for example, required a person to sign twice on the same page, and some voters were disenfranchised because they signed only once.

In short, reasonable impediment ballots were not offered to numerous North Carolina registered voters who should have been offered

this manner of voting. Voters who did receive reasonable impediment ballots were treated differently, including whether or not their provisional ballots counted, depending on who reviewed the ballot and which county the voter lived in. County officials improperly used their authority to reject ballots that should have been accepted. The instructions and guidance given to North Carolina voters who were attempting to comply with the photo ID requirement were severely lacking. The November General Election, with higher turnout, will only multiply the photo ID-related problems that occurred in the March Primary.

The problem with the reasonable impediment process is revealed and explained not just by numbers and dry data, but also by the stories that Democracy NC encountered. Here is a fraction of the stories of the 1,419 voters whose votes were not counted:

- Hilda Isabel Santiago, a Hispanic voter in Orange County, voted a regular provisional ballot that was not counted in the March Primary. Ms. Santiago should have been offered a reasonable impediment ballot because she did not possess acceptable photo ID in the state of North Carolina. Her Texas driver's license was

not a valid photo ID for voting because she had registered to vote in North Carolina more than 90 days before the March Primary. She was not offered a reasonable impediment ballot, was not told anything about the reasonable impediment process, and was disenfranchised in the March Primary despite being a valid, registered voter who had voted in North Carolina in the past.

- Bobbie Love of Alamance County, who has been a valid, registered voter since 2011 and voted successfully in two North Carolina elections previously, was unable to vote. The name on Ms. Love's NCDMV-issued photo ID was spelled wrong by NCDMV, and because the name on her photo ID did not match her voter registration, Ms. Love was turned away without voting in the March Primary. She was not offered a reasonable impediment ballot. Similarly, Douglas Stamey, a registered voter in Macon County, had voted in 22 elections prior to the March Primary. Mr. Stamey presented a photo ID that was worn and had only a faded image of his face. Instead of being offered a reasonable impediment provisional ballot, Mr. Stamey was

given a regular provisional ballot, which was rejected for so-called non-reasonable resemblance.

- Creola Clark, an 89-year-old African-American voter in Forsyth County who has voted for decades, was disenfranchised in the March Primary. Ms. Clark, who has only one leg, voted curbside, where voters are not required to present photo ID to vote but must present some form of non-photo ID, like a utility bill. Despite presenting a utility bill with her name and address on it at the polls, Ms. Clark was offered a provisional ballot, not a regular ballot, and her provisional ballot did not count. She was not offered a reasonable impediment ballot. In fact, poll workers first informed Ms. Clark's niece, Elaine Bevels, who assisted her aunt with the voting process, that Ms. Clark would not be permitted to cast any ballot, including a provisional one. Even if poll workers (mistakenly) thought Ms. Clark was subject to the photo ID requirement, which she was not because she voted curbside, she should have been offered a reasonable impediment ballot and a mail-in absentee ballot request form, but she was not.

- Charles Roger Young Sr., a 73-year-old registered voter in Catawba County and an attorney for 45 years, was turned away at the polls because he did not have acceptable photo ID to vote. Mr. Young voted successfully in North Carolina 64 times between 1977 and 2015 before being turned away at the polls in the March Primary. He went to his polling place in Catawba County twice on Election Day. He was first turned away because he did not have acceptable photo identification and was encouraged to go home and find his passport. He returned to the polls with his passport, which was expired, and he was not offered a provisional ballot or reasonable impediment ballot, despite not being able to find any other acceptable photo identification for voting. “Lost/stolen ID” appears on the pre-printed list of reasonable impediments on the reasonable impediment paperwork at the polls, and yet Mr. Young was simply turned away the second time he presented to vote. Poll workers at his polling place knew Mr. Young personally, as a staple of the Catawba County community for 65 years, and still he was unable to vote. A valid, registered voter for over 40 years

in Catawba County, Mr. Young was not allowed to vote because of the photo ID requirement.

- Rose Spitzer, a 93-year-old registered voter in Perquimans County, had no acceptable photo ID when voting in the March Primary. Ms. Spitzer could not fill out a reasonable impediment declaration because she did not know her birthdate and social security number. Her vote was not counted in the March Primary because of the photo ID requirement. She has voted in North Carolina elections for decades.
- Darlene Azarmi, a registered voter in Buncombe County and Democracy NC's Western North Carolina field organizer, lost her North Carolina driver's license, which is an acceptable reason for filling out a reasonable impediment declaration. When Ms. Azarmi went to vote, she was initially told that she could not vote at all because she did not have acceptable photo ID for voting. She was eventually given a provisional ballot without the reasonable impediment declaration. Only after leaving the polling place and personally visiting Buncombe County Board of Elections Director Trena Parker was Ms. Azarmi able to have

her provisional ballot counted in the March Primary. It was only because Ms. Azarmi is trained in voting procedures in North Carolina and knew how to navigate the elections system that Ms. Azarmi was able to vote. Unlike Ms. Azarmi, most voters have not been trained as voting advocates.

- Alberta Currie, an elderly African-American woman was at first denied the ability to vote on Election Day because she did not have acceptable photo ID. She was offered a reasonable impediment declaration only after a voting advocate drove from Durham to Fayetteville to assist Ms. Currie in her second attempt to vote that day.
- James Brownlow Grindstaff, of Avery County, marked “other” on the reasonable impediment declaration and wrote that his photo ID was expired. His reasonable impediment provisional ballot was counted. However, Arnold Mack Weaver, of Guilford County, who has voted successfully in seven previous elections, marked “other” on the reasonable impediment declaration and wrote in the “other” line that his photo ID had expired. His ballot was not counted in the March Primary.

- Charles Carroll Fishburne, of Chatham County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he had turned in his license and did not have an acceptable North Carolina photo ID. His reasonable impediment provisional ballot was counted. Chelsey Leanne Williford, of Wake County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that her North Carolina driver’s license was suspended. Her reasonable impediment provisional ballot was also counted. However, Tiffany Alexandra Sloan, of Hoke County, marked “other” on the reasonable impediment declaration and wrote that she only had a photo ID card from the Tarheel Challenge Academy. Her ballot was not counted.
- Albert Franklin Simpson, of Moore County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he didn’t have a photo ID with him. His reasonable impediment provisional ballot was counted. However, Anna Mae McCourry, of Yancey County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that she

left her ID at home. Her reasonable impediment provisional ballot was not counted.

- Benjamin Dominic Porco, of Wake County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he has not obtained a driver’s permit. His reasonable impediment provisional ballot was counted. However, Yves M. Orvoen, of Durham County, who has voted successfully in 38 previous elections in North Carolina, marked “other” on the reasonable impediment declaration and wrote in the “other” line that his passport renewal was not received. His reasonable impediment provisional ballot was not counted.
- Samuel Keven Spires, of Transylvania County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he does not drive. His reasonable impediment provisional ballot was counted. However, Destiny A. Nickerson, of Guilford County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that she has not needed a photo ID. Her reasonable impediment provisional ballot was not counted.

- Shayne Patrick Hayes, of Pamlico County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he had an out of state driver’s license. His reasonable impediment provisional ballot was counted. Also, D’Marco Christopher Smith, of Rowan County, marked “other” on the reasonable impediment declaration and wrote in the “other” line that he left his ID outside of the state. His reasonable impediment provisional ballot was counted. However, Sara Bjorkman, a student at North Carolina State University and voter in Wake County who registered to vote in September 2014, marked “other” on the reasonable impediment declaration and wrote in the “other” line that she had an out of state driver’s license. Her reasonable impediment provisional ballot was not counted. Sadia Asante Onee Pollard of Guilford County, a student at North Carolina A&T University, marked “other” on the reasonable impediment declaration and wrote in the “other” line “other state ID.” Her reasonable impediment provisional ballot was not counted.

- Luke Alexander Weir, Christopher Michael Robey, and McKinley Kondel O'Mara, all of whom are registered to vote in Watauga County and attend Appalachian State University, and Lee Andrew Barnes, Shwetadwip Chowdhury, Matthew Michael Gherman, Justin Michael Grady, and Sierra Anne Hodges, all of whom are registered in Durham County and attend Duke University, all had their reasonable impediment provisional ballots counted after stating in the "other" category that their passports were located out of state. Also, Zander X. Hall, a registered voter in Buncombe County and student at Warren Wilson College, marked "other" on the reasonable impediment declaration and wrote that he had no access to his passport. His reasonable impediment provisional ballot was counted. However, Ruby Elizabeth Monn, who is registered to vote in Wake County and attends North Carolina State University, and Bradley Micah Bailey, Elizabeth Kenneson Pomeroy, Elisabeth Grace Hauser, and Alejandra Rodriguez, all of whom are registered to vote in Mecklenburg County and attend Davidson College, did not have their reasonable impediment ballots

counted after stating on their reasonable impediment declarations that their passports were located out of state.

- Caroline Marie Eberhardt, a registered voter in Wake County and student at North Carolina State University, and Lasara Destiny Carter, also of Wake County, both had their reasonable impediment provisional ballots counted after stating in the “other” category that they were students. However, students in Mecklenburg County, many of whom attend Davidson College, who in the “other” category described their reasonable impediments as attending college, school schedule, or being a college student were wholly rejected by the Mecklenburg County Board of Elections, including students Christine Gaaeul Choi, Xzavier Michael Killings, Caroline Suzanne Naso, Srish Kumar Sharma, Patrick Farrell Spauster, Helen S. Webster, and Claire Elizabeth Weitnauer, all of whose reasonable impediment provisional ballots were rejected.
- Catalina Clara Carter, an 84-year-old registered voter in New Hanover County, filled out a reasonable impediment declaration and listed a valid reasonable impediment. While Ms. Carter

provided her date of birth, she provided her ZIP code in New Hanover County as the last four digits of her social security number, and because she provided an incorrect social security number her ballot was not counted. A poll worker should have recognized the New Hanover County ZIP code and could have assisted this elderly voter with making sure her social security number was provided.

- Xavier Robert Octetree, of Wake County, filled out a reasonable impediment declaration and listed a valid reasonable impediment. While he provided his date of birth as alternative ID, he did not include the last four digits of his social security number, and his reasonable impediment provisional ballot did not count. This exact scenario also happened to John M. McKiver, a 77-year-old voter from Duplin County whose reasonable impediment provisional ballot was not counted because although he provided his date of birth, he did not provide the last four digits of his social security number. Finally, Peggy Model, a 90-year-old voter from Wake County, who has voted successfully in 21 previous elections, did not have her reasonable

impediment provisional ballot counted because, while she provided her date of birth on her reasonable impediment declaration, she did not provide the last four digits of her social security number.

- Jessica Symone Buie, Djay Alexander Burkett, and Kanika Zakiya Whitaker, all of Guilford County, and Danielle Lauren Lefland, Ethan Isaal Levine, and Julia Mikhailova, all of Durham County, did not have their reasonable impediment provisional ballots counted because no reasonable impediment box was checked on the reasonable impediment declaration.
- Richard Eric Powell and Sylvia Janet Strauss, of Mecklenburg County, were not able to vote because they signed on one line of their reasonable impediment provisional ballot but not on a second line on the same page, and no poll worker stopped these voters to correct that error. The same scenario happened to Derek Martin Eanes, also of Mecklenburg County, but his reasonable impediment provisional ballot was counted.

III. THE MARCH PRIMARY DEMONSTRATED THAT NORTH CAROLINA'S PHOTO ID REQUIREMENT UNDERMINES THE INTEGRITY OF THE ELECTIONS PROCESS.

The examples above demonstrate that election officials were unable to conduct the March Primary in a uniform and fair manner because of the complexity and confusion of the reasonable impediment exception. By definition, an election system that arbitrarily accepts or rejects the ballots of citizens with equal eligibility is suspect and will cause voters to lose faith in its integrity as a fair means to choose their representatives.

The problems created by the complexity of the photo ID law go beyond the inconsistent administration of the reasonable impediment exception. For example, there are literally dozens of variations on what ID may be accepted under different conditions by different poll workers. Democracy NC's PMP also documented that, aside from disenfranchising voters directly, the complexity and confusion of the ID law caused long wait-times at the help stations designed to handle ID and provisional ballot issues, which caused people to leave without voting;⁴ pulled poll

⁴ For example, at the VFW Building polling place in New Hanover County, voters were waiting to have their photo IDs verified for over two hours. A minimum of twenty-two voters left the polling place without voting because of the lengthy wait to show photo ID to vote. Adrienne Williams, an African-American student registered to vote in Wake

workers away from properly serving curbside voters, who sometimes left without voting; and created a stressful environment that magnified the difficulty of managing administrative problems, such as a printer failure, which created long wait-times and caused voters to leave without voting.

Here is a further example. Democracy NC identified over 100 voters whose provisional ballots in the March Primary were rejected in Forsyth County because they failed to sign the paper form that accompanied the ballot. It turns out the form had no line requesting a signature, and county election officials expected the poll worker to instruct the provisional voter to sign in an open area at the bottom of the form. When confronted with the disenfranchisement caused by the improper form, the deputy director of the Forsyth County Board of Elections admitted that the staff had been so focused on training poll workers about the intricacies of implementing the complex ID law that

County, left a polling place in Wake County at 8 PM (polls are supposed to close at 7:30 PM) on Election Day without voting after waiting in two lines for at least three hours. Jazlin Laboy, a Hispanic student registered to vote in Orange County, waited in lines for 50 minutes before having to leave without voting. Ms. Laboy had to wait that long after she was told to go to a second line because she did not have acceptable photo ID to vote. She was not offered a reasonable impediment ballot.

they failed to train them on other important administrative duties to ensure a fair and accurate election.⁵

Fortunately, after Democracy NC met with the Forsyth County Board of Elections and the State Board of Elections, the State Board directed the county to re-canvass and count 130 provisional ballots that lacked a signature on the improper form. Because of other problems the State Board detected following the March 22 canvass by county election boards, the State Board delayed the official state canvass or certification of election results that typically occurs three weeks after an election. Instead, the State Board launched an “audit” of the county canvasses and eventually directed about 20 counties to re-evaluate and accept scores of ballots that had been wrongly rejected.

To its credit, the State Board is struggling to protect people’s votes in a revamped election system that breeds human error by poll workers

⁵ Meghann Evans, *Democracy N.C. Calls for Forsyth to Count More Provisional Ballots*, WINSTON-SALEM JOURNAL, Apr. 19, 2016, available at http://www.journalnow.com/news/local/democracy-n-c-calls-for-forsyth-to-count-more-provisional/article_52dc717a-ac1c-5ab3-8c46-d92a7f0f5c29.html; Editorial, *Rejected Ballots Are Troubling Issue That Must Be Corrected*, WINSTON-SALEM JOURNAL, Apr. 20, 2016, available at http://www.journalnow.com/opinion/editorials/our-view-rejected-ballots-are-troubling-issue-that-must-be/article_ad64de4e-6d0e-5d9f-a780-3df097191f2a.html.

and local election officials, but new examples of the ID law's harm on voters and the integrity of the voting process keep surfacing. Each time Democracy NC pointed out a major case of disenfranchisement to State Board in the weeks after the March election, the Board's staff would take action to fix that particular case, but an election system that depends on such a fragile method of protecting people's votes by rescuing them, one by one, *after* an election, cannot be tolerated. In its directive to the Forsyth County Board of Elections, the State Board included this quote from a 1948 North Carolina Supreme Court decision written by Justice Sam Ervin, Jr:

We can conceive of no principle which permits the disenfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.

Owens v. Chaplin, 228 N.C. 705, 711 (1948). The photo ID law runs directly against these principles.

The sad truth is that implementation of the photo ID law is creating more disenfranchisement and distrust, and African Americans and other people of color are disproportionately harmed at every level of the

problem. In the Forsyth County case, Democracy NC found that African Americans and Latinos make up 30% the county's registered voters, but they cast 61% of the 130 provisional ballots that were rejected because of "no signature." A preliminary analysis of over 20,000 exit surveys collected by the PMP in the March Primary shows that African Americans are twice as likely as whites to say that the ID law and other voting changes make them feel "less confident in the security of NC elections."

Governor Pat McCrory and legislative backers of the photo ID law call it a "common sense" anti-fraud measure that has wide approval in statewide polls. But polls and posturing cannot justify suppressing the voices of voters. If they could, then the wide approval in polls for banning unlimited political spending by wealthy special interests would justify suppressing that activity. But that "speech" is vigorously protected by the courts. Does not the speech of ordinary citizens through their votes deserve the same vigorous protection?

IV. HOUSE BILL 589 IS ABOUT MAKING IT HARDER FOR AFRICAN AMERICANS (AND OTHER GROUPS) TO VOTE, IN ORDER TO GAIN PARTISAN ADVANTAGE.

At the core of this case is a simple question: was House Bill 589 designed to protect the integrity of elections and prevent the fraud of voter impersonation, or was it designed to make it harder for African Americans (and youth and other groups) to vote, in order for its sponsors and supporters to gain partisan advantage? The trial record shows that it's the latter. The District Court unfortunately bent over backwards to avoid that obvious finding, straining to attribute innocent motives at all turns.⁶ Democracy NC respectfully suggests that if this Court analyzes the record as objectively as possible, it will recognize the error of the District Court's decision.

As noted above, Democracy NC is a nonpartisan organization whose goal is to maximize the number of citizens at the polls and the number of eligible ballots counted. It would oppose any law, sponsored by any party, that sought to restrict the right to vote for partisan advantage, especially if it did so through racial discrimination.

⁶ See, e.g., JA24870 (Op. 386) (finding that the legislators' request for data about which registered voters, by race, currently had photo ID could possibly have been a for a legitimate, non-discriminatory reason).

More than a century ago, the Democratic Party in North Carolina used Jim Crow laws to change the election process to disenfranchise African American voters who allied themselves with white Populists to defeat Democratic candidates at the polls. The voter suppression laws adopted by the Democrats did not use racist language against Black citizens, but they carefully enacted election procedures that would specifically disadvantage African Americans and their allies. And that is what House Bill 589 does.

Indeed, in a revealing 2008 essay, Jack Hawke, the former chair of the North Carolina Republican Party and manager of Pat McCrory's unsuccessful gubernatorial campaign that year, described how Barack Obama won the state because his campaign adroitly used the specific features in North Carolina's election law that were "most likely" to help "black and young voters"—for example, early voting and straight-ticket voting. "The conservative cause can learn from studying the liberal organization employed in our state," Hawke wrote.⁷ Five years later,

⁷ Jack Hawke, *McCrory's Election Performance Defended*, THE CAROLINA JOURNAL, Nov. 21, 2008, available at <https://www.carolinajournal.com/opinion-article/mccrorys-election-performance-defended/>.

after Mr. McCrory became governor, Republican leaders carefully picked out the procedures that helped African American and young voters and rolled them into House Bill 589 for repeal. An anti-Black focus once again intrinsically, and repulsively, served a partisan interest.

Fortunately, the Voting Rights Act and the Fourteenth Amendment allow this Court—indeed require this Court—to protect the most fundamental right of citizens from these political actors who would take it away.

CONCLUSION

The Court should reverse and render judgment for Appellants.

Dated: May 26, 2016. Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE