
IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA, *ET AL.*,

Applicants,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *ET AL.*,

Respondents,

v.

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, *ET AL.*,

Respondents,

v.

LOUIS M. DUKE, *ET AL.*,

Intervenors/Respondents,

v.

UNITED STATES OF AMERICA,

Respondents.

ON APPLICATION FOR STAY FROM THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**RESPONSE TO APPLICANTS' EMERGENCY MOTION
FOR RECALL AND STAY OF MANDATE**

Daniel T. Donovan
Counsel of Record

Susan Davies
Michael A. Glick

K. Winn Allen
Ronald K. Anguas, Jr.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Penda D. Hair
Caitlin Swain
1401 New York Avenue, N.W.,
Suite 1225
Washington, D.C. 20005

Adam Stein
TIN FULTON WALKER & OWEN
1526 E. Franklin St., Suite 102
Chapel Hill, NC 27514

Irving Joyner
P.O. Box 374
Cary, NC 27512

Anita S. Earls
Allison J. Riggs
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 Highway 54, Suite 101
Durham, NC 27707

Dale E. Ho
Julie A. Ebenstein
Stephen R. Shapiro
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION, INC.
125 Broad Street
New York, NY 10004

Christopher Brook
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611-8004

Marc E. Elias
Bruce V. Spiva
Elisabeth C. Frost
Amanda Callais
PERKINS COIE LLP
700 Thirteenth Street, N.W.,
Suite 600
Washington, D.C. 20005-3960

Abha Khanna
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

Joshua L. Kaul
PERKINS COIE LLP
1 E. Main Street, Suite 201
Madison, WI 53703

Counsel for Respondents

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INTRODUCTION

Just as African Americans were “poised to act as a major electoral force” in North Carolina, the State “target[ed] African Americans with almost surgical precision,” App. at 10a-11a,¹ “rush[ing] through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965,” *id.* at 41a. In a careful and detailed opinion issued on July 29, the Fourth Circuit enjoined five voting restrictions and effectively returned North Carolina to the status quo during the last presidential election. As Applicants acknowledge, the Fourth Circuit’s decision came “months before the general election,” Applicants’ Emergency Appl. to Recall & Stay Mandate (“Br.”) at 3, and within the timeframe the State represented to the court would be sufficient for implementation. The timing of the decision was also consistent with this Court’s guidance that changes to elections procedures for a general election remain permissible through at least late July. *See Veasey v. Abbott*, 136 S. Ct. 1823 (2016).

Seventeen days later, the State filed this “emergency” request for a stay. But in the nearly four weeks that have now passed since the Fourth Circuit’s decision, the State has already taken a number of critical remedial steps to implement the Fourth Circuit’s decision, including:

- Convening the boards of elections in virtually all of North Carolina’s 100 counties to consider, approve, and publicize voting sites, dates, and hours necessary to implement a restored 17-day early voting period;

¹ Where necessary, Respondents cite to the Appendix appended to Applicants’ pleadings. Respondents have also added a small number of additional documents and have started numbering those at page 103a, which picks up where Applicants’ appendix finished.

- Conducting a two-day “State Elections Conference” for election administrators from each county, featuring training materials reflecting the post-injunction election rules and procedures; and
- Posting online, and preparing for print distribution to over four million households, a state-mandated voter guide (excerpted below), which describes the election rules under the terms of the injunction:

COURT-ORDERED ELECTION LAW CHANGES

On July 29, a federal court of appeals struck down challenged provisions of North Carolina Session Law 2013-381 (“HB-589”). The information below reflects the law in place as of August 15. In the event of any change, we will post updates to ncsbe.gov.

NO PHOTO I.D. REQUIRED TO VOTE IN THIS ELECTION

Voters will no longer be required to present photo identification at the polls. Please note: the Help America Vote Act of 2002 (HAVA) will still require certain first-time voters to present proof of identity if a valid social security number or driver license number was not provided at the time of registration.



REGISTRATION DURING 17-DAY EARLY VOTING PERIOD

Individuals may register and vote at one-stop early voting locations within their county during a 17-day period, beginning October 20 and ending November 5.

OUT-OF-PRECINCT VOTING ON ELECTION DAY

Provisional ballots cast on Election Day outside a voter’s assigned precinct but inside the voter’s county of residence will count toward all contests in which the voter is eligible to participate. To avoid voting a provisional ballot, voters must appear at their properly-assigned precinct on Election Day or at any of their county’s one stop early voting locations during the one-stop early voting period.

PRE-REGISTRATION FOR YOUNG ADULTS

Individuals who are at least 16 years old but will not yet be 18 years old on the date of the next election may now preregister to vote by submitting a registration application form. A downloadable form is available at NCSBE.gov.

The State’s assertion that there is too little time to comply with the injunction is not only belied by this record of on-the-ground activity, it is also at odds with the State’s own representations to the Fourth Circuit. At oral argument in June, the State offered “assur[ance] . . . that it would be able to comply with any order . . . issued by late July,” and explained that changing election procedures in August—as the State now seeks to accomplish through its stay application—would impose significant administrative burdens. *See* App. at 101a-102a. Indeed, the Court of Appeals credited these admissions in denying the State’s motion to recall or stay the mandate in that court. *Id.* Yet the State then waited ***another 11 days*** after the Fourth Circuit’s denial of their stay request (for a ***total of 17 days***) before filing the present application. At this point, however, the only risk of “dramatically alter[ing] existing election procedures,” Br. at 17, would be if the application were granted. Simply put, the State is not seeking a stay but rather an order that North Carolina’s elections practices be changed from what has already been implemented in accordance with the Fourth Circuit’s order.

The balance of equities also tips decidedly in favor of denying the stay given the Fourth Circuit’s conclusion that the challenged restrictions were enacted with racially discriminatory intent. As described more fully below, that conclusion is amply supported by largely undisputed facts in the record. Most critically, the enjoined restrictions were adopted following a “surge[]” in voting by African Americans, App. at 13a, and targeted forms of voting “used disproportionately by African Americans,” *id.* at 45a-46a (citation omitted)—a fact fully understood by the

Legislature, which had requested “racial data” on precisely that point, *id.* at 48a. Moreover, four of the five restrictions were added to a pre-existing voter ID bill soon after the State was relieved of its federal preclearance obligations and then “rushed through the legislative process” with little opportunity for meaningful debate. *Id.* at 41a. On the other side of the scale, the Fourth Circuit recognized the State’s proffered justifications for the enjoined restrictions as “solutions in search of a problem” that “were not tailored to achieve [their] purported justifications, a number of which were in all events insubstantial.” *Id.* at 68a.

The State nonetheless contends that this Court is likely to grant certiorari and reverse the decision below on the ground that the Fourth Circuit’s finding of discriminatory intent was undermined by its failure to reverse the District Court’s findings on discriminatory effect. That contention mischaracterizes both the record and the law. The Fourth Circuit did address discriminatory effects within the context of its intent analysis. And, as the Fourth Circuit correctly understood, a voting restriction that is enacted with a discriminatory purpose is not redeemed under either the Constitution or the Voting Rights Act by the fact that it does not fully achieve its discriminatory goals.

Ultimately, the Fourth Circuit’s decision was based on a careful consideration of the legislative and trial record. The State fails to offer valid grounds for upsetting that well-reasoned ruling. And it certainly fails to offer grounds for a stay weeks down the road and after election officials have undertaken substantial measures to implement the Fourth Circuit’s ruling for the upcoming election. It

would be a miscarriage of justice and inconsistent with this Court’s precedents to permit North Carolina’s discriminatory voting law to remain in force through the 2016 election by issuing the requested stay. The application should be denied.

STATEMENT OF THE CASE

A. North Carolina’s Mix of Race and Politics

North Carolina has “a long history of race discrimination generally and race-based vote suppression in particular.” App. at 31a. As a result, the State’s “African Americans are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health”—a panoply of “socioeconomic factors that may hinder their political participation.” *Id.* at 18a-19a.

Starting in 1999, the State adopted four voting reforms, each of which was disproportionately used by African Americans. *First*, the General Assembly passed legislation allowing for 17 days of no-excuse early in-person voting. *See* SL 1999-455; *see also* SL 2001-319. In the 2008 and 2012 elections, over 70% of African-American voters used early voting, compared to approximately 50% of white voters. *N.C. State Conference of NAACP v. McCrory*, 997 F. Supp. 2d 322, 372 n.64 (M.D.N.C.), *rev’d sub nom. League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014). Notably, the District Court found that “African Americans disproportionately used the first seven days [of early voting],” particularly in presidential elections. *N.C. State Conference of NAACP v. McCrory*, __ F. Supp. 3d __, 2016 WL 1650774, at *49 (M.D.N.C. Apr. 25, 2016) (“D. Ct. Op.”). *Second*, in 2005, the legislature authorized the counting of “out-of-precinct ballots”—provisional ballots cast by registered voters within their county of residence but

outside of their assigned precinct—expressly recognizing that African Americans had cast a “disproportionately high percentage” of such ballots in then-recent elections. SL 2005-2, § 1; *see also* D. Ct. Op. at *66-67. *Third*, in 2007, the State adopted same-day registration, whereby an individual could register to vote and cast a ballot at the same time during early voting, subject to heightened security requirements. SL 2007-253. Roughly 100,000 voters used same-day registration in both the 2008 and 2012 presidential elections. JA631; JA823-24.² As the District Court found, “it is indisputable that African American voters disproportionately used [same-day registration],” constituting over 30% of such registrants in those elections, “which exceeded their roughly 22% proportionate share of all registered voters.” D. Ct. Op. at *61. *Finally*, in 2009, the General Assembly authorized 16- and 17-year-olds to “preregister to vote and . . . be automatically registered upon reaching the age of eligibility.” SL 2009-541, § 7(a). Over 150,000 North Carolinians went on to use pre-registration, a disproportionate share of whom were African American. App. at 18a; *see also* D. Ct. Op. at *131; JA19528; JA20114; JA3906; JA3945.

“[B]etween 2000 and 2012, when the law provided for the voting mechanisms at issue here and did not require photo ID, African American voter registration swelled by 51.1%. . . . African American turnout similarly surged, from 41.9% in 2000 to . . . 68.5% in 2012.” App. at 13a (comparing to an increase of 15.8% for white voters). Thus, “by 2013 African American registration and turnout rates had

² “JA” citations are to the Joint Appendix filed in *N.C. State Conference of the NAACP v. McCrory*, No. 16-1468 (4th Cir. May 19, 2016), ECF Nos. 89-95.

finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force.” *Id.* at 10a.

“Voting in . . . North Carolina is racially polarized.” *Id.* at 9a. Indeed, “one of the State’s experts conceded, ‘in North Carolina, African-American race is a better predictor for voting Democratic than party registration.’” *Id.* at 37a-38a. The legislature “certainly knew that African American voters were highly likely, and that white voters were unlikely, to vote for Democrats. And it knew that, in recent years, African Americans had begun registering and voting in unprecedented numbers . . . to a degree unmatched in modern history.” *Id.* at 38a.

B. Session Law 2013-381 and Subsequent Amendments

“[T]he sheer number of restrictive provisions in SL 2013-381 distinguishes this case from others.” App. at 52a-53a. “[I]n the immediate aftermath of unprecedented African American voter participation in a state with a troubled racial history and racially polarized voting,” *id.* at 40a, the State abruptly eliminated the four voting practices described above, and imposed a strict voter identification requirement, “target[ing] African Americans with almost surgical precision,” *id.* at 11a. It did so in a secretive and truncated legislative process, adopting “the first meaningful restrictions on voting access” in North Carolina in decades, with a bill that “came into being literally within days of North Carolina’s release from the preclearance requirements of the Voting Rights Act.” *Id.* at 32a.

“The sequential facts found by the district court are . . . undisputed. And they are devastating.” *Id.* at 41a. House Bill 589 (“HB 589”), the bill that became SL 2013-381, was originally introduced in early 2013, and included only a

substantially less stringent voter ID requirement without making any other significant changes to election laws. *Id.* The initial bill permitted the use of all forms of government-issued photo ID, including public assistance ID cards. After four weeks of consideration—including public hearings and debate in three committees—it passed the House on April 24, 2013. *See id.* The Senate received the bill the following day, but took no legislative action for two months. *Id.* at 42a.

Two months later, this Court decided *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), which invalidated the formula for determining which jurisdictions were subject to the Voting Rights Act’s preclearance requirement, thus relieving North Carolina from having to seek federal approval for changes to its voting laws. “[T]he day after[wards] . . . the Republican Chairman of the [Senate] Rules Committee[] publicly stated . . . that the Senate would move ahead with the ‘full bill.’” App. at 14a. “After that announcement, no further public debate or action occurred for almost a month,” and “[i]t was not until July 23” with only two days left in the legislative session “that an expanded bill, including the election changes challenged in this case, was released.” *Id.* at 42a (citation omitted). What had been “an essentially single-issue bill” suddenly reappeared as “omnibus legislation,” *id.* at 14a, which also, *inter alia*, eliminated a week of early voting, same-day registration, out-of-precinct provisional balloting, and pre-registration.

The legislature’s decision to target these modes of voting was no accident; the legislature restricted voting mechanisms that it “knew were used disproportionately by African Americans, and so likely would not have passed preclearance,” *id.* at 45a-

46a (citation omitted), because it “requested and received racial data as to usage of the practices changed by the proposed law,” “prior to and during the limited debate on the expanded omnibus bill,” *id.* at 14a, 48a.

This data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, and disproportionately lacked DMV-issued ID. Not only that, it also revealed that African Americans did *not* disproportionately use absentee voting; whites did. SL 2013-381 drastically restricted all of these other forms of access to the franchise, but exempted absentee voting from the photo ID requirement. In sum, relying on this racial data, the General Assembly enacted legislation restricting all -- and only -- practices disproportionately used by African Americans.

Id. at 48a (citations omitted).³

But that is not all. The legislature also “substantially changed” the pre-*Shelby County* voter ID requirement. *Id.* at 46a. The aforementioned data requested by the legislature “showed that African Americans disproportionately lacked the most common kind of photo ID, those issued by the Department of Motor Vehicles (DMV).” *Id.* at 15a. Yet, whereas the pre-*Shelby County* version of the law provided that all government-issued IDs would be a valid alternative to DMV-issued photo IDs, the “full bill” did not. *Id.* at 14a-15a. Instead, “with race data in hand, the legislature amended the bill,” *id.*, so that “the new ID provision *retained only those types of photo ID disproportionately held by whites* and excluded

³ Although Applicants quibble about what precisely the data showed and the precise timing with which it was received, *see* Br. at 15, the record is unequivocal. Legislators requested a racial breakdown of early voting and provisional voting, which confirmed racially disproportionate usage. App. at 14a-18a. “[L]egislators similarly requested data as to the racial makeup of same-day registrants,” which “indisputabl[y]” showed “that African American voters disproportionately used same-day registration when it was available.” *Id.* at 16a-17a.

those disproportionately held by African Americans.” *id.* at 43a (emphasis added) (citation omitted). The legislature has never offered a public explanation for this change—either during the legislative process or three subsequent years of litigation, and thus, “[t]he district court specifically found that ‘the removal of public assistance IDs’ in particular was suspect.” *Id.* at 43a. The new version of SL 2013-381 was then “rushed through the legislative process” in two days, with little opportunity for public scrutiny. *Id.* at 41a.

C. Judicial Proceedings

Respondents immediately challenged the law on grounds that, *inter alia*, it was enacted with discriminatory intent and has discriminatory results for African Americans. The District Court ruled for the State, but the Court of Appeals reversed, holding that SL 2013-381 was passed with discriminatory intent. In doing so, the court held that the District Court “clearly erred” by considering “each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis required by *Arlington Heights*.” App. at 56a. Those circumstances include:

- “North Carolina’s history of voting discrimination,” App. at 56a, which the District Court “inexplicably failed to grapple with . . . in its analysis of [Applicants]’ discriminatory intent claim,” *id.* at 32a;
- North Carolina’s recent “surge in African American voting,” coupled with “the legislature’s knowledge that African Americans voting translated into support for one party,” *id.* at 56a;
- The sweeping nature of the bill, which, at every turn, “eliminat[ed] . . . the tools African Americans had used to vote,” *id.* at 56a, and which was imposed “with race data in hand,” *id.* at 15a, “at the first opportunity” right after *Shelby County*, *id.* at 56a; and
- The decision to “rush[] [the bill] through the legislative process,” which “suggests an attempt to avoid in-depth scrutiny,” *id.* at 43a-44a.

As explained by the Fourth Circuit, the totality of the circumstances “unmistakably reveal[ed] that the General Assembly used SL 2013-381 to entrench itself” by engaging in a form of “racial discrimination”: namely, “by targeting voters who, based on race, were unlikely to vote” for the party in power. *Id.* at 56a. The Fourth Circuit therefore concluded that race was “*a* factor” in the adoption of the voting restrictions at issue. *Id.* at 57a.

Following the framework set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the Fourth Circuit next turned to the State’s proffered rationales for the enjoined provisions, App. at 57a, and found them wanting. The court found that, “[a]lthough the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.” *Id.* at 11a. The court noted the legislature’s express acknowledgement that self-entrenchment was its purpose, which “comes as close to a smoking gun as we are likely to see in modern times, [as] the State’s very justification for a challenged statute hinges *explicitly* on race -- specifically its concern that African Americans, who had overwhelmingly voted for Democrats, had too much access to the franchise.” *Id.* at 40a. The court then “conclude[d] that race constituted a but-for cause of SL 2013-381, in violation of the Constitutional and statutory prohibitions on intentional discrimination.” *Id.* at 69a.

Given the completeness of the record, *id.* at 59a, the Fourth Circuit determined that remand was unnecessary and ordered that the challenged

provisions be enjoined in their entirety. On the same day, the District Court permanently enjoined the challenged provisions. *See N.C. State Conference of NAACP v. McCrory*, No. 1:13-cv-658 (M.D.N.C. July 29, 2016), ECF No. 455. As described below, in the nearly four weeks since entry of the injunction, state and local elections officials have taken numerous steps to align the State’s elections procedures with the injunction, and have substantially accomplished that goal.

REASONS FOR DENYING THE STAY

In assessing a stay application pending the filing and disposition of a petition for a writ of certiorari, the “judgment of the court below is presumed to be valid,” and this Court defers to the judgment of the court of appeals “absent unusual circumstances.” *Wise v. Lipscomb*, 434 U.S. 1329, 1333 (1977) (Powell, J., in chambers). “Denial of . . . in-chambers stay applications” pending the filing of a petition for certiorari “is the norm; relief is granted only in ‘extraordinary cases.’” *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers). “The party requesting a stay bears the burden of showing that the circumstances justify” such extraordinary relief. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

Applicants do not remotely satisfy this Court’s exacting standards. Applicants—who bear the burden—fail to demonstrate *any* of the three prongs required for granting a stay at this stage: (1) a likelihood that irreparable harm will result from the denial of a stay; (2) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; and (3) a fair prospect that a majority of the Court will vote to reverse the judgment below. *See Conkright*, 556 U.S. at 1402. And even if Applicants could satisfy these prongs—and they

cannot—“[t]he conditions that are *necessary* for issuance of a stay are not necessarily *sufficient*.” *Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers). “It is ultimately necessary, in other words, ‘to “balance the equities”—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.’” *Id.* at 1305 (citations omitted). Here, the consequences of granting a stay would be severe: not only would it disrupt the status quo before an upcoming presidential election, it would permit the State to impose a discriminatory law that would irreversibly violate the fundamental rights of tens of thousands of North Carolinians.

I. The Fourth Circuit’s Mandate Will Not Injure Applicants, But A Stay At This Juncture Would Confuse The Public And Disenfranchise Thousands Of North Carolina Voters.

The State cannot demonstrate irreparable harm, especially after having waited 17 days after the Fourth Circuit ruled to file this emergency application. The Fourth Circuit’s judgment has already been implemented in substantial measure. What the State now seeks is to disrupt the status quo, which would impose severe burdens on elections officials and “result in voter confusion and consequent incentive to remain away from the polls”—a “risk” that has only “increase[d]” as the “election [has] draw[n] closer” during Applicants’ inexplicable delay in seeking this Court’s relief. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).

A. The Fourth Circuit Ruled More Than 100 Days before Election Day and Its Decision Has Been Substantially Implemented.

The Fourth Circuit's July 29 order did not arrive at the "eleventh hour," as Applicants claim, Br. at 28, but rather came more than 100 days before Election Day. This is well within the permissible timeframe for modifying election procedures, and was based on the State's assurances that it could implement an injunction issued in July without disrupting the November election. *See* App. at 101a ("At oral argument, the State assured us that it would be able to comply with any order we issued by late July."). The timing here is also consistent with this Court's recent guidance in *Veasey v. Abbott*, 136 S. Ct. 1823 (2016), which recognized that a Fifth Circuit ruling in Texas's voter ID litigation by late July would allow enough time for implementation. *See id.* (inviting the parties to seek interim relief on July 20 if the Fifth Circuit did not act). Federal law similarly permits systemic changes to voter registration rolls more than 90 days before an election. *See* 52 U.S.C. § 20507(c)(2)(A).

Now, almost a month after the Fourth Circuit's ruling, State and local elections officials have taken nearly all of the steps to comply with that ruling. A stay at this juncture would raise rather than mitigate *Purcell* concerns.

Training of Election Officials. Per its tradition, and consistent with Applicants' representations to the Fourth Circuit, *see* Fourth Circuit Oral Argument ("Oral Arg.") at 01:13:51-01:14:55 (June 21, 2016), *available at* <http://coop.ca4.uscourts.gov/OAarchive/mp3/16-1468-20160621.mp3>, on August 8-9, the State Board of Elections ("SBOE") conducted a mandatory two-day State

Elections Conference training for administrators from each of North Carolina's 100 counties. *See* App. at 103a-106a. At that conference, SBOE Executive Director Kim Strach explained that the training would focus on conducting elections this fall in conformity with the Fourth Circuit's order and District Court injunction. *Id.* at 104a ("We're not going to focus on photo ID, we're going to focus on elections without photo ID."). To that end, Executive Director Strach represented to training attendees that the SBOE had already taken various steps to comply with the ruling, including: (1) updating its website to reflect the injunction; (2) removing billboards advertising the voter ID requirement; (3) halting its voter ID media campaign; and (4) cancelling the distribution of photo ID educational materials. *See id.* at 104a-105a.

Moreover, the materials produced for the training reflected the injunction's restoration of pre-2013 election procedures. *See id.* at 105a. And the SBOE represented that it was in the process of providing county boards with updated election administration materials (including a revised voting "station guide" for poll workers deleting all mention of the photo ID requirement). *Id.* at 104a.

Having already trained election officials on the pre-2013/post-injunction election procedures, it is, by the State's admission, too late to make substantial changes to those procedures. Indeed, during the Fourth Circuit argument in June, counsel for the State represented: "[I]f any changes are made after that date [the August 8-9 training], it becomes an issue, not just educating people what the rules are, but reeducating people. It's not what you've already been told. It's now going

to be this.” See Oral Arg. at 01:13:51-01:14:58. Accordingly, far from causing confusion in the election process, the Fourth Circuit’s decision came in time for the State’s scheduled training—precisely because the State warned that changing procedures after the training would be problematic. Granting the State’s newly-requested application would require extensive re-training. Given the lack of opportunity for such re-training before the election, re-implementing the law without adequate training of elections officials would be a recipe for disaster.

Public Pronouncements to Voters. In the weeks since the Fourth Circuit’s ruling, the State has publicized the new election rules in several manners. Most notably, the SBOE voter guide that is on the State’s website and will soon be mailed to every North Carolina household has already been updated to reflect the injunction. See App. at 114a-140a. The second page instructs voters about, *inter alia*, the absence of a photo ID requirement; the beginning of the first day of the 17-day early voting period; procedures for out-of-precinct voting; and the reinstatement of pre-registration. *Id.* at 115a. The guide is already available online.⁴ Upon information and belief, the SBOE sent the guide to the printer more than a week ago and the guides started printing earlier this week for mailing to over 4.3 million households.⁵

⁴ See NC SBOE, *2016 Judicial Voting Guide*, available at http://www.ncsbe.gov/Portals/0/FilesP/PDF/2016_Voter_Judicial_Guide_Web.pdf.

⁵ Applicants represented at oral argument that proofs for the voter guide were due on August 5; Respondents understand that deadline was extended to August 15, and proofs of the guide were sent to the printer on that date. By statute, the guides must be mailed between 7 and 28 days before early voting begins. See N.C. Gen. Stat. § 163-278.69(a).

Once again, consistent with the State’s representations, the fact that the voter guide reflecting post-injunction election procedures is already in the process of printing is a critical marker after which additional changes to election procedures would be disruptive and confusing to voters. *See* Oral Arg. at 01:16:10-01:16:19. Applicants argued **against** preliminary relief in early September 2014, claiming it would be too late to implement an injunction before the November 2014 election because the voter guides had already been sent to the printer. *See* Decl. of K. Strach ¶ 6 (“Strach Decl.”), *N.C. State Conference of Branches of NAACP v. McCrory*, No. 14-1856 (4th Cir. Sept. 2, 2014), ECF No. 26-5 (declaration stating that because the voter guide’s “content and layout ha[d] already been approved” and “sent to the printer” by September 2—with “the information about the changes to election law . . . featured prominently”—“[i]t [wa]s not possible at this time to alter the content of the voter guides and have revised guides sent out in accordance with the statutory requirements”). To the extent the initiation of printing the voter guide supported **granting** a stay in 2014, it cuts exactly the opposite way here. This time, the Fourth Circuit’s decision came well before the date the State represented it would commence printing the guide, and the election law changes mandated by the Fourth Circuit are reflected in the printed version.

Approval of 17-Day Early Voting Plans. As of the time of this filing, almost all 100 counties in the State have adopted a 17-day early voting plan. To adopt a plan, a three-member local board must give 48 hours public notice for a meeting at which the plan will be adopted. *See* N.C. Gen. Stat. § 142-318.12(b).

The boards must make arrangements for early voting sites and for staffing and funding. The Fourth Circuit’s ruling required counties to develop plans to extend the 10-day early voting period to 17 days as was the case in the last presidential election cycle. Following the Fourth Circuit’s decision, the SBOE promptly issued Numbered Memo 2016-11 (August 4, 2016), *available at* <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered%20Memo%202016-11.pdf>, providing guidance on how the counties could comply with the District Court’s injunction. The counties acted immediately to follow that guidance. By the end of the day on August 15 (when Applicants sought relief from this Court), more than half of the counties (53) had adopted 17-day early voting plans. *See* App. at 111a-113a. On August 16, immediately following this Court’s briefing order, the SBOE issued Numbered Memo 2016-12, which set today (August 25) as the deadline for the remaining counties to submit amended 17-day early voting plans. *See id.* at 141a. Respondents have confirmed that 99 out of the State’s 100 counties have done so prior to this filing, with about two-thirds of those counties having adopted plans on a unanimous basis, which will require only administrative approval from the State Board. *See* N.C. Gen. Stat. § 163-227.2(g).

A stay would require nearly every county in the State to (i) reconvene to adopt a new 10-day plan, and (ii) publicize another revised plan to voters. Again, Applicants’ representations from 2014 confirm that reversing course would be nearly impossible: Executive Director Strach stated on September 2 of that year that “[t]here is insufficient time for county boards to reformulate early voting plans,

obtain any new and necessary funding or approvals, and publicize different early voting locations and hours” Strach Decl. ¶ 15.

If modification of early voting plans across the State was problematic at this point in 2014, it is even more so today. After the Fourth Circuit’s ruling, for example, some counties released carefully selected early voting sites and sometimes switched to new sites when others were available for 10 days but not 17 days. *See* App. at 109a. If a stay were granted, many now-defunct early voting sites would need to be reactivated, but certain of the released sites may no longer be available.⁶

Pre-Registration Changes. Finally, with respect to pre-registration, the DMV is already accepting pre-registrations manually and is in the process of changing its data entry system to accept such applications automatically. App. at 105a. Counties are no longer allowed to send denial letters to 16- and 17-year-olds who submit a voter registration application form, and must instead keep those registrations in queue for registration when the applicable age is reached. *Id.* Applicants identify ***no burden at all*** associated with maintaining pre-registration, which does not directly affect the upcoming election because 16- and 17-year-olds will not be eligible to vote in November.

* * * * *

⁶ County boards are generally advised that they may not vote on an early voting plan without all three members of the county board participating in the vote. If a stay is issued and counties cannot reconvene in the short time left to adopt new plans, they would, by statute, default to offering early voting only at the County Board of Elections office during weekday regular business hours and on the last Saturday morning of the early voting period. In the largest counties, such a result would be nothing short of catastrophic.

Applicants represented to the Court of Appeals that any changes to elections procedures had to be ordered prior to various August deadlines for elections administration tasks. The Fourth Circuit relied on those representations, issuing its decision “a week in advance of those dates.” App. at 101a. Notwithstanding the Fourth Circuit’s diligence in accommodating the State’s timing concerns, the State waited five days before seeking a stay from that court, which denied the stay the next day, concluding that “recalling or staying the mandate now would only undermine the integrity and efficiency of the upcoming election.” *Id.* Then, rather than seeking immediate relief from this Court before at least some of the administrative deadlines passed, the State waited ***an additional eleven days*** before filing this “emergency” application. The State’s delay alone is sufficient to warrant denial of this application. *See Winston-Salem/Forsyth Cty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1226-27, 1231 (1971) (Burger, C.J., in chambers) (rejecting stay of school desegregation decision where 29-day delay in making application was not explained). The only way North Carolina will be “forced to scramble” now, Br. at 3, would be if this Court were to issue a stay, which would require the re-training of election workers statewide, the revision and reprinting of more than four million voter guides (apparently impossible at this point), and the reconvening of 100 county boards of elections to redesign early voting plans. The Court should not order such extraordinary and disruptive relief.

B. The Facts of this Case Distinguish It from Those in which Stays Were Granted.

Given the circumstances and timeline set forth above, this case is nothing like the three cases in which this Court granted or affirmed stay applications in 2014. In those cases, this Court stayed (or affirmed a stay of) injunctions that had been issued between 11 days and four weeks before early voting was to commence. *See Husted v. Ohio State Conference of NAACP*, 135 S. Ct. 42 (2014) (Ohio); *North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 6 (2014) (North Carolina); *Veasey v. Perry*, 135 S. Ct. 9 (2014) (Texas).⁷ The chart below summarizes dates of those injunctions compared to the commencement of early voting and Election Day:

	2014			2016
	Ohio	North Carolina	Texas	North Carolina
Injunction Issued	September 4 (affirmed by Court of Appeals on September 24)	October 1	October 9 (affirmed by Court of Appeals on October 15)	July 29
Days before Election Day	61 days after original injunction (41 days after affirmance by Court of Appeals)	35 days	25 days after original injunction (19 days after affirmance by Court of Appeals)	103 days
Days before Early Voting	28 days after original injunction (8 days after affirmance by	15 days	11 days after original injunction (5 days after affirmance by	86 days

⁷ On October 9, 2014, the Court vacated an order entered by the Seventh Circuit staying a district court’s order barring Wisconsin from implementing its strict photo ID requirement. *See Frank v. Walker*, 135 S. Ct. 7 (2014).

	Court of Appeals)		Court of Appeals)	
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As reflected above, the injunction here came 103 days before Election Day, and more than **12 weeks** before the start of early voting. This left the State ample time to implement the Fourth Circuit’s mandate, as Applicants assured the court was possible. Thus, while *Purcell* warned against making changes “just weeks before an election,” 549 U.S. at 4, that is not at all what happened here.⁸ Indeed, the facts of *Purcell* vividly illustrate the difference: there, the election rules changed three times between September 11, and the November 7 general election, with an injunction pending appeal granted on the day early voting started. That is a far cry from the circumstances here, where the State has already implemented the injunction well in advance of the upcoming election. The *Purcell* concerns that may have informed this Court’s 2014 decisions warrant *denying* this application in 2016.

C. Thousands of Voters Will Be Irreparably Harmed by a Stay.

Finally, a “conflicting order” to stay the injunction would expose thousands of North Carolinians to disenfranchisement by curtailing widely-used voting opportunities. In 2012, nearly 900,000 North Carolina voters used the seven days of early voting that the State seeks to eliminate via its stay application, *see* JA626, and approximately 1,400 votes cast by people who lack photo ID were not counted in

⁸ Notably, in each of the 2014 cases, the applicants also sought emergency relief from this Court with much more urgency—the very next day after the Court of Appeals ruled on a stay request—than North Carolina displayed here.

the March 2016 primary election,⁹ despite the purported availability of an affidavit option. See Decl. of R. Hall at 9-10, *N.C. State Conference of NAACP v. McCrory*, No. 16-1468 (4th Cir. May 25, 2016), ECF No. 99-2.

A stay would leave in place intentionally discriminatory voting laws, which is repugnant to the guarantees of the Constitution and the Voting Rights Act. “[The Equal Protection Clause’s] central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race.” *Shaw v. Reno*, 509 U.S. 630, 642 (1993). As the Fourth Circuit noted in rejecting the State’s motion for a stay, “[v]oters disenfranchised by a law enacted with discriminatory intent suffer irreparable harm far greater than any potential harm to the State.” App. at 102a. That is, even assuming that the injunction raises *Purcell* concerns—which it does not—the constitutional imperative to prevent racial discrimination in voting demands that the injunction remain undisturbed.

Applicants’ asserted hassles from “rejigger[ing]” their plans, Br. at 3-4, pale in comparison to the constitutional injuries that would be visited upon thousands of voters if a stay is granted. With respect to the photo ID requirement, implementation of the injunction is straightforward and simple: poll workers should no longer ask voters to show such ID at the polls in order to vote. Election officials have already been trained on how to implement such straightforward relief. With respect to early voting, Applicants have failed to show **any** injury beyond two minor

⁹ Applicants describe the only election in which the photo ID requirement was enforced as an “exceptionally high-turnout March 2016 primary.” Br. at 29. Yet the 35.7% turnout was lower than the March 2008 primary, and substantially lower than the turnout expected in the upcoming presidential general election.

administrative hurdles, *see* Br. at 30, both of which are illusory. First, Applicants claim to need 90 days’ notice to use public buildings as polling places, Br. at 30; but, in fact, state law requires only 45 days’ notice, *see* N.C. Gen. Stat. § 163-128. And the actions already taken by 99 county boards to reconsider or amend their early voting plans—many of which involved securing public buildings for an additional seven days—further belie the State’s contention. *See* App. at 111a-113a. Second, while “the budgets for county boards were set in June or July,” Br. at 30, in March of this year, the SBOE instructed county boards “to request contingency funds for unforeseen changes to the election process” in light of this and other ongoing litigation. SBOE Numbered Memo 2016-06 at 5 (March 30, 2016), *available at* https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered_Memo_2016-06.pdf. And Applicants conceded during oral argument that reverting to a 17-day early voting period will not likely increase the county boards’ budgets. *See* Oral Arg. at 01:17:57-01:19:50. Furthermore, Applicants fail to identify any burden associated with reinstating pre-registration, which does not directly affect the upcoming election regardless. Thus, based on the State’s application, the only “emergency” here appears to be the danger of too many eligible North Carolinians registering and subsequently voting.

Nor can the State credibly claim irreparable harm from the mere fact that an injunction prevents implementation of a state election law. This Court has consistently reaffirmed the role of federal courts in reviewing legislation that threatens the right to vote, *cf. Tashjian v. Republican Party of Conn.*, 479 U.S. 208,

217 (1986) (“The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote”), while recognizing the irreparable injury that necessarily inures from unlawful restrictions on constitutional rights, *see Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury. . . . [O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.”), *cert. denied*, 135 S. Ct. 1735 (2015).

After diligently pursuing discovery that unearthed smoking-gun evidence of discrimination, Respondents’ principal claims were tried over a year ago, with supplemental proceedings in January of this year. And following the District Court’s decision in late April of this year, Respondents diligently pursued appeals, including expedited briefing and argument before the Fourth Circuit. Now, three years after SL 2013-381 was enacted, Respondents have succeeded before the Fourth Circuit (again), yet the State is asking for another federal election cycle to pass before relief is granted. But *Purcell* is not a license to squeeze out every last possible election under an unlawful regime. The stay should be denied.

II. The Fourth Circuit Correctly Held That The Challenged Law Was Enacted With Discriminatory Intent.

A. The Fourth Circuit Correctly Applied *Arlington Heights*.

The Fourth Circuit properly applied this Court’s precedent in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977),

in holding that the challenged provisions were enacted with discriminatory intent. Contrary to Applicants’ assertion that the court applied a presumption of racial animus because the eliminated practices were disproportionately used by minority voters, Br. at 23, the Fourth Circuit carefully applied the *Arlington Heights* rubric, looking first at the series of non-exhaustive factors indicative of discriminatory intent, App. at 25a, 31a-56a, as well as other pertinent facts from the record, and then assessing the Applicants’ purported justifications for the law, *id.* at 57a-68a. Applying this framework, the Fourth Circuit correctly held that SL 2013-381 was enacted with discriminatory intent.

1. The Fourth Circuit properly considered the factors indicative of discriminatory intent.

In *Arlington Heights*, the Court established a set of non-exhaustive factors that are indicative of whether official action was taken with discriminatory intent. 429 U.S. at 265-68. These factors include: the “historical background of the [challenged] decision”; the “specific sequence of events leading up [to] the challenged decision,” including “[d]epartures from the normal procedural sequence”; the legislative history of the decision; and whether the disparate “impact of the official action . . . bears more heavily on one race than another.” *Id.* at 266-68. The Fourth Circuit devoted nearly thirty pages of its opinion to analyzing and applying these factors to the record developed before the District Court before concluding that SL 2013-381 was enacted with a discriminatory purpose. App. at 31a-59a.

Historical Background. The Fourth Circuit properly observed that North Carolina “[u]nquestionably” has “a long history of race discrimination generally and

race-based vote suppression in particular.” App. at 31a. While acknowledging the “limited weight” of the State’s sordid pre-1965 history of discrimination, *id.*, the court observed that “[t]he record is replete with evidence of instances since the 1980s in which the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans,” *id.* at 33a. Specifically, it pointed to the fifty objection letters to proposed election law changes from 1980 to 2013, ten judicial decisions in the same period “finding that electoral schemes in counties and municipalities across the state had the effect of discriminating against minority voters,” and a spate of recent decisions finding that State redistricting plans were adopted with improper racial motive.¹⁰ *See id.* at 33a-36a. The Fourth Circuit thus concluded that the State “continued in [its] efforts to restrict or dilute African American voting strength well after 1980 and up to the present day.” *Id.* at 37a.

Sequence of Events Leading to the Law’s Passage. The Fourth Circuit next evaluated the “specific sequence of events” leading up to the passage of HB 589, including the legislature’s “[d]epartures from the normal procedural sequence.” App. at 41a. Relying on the “undisputed” and “devastating” factual record as established by the District Court, the court found that “immediately after *Shelby County*, the General Assembly vastly expanded an earlier photo ID bill and rushed through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965.” *Id.* The Fourth Circuit

¹⁰ A three-judge district court has since issued an additional decision finding racially motivated redistricting in North Carolina. *See Covington v. North Carolina*, No. 1:15-cv-399, 2016 WL 4257351 (M.D.N.C. Aug. 11, 2016).

recognized the “unusual” and “abrupt” timeline for considering and debating HB 589, particularly given the “expanded law’s proximity to the *Shelby County* decision” and the impact the law would have on African Americans. *Id.* at 44a-46a. Of particular salience to the court was the more restrictive post-*Shelby County* photo ID provision, which “retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans.” *Id.* at 42a-43a. From this sequence of events, the court properly drew “the obvious inference” of discriminatory intent under *Arlington Heights*. *Id.* at 41a.

Legislative History. The Fourth Circuit focused on the fact that “members of the General Assembly requested and received a breakdown by race of DMV-issued ID ownership, absentee voting, early voting, same-day registration, and provisional voting (which includes out-of-precinct voting).” App. at 48a. As both the District Court and the Fourth Circuit agreed, “[t]his data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting”—the same voting reforms eliminated by SL 2013-381—and that African Americans “disproportionately lacked DMV-issued ID”—the primary form of ID among those mandated by SL 2013-381. *Id.* (citing D. Ct. Op. at *148). As the Fourth Circuit explained, “the General Assembly enacted legislation restricting all—and only—practices disproportionately used by African Americans.” *Id.* In light of the perfect match between the requested data showing disproportionate use by African Americans and the restrictive provisions of SL 2013-281, the Fourth

Circuit rejected “the unpersuasive non-racial explanations the State proffered for the specific choices it made.” *Id.* at 48a-49a.

Impact of Official Action. The Fourth Circuit also assessed whether the enacted law “bears more heavily on one race than another.” *Arlington Heights*, 429 U.S. at 266 (citation omitted). In addition to addressing the “impact of the official action” in the elections that *followed* the law’s enactment, *see infra* Part II.C, the Fourth Circuit (like the District Court before it) agreed that African Americans had disproportionately used the voting mechanisms eliminated by SL 2013-381 in the elections preceding the law, and disproportionately lacked DMV-issued photo IDs. *See App.* at 49a (citing D. Ct. Op. at *37, *136). Even in light of these clear findings, Applicants wrongly argue that the Fourth Circuit focused on the theoretical effects of the enjoined provisions based only on past results. Br. at 15-16. Not so. As the Fourth Circuit explained, the record “provides abundant support” for the conclusion that SL 2013-381 *does* have a disparate impact on minority voters, given that minority voters disproportionately use—and have continued to use—every one of the challenged voting mechanisms.¹¹ *See App.* at 51a. Particularly when viewed in the context of the other *Arlington Heights* factors, this cumulative disparate impact, *see id.*, provides a firm basis for the Fourth Circuit’s conclusion that HB 589 was enacted with discriminatory intent.

¹¹ Applicants misleadingly suggest that the District Court found that “preregistration is actually not disproportionately used by minorities.” Br. at 23 n.3. The District Court found that African Americans disproportionately used pre-registration but Hispanics did not. D. Ct. Op. at *69. The Court of Appeals accepted the District Court’s finding about African Americans and did not reach the claims of discrimination against Latinos. App. at 18a, 22a-23a.

2. The Fourth Circuit considered—and rejected—the Applicants’ made-for-litigation justifications.

After finding that Respondents had demonstrated that a race-based purpose was at least *a* motivating factor behind SL 2013-381, the Fourth Circuit turned its attention to “the substantiality of the state’s proffered non-racial interest and how well the law furthers that interest.” *See* App. at 57a (citing *Hunter v. Underwood*, 471 U.S. 222, 228-33 (1985)). And Applicants could offer only the flimsiest rationales for each of the enjoined provisions.

Photo ID. Proponents of SL 2013-381 argued that the law would combat voter fraud and promote public confidence in the electoral system. *See* SL 2013-381, preamb. But the “voter fraud” the law seeks to address does not exist, and the law is ill-tailored to address it in any event. For instance, SL 2013-381 imposes a photo ID requirement on *in-person* voters even though “the State has failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina,” while exempting *absentee* voters (who the legislature knew were disproportionately white, *see* App. at 48a) from the requirement even though “the General Assembly *did* have evidence of alleged cases of mail-in absentee voter fraud.” App. at 61a.

Early Voting. The early-voting period was supposedly reduced in response to calls for “consistency” in early-voting practices across counties, including with regard to Sunday voting. *E.g.*, JA12997-98, JA20943-44, JA22348. But SL 2013-381 does not even address such inconsistencies and instead vests each county’s board of elections with discretion to set early-voting hours without regard to the

practices of other counties. *See* JA3325; N.C. Gen. Stat. § 163-227.2(f). And because the law mandated that counties utilize the same number of aggregate hours as the immediately prior election of that type (presidential versus non-presidential)—elections in which the counties had *different* numbers of early-voting hours—the law in effect codified existing inconsistencies. *See* App. at 64a-65a. Moreover, given that State asserted that “[c]ounties with Sunday voting in 2014 were disproportionately black’ and ‘disproportionately Democratic,” *id.* at 39a (brackets in original) (citation omitted), the Fourth Circuit observed that the elimination of one of two Sundays available for early voting “hinge[d] *explicitly* on race -- specifically its concern that African Americans, who had overwhelmingly voted for Democrats, had too much access to the franchise,” *id.* at 40a. The Fourth Circuit further observed that proponents of the law ignored the recommendation of the SBOE regarding the ill-effects of reducing early voting, particularly in high turnout elections. *Id.* at 65a-66a.

Pre-Registration. According to HB 589’s proponents, the pre-registration system was confusing to young voters. But the District Court rejected that explanation, finding that “pre-registration’s removal . . . make[s] registration *more* complex,” D. Ct. Op. at *116 (emphasis added), and the Fourth Circuit agreed that the State had “contrived a problem in order to impose a solution.” App. at 68a.

Out-of-Precinct Provisional Ballots.¹² Applicants’ initial justification for the elimination of counting out-of-precinct provisional ballots was that it “move[d] the law back to the way it was”—before precinct restrictions were eliminated “to facilitate greater participation in the franchise by minority voters.” App. at 67a (citing JA3307). After this litigation commenced, however, the State altered course and asserted that SL 2013-381 eliminated out-of-precinct voting to “permit[] election officials to conduct elections in a timely and efficient manner.” *Id.* (citing JA22328). As the Fourth Circuit correctly recognized, these types of ever-shifting, “*post hoc* rationalizations during litigation provide little evidence as to the actual motivations of the legislature.” *Id.* (citing *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 730 (1982); *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

Same-Day Registration. Finally, the Fourth Circuit observed that the legislature again ignored the advice of the SBOE in eliminating same-day registration, as well as in failing to consider less restrictive alternatives. App. at 66a-67a. While proponents of SL 2013-381 averred that same-day registration did not allow the State to verify the addresses of registrants at the very end of the early-voting period, the Fourth Circuit noted that 97% of same-day registrants passed the verification process and that “[t]he General Assembly had before it alternative proposals that would have remedied the problem without abolishing the popular program.” *Id.* at 66a.

¹² Even though Applicants do not seek a stay of the District Court’s injunction reinstating same-day registration and the counting of out-of-precinct provisional ballots, the lack of legitimate justifications supporting the elimination of these practices bears upon the discriminatory intent behind the omnibus election law.

In sum, after finding that a race-based, discriminatory purpose was a factor motivating passage of SL 2013-381, the Fourth Circuit properly found Applicants' stated rationales to be tenuous and unpersuasive. Holding that "the legislature's *actual* non-racial motivations" alone cannot justify the legislature's choices, *id.* at 27a, the court "conclude[d] that race constituted a but-for cause of [the legislation]," *id.* at 69a. That finding represents a straightforward application of this Court's directives and is unlikely to be reversed should this Court grant certiorari.

B. The 2015 Amendment to the Photo ID Requirement Does Not Cure the State's Original Discriminatory Intent.

Applicants suggest that the Fourth Circuit's decision should be overturned because of a 2015 amendment to the photo ID requirement that somehow washes away the stain of discrimination that taints the 2013 bill. *See* Br. at 21. But Applicants affirmatively waived this argument, and, in any event, it is misplaced.

First, during the January 2016 trial, Applicants admitted they were *not* contending that the 2015 amendment (enacted via HB 836) cured any original discriminatory intent behind the original law (HB 589):

Your Honor, as to that particular point, I am not aware of anywhere we've argued that 836 was curative of any alleged discriminatory intent in 589. . . . I don't recall anywhere we argued or used this concept of curative.

JA23585:13-19. Applicants' counsel confirmed that position minutes later:

So I think we made it pretty clear that our position is that we are not arguing 836 cured any alleged intent from 589.

JA23588:23-25. And the District Court took note of Applicants' position:

I will also note as well the Defendants have just admitted that they are not arguing that somehow the passage of 836 purges any discriminatory intent as to 589.

JA23590:4-7. There could hardly be a more clear waiver on this point.

Moreover, an amendment to the photo ID requirement—and only the photo ID requirement—enacted in 2015 cannot logically cure the discriminatory intent behind the passage of an omnibus bill covering multiple provisions almost two years earlier. The 2015 bill did not address any of the other enjoined provisions—thus, the sting of any discriminatory intent with regard to those provisions (all of which were subject of the Fourth Circuit’s ruling) could not possibly have been cured. *See Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (“[W]e simply observe that [the] original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect.”).

C. Applicants’ Arguments as to Discriminatory Effect are Factually Inaccurate and Misconstrue the Applicable Legal Standard for Discriminatory Intent Claims.

The Applicants are doubly wrong in asserting that the Court of Appeals erred by invalidating provisions “affirmatively found to have no discriminatory effect”. Br. at 1. Not only do they misconstrue the requirements for establishing a discriminatory *intent* claim, they ignore the Fourth Circuit criticism of the District Court’s discriminatory results ruling, which observed that “while the district court recognized the undisputed facts as to the impact of the challenged provisions of SL 2013-381, it simply refused to acknowledge their import.” App. at 55a.

As an initial matter, Applicants’ disagreements with the Fourth Circuit regarding the discriminatory effects of the enjoined provisions are immaterial to the

court's ruling on discriminatory intent. As Applicants themselves acknowledge, a state's "failure to achieve discriminatory effects is no excuse for a law that truly is enacted with discriminatory intent." Br. at 31. The Fifteenth Amendment unequivocally provides that "[t]he right of citizens of the United States to vote" may not be "denied or **abridged** . . . by any State on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1 (emphasis added). Voting laws motivated by discriminatory intent therefore "ha[ve] no legitimacy at all under our Constitution or under the [Voting Rights Act]." *City of Richmond v. United States*, 422 U.S. 358, 378 (1975); cf. *Shelby County*, 133 S. Ct. at 2631 ("[A]ny racial discrimination in voting is too much . . ."). In the State's view, however, a restriction on voting such as a literacy test would pass constitutional muster even if enacted with clear discriminatory intent, unless the plaintiffs also establish "a discriminatory effect on minority voters" via a consequent "depress[ion]" in "minority turnout." Br. at 11. The law does not require such showing.

In any event, the Court of Appeals noted that the enjoined provisions **do** have a discriminatory effect in light of socioeconomic disparities that have led African Americans to rely disproportionately on the eliminated practices. The State simply ignores the undisputed findings of both the District Court and Court of Appeals that "African Americans . . . in North Carolina are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health." App. at 55a (ellipsis in original) (quoting D. Ct. Op. at *89). As the Court of Appeals found, those disparities "led African Americans to disproportionately use early

voting, same-day registration, out-of-precinct voting, and preregistration” and to “lack acceptable photo ID.” *Id.* While the District Court—and Applicants—described the eliminated practices as merely “‘preferred’ by African Americans,” *id.* (quoting D. Ct. Op. at *170) the Court of Appeals found that the eliminated practices “are a necessity” “for many African Americans” in North Carolina. *Id.* And this was confirmed in the 2014 election, when “thousands of African Americans were disenfranchised” by the challenged provisions, including voters (disproportionately African American) who either “registered during what would have been the same-day registration period but because of SL 2013-381 could not then vote” or who cast an out-of-precinct provisional ballot, which went uncounted. *Id.* at 54a.

Ignoring the Fourth Circuit’s conclusions, Applicants repeat the District Court’s error of according “almost dispositive weight” to the 1.8% increase in African American turnout in the 2014 midterm election as compared to 2010. *See id.* at 53a. As an initial matter, this meager increase in African-American turnout—which occurred in the midst of the most expensive Senate race in U.S. history—“represents a significant **decrease** in the **rate**” at which African-American participation had been growing **before** SL 2013-381: “For example, in the prior four-year period, African American midterm voting had increased by 12.2%.” *Id.* at 54a-55a. Applicants’ argument amounts to the claim that voting restrictions that target minorities are permissible so long as the State does not completely extinguish what had been a 16-year trend of surging participation. But such a dramatic result is not

a prerequisite for an intentional discrimination claim; the State’s failure to fully effectuate discriminatory goals does not immunize it from liability.

Applicants’ myopic focus on turnout in 2014 also ignores this Court’s caution against “plac[ing] much evidentiary weight on any one election” when attempting to assess the effect of an electoral practice. *Id.* at 54a (citing *Thornburg v. Gingles*, 478 U.S. 30, 74-77 (1986)). For example, the Fifth Circuit, sitting *en banc*, recently rejected the argument that plaintiffs bringing a Section 2 discriminatory results claim against a voter ID law must establish that the law “directly caused a reduction in turnout,” explaining that:

An election law may keep some voters from going to the polls, but in the same election, turnout by different voters might increase for some other reason. . . . That does not mean the voters kept away were any less disenfranchised. . . . [N]o authority supports requiring a showing of lower turnout, since **abridgement** of the right to vote is prohibited along with denial.

Veasey v. Abbott, __ F.3d __, 2016 WL 3923868, at *29 (5th Cir. July 20, 2016) (*en banc*) (citations omitted).

III. The Court Is Unlikely To Grant Certiorari.

The requested stay should also be denied because it is unlikely that “four Justices will consider the issue[s presented by this case] sufficiently meritorious to grant certiorari.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). The State, to begin, points to no split of authority that it argues warrants review. Until such a split emerges, this Court’s review would be both premature and unnecessary.

This case presents unique facts that are unlikely to arise in other litigation. *First*, “the sheer number of restrictive provisions in SL 2013-381 distinguishes this

case from others.” App. at 52a-53a. Other voting-rights cases have typically involved challenges to only a single electoral practice. *See, e.g., Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 185 (2008) (challenging only a photo ID requirement); *Veasey*, 2016 WL 3923868, at *1 (same). This case, however, involves an “omnibus” bill that restricts an entire series of “voting mechanisms [the State] knew were used disproportionately by African Americans.” App. at 45a-46a.

Second, the timing of SL 2013-381 distinguishes this case from others and lessens the need for this Court’s review. The day after *Shelby County* was decided, the chairman of the Senate Rules Committee stated, “I think we’ll have an omnibus bill coming out’ and . . . that the Senate would move ahead with the ‘full bill.’” App. at 14a (quoting D. Ct. Op. at *9). The legislature then swiftly acted to expand what previously had been a single-issue bill into omnibus legislation targeting those very voting practices used disproportionately by African Americans. *Id.* That distinctive time sequence makes this case unique.

The State argues that the decision below must be reviewed because it “renders every voter-ID law in the country vulnerable to invalidation as intentionally discriminatory” and potentially undermines *Crawford*, 553 U.S. 181. Br. at 19-23. It does not. The analysis required by *Arlington Heights* is a multi-factored, highly fact-intensive inquiry that necessarily turns on the specific facts and circumstances of each case. *See, e.g.,* App. 24a-26a. The Fourth Circuit’s decision was thus the result of the unique facts of *this* case, just as *other* cases will turn on *their own* unique circumstances. The number of electoral modifications in

SL 2013-381, and the timing with which that statute was enacted, are just two of the many facts on which the Fourth Circuit relied that are unlikely to be repeated in future cases. The highly fact-specific nature of the inquiry demanded by *Arlington Heights* fully rebuts the State’s claim that the decision below somehow endangers voter-ID laws nationwide.

The Fourth’s Circuit’s decision also does not undermine *Crawford*. The Court in *Crawford* did not have before it, much less address, a claim of racially discriminatory intent. 553 U.S. at 186-87. Instead, *Crawford* held that certain photo-ID laws pass muster under the Fourteenth Amendment balancing approach applied to facially neutral election laws. *See id.* at 189-90. The Court did not foreclose plaintiffs from bringing *other* challenges to photo-ID laws, such as discriminatory-intent claims. And it is not uncommon for courts to invalidate facially neutral laws (that might otherwise be permissible) on the basis that such laws were enacted with a racially discriminatory intent. *See, e.g., Hunter*, 471 U.S. at 231-33; *Rogers v. Lodge*, 458 U.S. 613, 622 (1982).¹³

Finally, Applicants repeatedly suggest that review is necessary because no other case in recent history has “reversed a fact-finder’s finding that a State did *not*

¹³ The decisions in *Hunter* and *Rogers* confirm that invalidating a law that was enacted with discriminatory intent does not “threaten the continued existence of all of those [types of] laws” throughout the country. Br. at 19. *Hunter* struck down a felon-disenfranchisement law, and *Rogers* invalidated an at-large electoral scheme, but notwithstanding those decisions, most states and municipalities continues those practices. *See* National Conference of State Legislatures, *Felon Voting Rights* (Apr. 25, 2016), <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>; National League of Cities, *Municipal Elections*, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-officials/municipal-elections> (last visited Aug. 23, 2016).

enact an election law with discriminatory intent.” Br. at 1; *see also id.* at 18. That is both irrelevant and incorrect. Courts of appeals **have** reversed district court decisions finding no discriminatory intent. *See, e.g., Hunter*, 471 U.S. at 225 (noting that the Eleventh Circuit had “determined that the District Court’s finding of a lack of discriminatory intent . . . was clearly erroneous”); *Perkins v. City of W. Helena*, 675 F.2d 201, 216 (8th Cir.) (“[W]e believe that the district court’s finding that the plaintiffs did not prove discriminatory intent is clearly erroneous.”), *aff’d*, 459 U.S. 801 (1982); *Foster v. Chatman*, 136 S. Ct. 1737, 1754-55 (2016) (reversing as clearly erroneous state-court finding that criminal defendant has failed to show purposeful discrimination for purposes of a *Batson* challenge); *Snyder v. Louisiana*, 552 U.S. 472, 485-86 (2008) (same). And in any event, the fact that such reversals may not be common only further illustrates that review is unwarranted: the unique circumstances of this case have only limited applicability to other matters.

CONCLUSION

The Fourth Circuit's ruling properly applied this Court’s precedents in finding that the North Carolina legislature enacted the enjoined provisions of SL 2013-381 with discriminatory intent. And the extensive actions of North Carolina elections officials to implement the Fourth Circuit’s order and subsequent District Court injunction in the almost-four weeks since have already created a new status quo, which this Court should not disrupt. For these and all the reasons stated above, Respondents respectfully urge this Court to deny the extraordinary relief sought by Applicants.

Dated: August 25, 2016

Respectfully submitted,

Penda D. Hair
Caitlin Swain
1400 New York Avenue, N.W.,
Ste. 1225
Washington, DC 20005

Adam Stein
TIN FULTON WALKER &
OWEN, PLLC
1526 E. Franklin St., Ste. 102
Chapel Hill, NC 27514

Irving Joyner
P.O. Box 374
Cary, NC 27512

Attorneys for North Carolina State Conference of the NAACP Respondents

Dale E. Ho
Julie A. Ebenstein
Stephen R. Shapiro
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004

Anita S. Earls
Allison J. Riggs
SOUTHERN COALITION FOR SOCIAL
JUSTICE
1415 Highway 54, Ste. 101
Durham, NC 27707

Christopher Brook
ACLU OF NORTH CAROLINA LEGAL
FOUNDATION
P.O. Box 28004
Raleigh, NC 27611-8004

Attorneys for League of Women Voters of North Carolina Respondents

By: 
Daniel T. Donovan

Counsel of Record
Susan M. Davies
Michael A. Glick
K. Winn Allen
Ronald K. Anguas Jr.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 879-5000
daniel.donovan@kirkland.com

Marc E. Elias
Bruce V. Spiva
Elisabeth C. Frost
Amanda Callais
PERKINS COIE LLP
700 Thirteenth Street, N.W., Ste. 600
Washington, D.C. 20005-3960

Abha Khanna
PERKINS COIE LLP
1201 Third Avenue, Ste. 4900
Seattle, WA 98101

Joshua L. Kaul
PERKINS COIE LLP
1 East Main Street, Ste. 201
Madison, WI 53705

Attorneys for Duke Intervenor-Respondents

APPENDIX

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DECLARATION OF JACLYN MAFFETORE

I, Jaclyn Maffetore, hereby declare as follows:

1. I am a United States citizen and resident of North Carolina. I am over eighteen years old and competent to give this declaration.

2. I earned my Juris Doctor from Elon University School of Law in May 2016. In my final semester of law school, from January 2016 through May 2016, I worked as a full-time legal extern at the Southern Coalition for Social Justice in Durham, North Carolina. During my legal externship, I focused on ongoing voting rights issues, including engaging in election protection work during the March 2016 primary election.

3. On August 8-9, 2016, I attended and observed the 2016 North Carolina State Board of Elections State Elections Conference held in Concord, North Carolina. The state elections conference is open to attendance by members of the public.

4. To the best of my knowledge and recollection, representatives from all 100 county boards of elections in North Carolina were present at the 2016 Conference, which was focused on providing logistical training and legal clarification for election workers in preparation for the November 2016 general election.

5. On August 8, 2016, State Board of Elections Executive Director Kim Strach delivered opening remarks at the 2016 Conference. Ms. Strach notified attendees that the two-day conference would focus on administering elections in

November 2016 consistent with the recent federal court ruling and injunction. This meant the training would focus only on elections to be conducted without a photo identification requirement, with continued implementation of same-day voter registration and out-of-precinct provisional voting (as had been offered in the March 2016 and June 2016 primary elections), with a 17-day early voting period, and with restoration of pre-registration of 16- and 17-year-olds. With specific regard to the photo identification requirement, Ms. Strach stated: “We’re not going to focus on photo ID, we’re going to focus on elections without photo ID.”

6. Ms. Strach also explained that the State Board of Elections would be spending at least the next week revising the state voter guide, which is distributed to the public, and that it had already begun revising poll worker station guides and election forms, which will be used by poll workers during the November 2016 general election and during training for that election. The station guide provides a step-by-step explanation for poll workers to assist voters on Election Day and the early voting period. The State Board explained that county boards should incorporate the revised station guides into their poll worker training for the November 2016 general election.

7. Ms. Strach further indicated that the State Board had already updated its website to reflect the changes in the law, ceased distributing written materials indicating that photo identification would be required as a prerequisite to voting in 2016, and halted its media campaign advertising the photo identification requirement on television, radio, and billboards. This included cancelling the

distribution of educational materials from outside groups who were previously working in North Carolina communities to assist citizens with obtaining photo ID prior to the Fourth Circuit Court of Appeals' July 29, 2016 decision.

8. Additionally, the State Board instructed county election officials to remove all posted references to the photo ID requirement from their offices and other published materials, and to prepare to conduct the November 2016 general election under current law in light of the Fourth Circuit's decision and the injunction entered by the District Court.

9. With respect to pre-registration, Ms. Strach also indicated that DMV was in the process of updating SADLS, its database system, and that counties were no longer to send denial letters to 16- or 17-year-old registrants (as they did when pre-registration was repealed).

10. The materials distributed to county elections officials at the conference, such as a 19-page booklet with key election deadlines, all reflected the changes in election law ordered by the Fourth Circuit, including the 17-day early voting period.

I declare under penalty of perjury under the laws of the United States that the foregoing Declaration is true and correct to the best of my knowledge.

Executed this 24th day of August, 2016.



Jaelyn Maffetore

DECLARATION OF EMILY E. SEAWELL

I, Emily E. Seawell, hereby declare as follows:

1. I am a United States citizen and resident of North Carolina. I am over eighteen years old and competent to give this declaration.

2. I earned my Juris Doctor from Elon University School of Law in May 2015. I am a voting rights staff attorney at the Southern Coalition for Social Justice in Durham, North Carolina.

3. Following the decision of the U.S. Court of Appeals for the Fourth Circuit in this action on July 29, 2016, I have monitored the adoption of 17-day early voting plans in each of North Carolina's 100 counties. To accomplish this task, I have primarily relied on phone calls to the county boards of elections offices. I personally conducted the majority of the calls to county boards of elections, or, in the limited instances in which I did not, I supervised collection of such information from other Southern Coalition for Social Justice staff members or volunteers. For a few counties, a staff member or volunteer for the Southern Coalition for Social Justice attended the county board of elections meeting regarding the adoption of a 17-day early voting plan and reported back to me with the details of the adoption and plan.

4. The charts attached to my declaration as Exhibits A and B represent the data that I collected in this process. To the best of my knowledge, the information contained in these charts is accurate and up-to-date as of 9 AM on August 25, 2016.

5. Exhibit A reflects the counties that have approved 17-day early voting plans by unanimous or non-unanimous vote. (Each county board of elections has three members, so the vote in each county was either 3-0 or 2-1 with regard to proposed early voting plans.) As reflected in Exhibit A, sixty-six counties approved plans by unanimous vote and thirty-one counties approved plans by non-unanimous vote.

6. Exhibit B lists the counties by name and includes the date each county met to consider a 17-day early voting plan, and whether or not the plan was adopted unanimously.

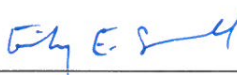
7. As reflected in Exhibits A and B, there are a few counties that have not approved a majority plan as of the date of this Declaration. Two counties—Watauga and Cumberland—have not yet voted on a majority plan, but because they met to discuss an early voting plan, I understand that members of the board have submitted competing plans to the State Board of Elections pursuant to N.C. Gen. Stat. § 163-227.2(g). I treated these counties as having non-unanimous plans because the State Board of Elections will be reviewing the submitted plans just as it would non-unanimous plans under N.C. Gen. Stat. § 163-227.2(g). Two additional counties—Avery and Yadkin—indicated that they would default under N.C. Gen. Stat. § 163-227.2(b) to offering early voting only at the county board of elections site. I treated these counties as having unanimously decided on a plan because their decisions to use only the county board of elections site were unanimous and

because I understand that the State Board of Elections will not review such decisions under N.C. Gen. Stat. § 163-227.2(g).

8. As part of my efforts, I also tracked some details of the newly adopted 17-day early voting plans. In adopting 17-day plans, several counties shifted resources across the longer early voting period. For example, Halifax, Edgecombe, and Rutherford counties adopted 17-day plans featuring a smaller number of satellite sites (i.e., sites outside the county board of elections offices in those counties), which will be kept open for the entire 17-day early voting period to preserve financial resources. In doing so, these counties removed certain early voting sites that had previously been designated for use in their 10-day early voting plans. Other counties kept the same number of satellite sites but shifted the hours those sites would be open. For instance, Chatham County's 10-day plan called for every site to be open from 7:30 AM to 7:30 PM on weekdays. The 17-day plan calls for all satellite sites to be open from 10 AM to 7 PM on weekdays and the county board of elections office to be open from 8 AM to 7 PM on weekdays.

I declare under penalty of perjury under the laws of the United States that the foregoing Declaration is true and correct to the best of my knowledge.

Executed this 25th day of August, 2016.



Emily E. Seawell

**EXHIBIT A: ADOPTION OF 17-DAY EARLY VOTING PLANS
FOLLOWING JULY 29 INJUNCTION**

ADOPTED NEW PLAN BY UNANIMOUS VOTE		ADOPTED NEW PLAN BY NON-UNANIMOUS VOTE	NO PLAN ADOPTED AS OF AUGUST 25
66 Counties		31 Counties	3 Counties
Alamance	Haywood	Bertie	Cumberland**
Alexander	Henderson	Bladen	Watauga**
Alleghany	Hertford	Cleveland	Yancey
Anson	Hyde	Craven	
Ashe	Iredell	Duplin	
Avery*	Jackson	Edgecombe	
Beaufort	Johnston	Franklin	
Brunswick	Jones	Gaston	
Buncombe	Lee	Harnett	
Burke	Lincoln	Hoke	
Cabarrus	Macon	Lenoir	
Caldwell	Madison	Martin	
Camden	McDowell	Mecklenburg	
Carteret	Mitchell	Montgomery	
Caswell	Onslow	Moore	
Catawba	Pasquotank	Nash	
Chatham	Pender	New Hanover	
Cherokee	Perquimans	Northampton	
Chowan	Polk	Orange	
Clay	Rutherford	Pamlico	
Columbus	Sampson	Person	
Currituck	Scotland	Pitt	
Dare	Stokes	Randolph	
Davidson	Surry	Richmond	
Davie	Swain	Robeson	
Durham	Transylvania	Rockingham	
Forsyth	Tyrrell	Rowan	
Gates	Warren	Stanly	
Graham	Washington	Union	
Granville	Wayne	Vance	
Greene	Wilkes	Wake	
Guilford	Wilson		
Halifax	Yadkin*		

* Board decided to default to county board of elections office under N.C. Gen. Stat. § 163-227.2(b).

** Met to consider an early voting plan but no vote—treated as non-unanimous under N.C. Gen. Stat. § 163-227.2(g).

Exhibit B: County Boards of Elections Tracking Chart

	County	17-Day Early Voting Plan Meeting/Adoption Date	Unanimous or Non-Unanimous
1	Alamance	8/12/2016	Unanimous
2	Alexander	8/3/2016	Unanimous
3	Alleghany	8/10/2016	Unanimous
4	Anson	8/16/2016	Unanimous
5	Ashe	8/9/2016	Unanimous
6	Avery	No meeting	Unanimous (N.C.G.S. § 163-227.2(b) default)
7	Beaufort	8/12/2016	Unanimous
8	Bertie	8/16/2016	Non-unanimous
9	Bladen	8/11/2016	Non-unanimous
10	Brunswick	8/15/2016	Unanimous
11	Buncombe	8/11/2016	Unanimous
12	Burke	8/11/2016	Unanimous
13	Cabarrus	8/1/2016	Unanimous
14	Caldwell	8/2/2016	Unanimous
15	Camden	8/12/2016	Unanimous
16	Carteret	8/3/2016	Unanimous
17	Caswell	8/15/2016	Unanimous
18	Catawba	8/12/2016	Unanimous
19	Chatham	8/16/2016	Unanimous
20	Cherokee	8/22/2016	Unanimous
21	Chowan	8/10/2016	Unanimous
22	Clay	8/16/2016	Unanimous
23	Cleveland	8/12/2016	Non-unanimous
24	Columbus	8/15/2016	Unanimous
25	Craven	8/15/2016	Non-unanimous
26	Cumberland	8/11/2016	No vote (non-unanimous)
27	Currituck	8/11/2016	Unanimous
28	Dare	8/24/2016	Unanimous
29	Davidson	8/17/2016	Unanimous
30	Davie	8/12/2016	Unanimous
31	Duplin	8/17/2016	Non-unanimous
32	Durham	8/17/2016	Unanimous
33	Edgecombe	8/16/2016	Non-unanimous
34	Forsyth	8/11/2016	Unanimous
35	Franklin	8/12/2016	Non-unanimous
36	Gaston	8/16/2016	Non-unanimous
37	Gates	8/23/2016	Unanimous
38	Graham	8/11/2016	Unanimous
39	Granville	8/10/2016	Unanimous
40	Greene	8/16/2016	Unanimous

41	Guilford	8/8/2016	Unanimous
42	Halifax	8/12/2016	Unanimous
43	Harnett	8/12/2016	Non-unanimous
44	Haywood	8/17/2016	Unanimous
45	Henderson	8/16/2016	Unanimous
46	Hertford	8/17/2016	Unanimous
47	Hoke	8/10/2016	Non-unanimous
48	Hyde	8/24/2016	Unanimous
49	Iredell	8/16/2016	Unanimous
50	Jackson	8/15/2016	Unanimous
51	Johnston	8/15/2016	Unanimous
52	Jones	8/17/2016	Unanimous
53	Lee	8/10/2016	Unanimous
54	Lenoir	8/17/2016	Non-unanimous
55	Lincoln	8/16/2016	Unanimous
56	Macon	8/12/2016	Unanimous
57	Madison	8/10/2016	Unanimous
58	Martin	8/15/2016	Non-unanimous
59	McDowell	8/11/2016	Unanimous
60	Mecklenburg	8/15/2016	Non-unanimous
61	Mitchell	8/12/2016	Unanimous
62	Montgomery	8/16/2016	Non-unanimous
63	Moore	8/16/2016	Non-unanimous
64	Nash	8/18/2016	Non-unanimous
65	New Hanover	8/18/2016	Non-unanimous
66	Northampton	8/16/2016	Non-unanimous
67	Onslow	8/16/2016	Unanimous
68	Orange	8/16/2016	Non-unanimous
69	Pamlico	8/10/2016	Non-unanimous
70	Pasquotank	8/2/2016	Unanimous
71	Pender	8/16/2016	Unanimous
72	Perquimans	8/9/2016	Unanimous
73	Person	8/16/2016	Non-unanimous
74	Pitt	8/17/2016	Non-unanimous
75	Polk	8/16/2016	Unanimous
76	Randolph	8/16/2016	Non-unanimous
77	Richmond	8/15/2016	Non-unanimous
78	Robeson	8/18/2016	Non-unanimous
79	Rockingham	8/16/2016	Non-unanimous
80	Rowan	8/12/2016	Non-unanimous
81	Rutherford	8/19/2016	Unanimous
82	Sampson	8/17/2016	Unanimous
83	Scotland	8/12/2016	Unanimous

84	Stanly	8/15/2016	Non-unanimous
85	Stokes	8/16/2016	Unanimous
86	Surry	8/15/2016	Unanimous
87	Swain	8/16/2016	Unanimous
88	Transylvania	8/12/2016	Unanimous
89	Tyrrell	8/19/2016	Unanimous
90	Union	8/12/2016	Non-unanimous
91	Vance	8/16/2016	Non-unanimous
92	Wake	8/8/2016	Non-unanimous
93	Warren	8/10/2016	Unanimous
94	Washington	8/15/2016	Unanimous
95	Watauga	8/15/2016	No vote (Non-unanimous)
96	Wayne	8/16/2016	Unanimous
97	Wilkes	8/16/2016	Unanimous
98	Wilson	8/18/2016	Unanimous
99	Yadkin	8/19/2016	Unanimous (N.C.G.S. § 163-227.2(b) default)
100	Yancey	8/26/2016	Has not met yet



2016 JUDICIAL VOTING GUIDE

SELECT GENERAL ELECTION DATES

- September 9 (Friday)**
 Absentee voting by mail begins.
- October 14 (Friday)**
Regular voter registration deadline. Voter registration forms must be postmarked or delivered to your county elections office by 5 p.m. Same-day registration is also available in your county during the one-stop early voting period, beginning October 20 and ending November 5.
- October 20 (Thursday)**
Beginning of one-stop early voting period. Voters may participate at any one-stop early voting location in their county of residence. For locations, check with your county elections office (see pages 22-26) or ncsbe.gov.
- November 1 (Tuesday)**
 Regular deadline to request a mail-in absentee ballot. Requests must be received by your county elections office by this date. County offices are listed on page 22-26. A pull-away Absentee Ballot Request Form is included at the center of this guide.
- November 5 (Saturday)**
 One-stop early voting and same-day registration ends.

November 8

POLLS OPEN

6:30a.m. - 7:30p.m.

locate your precinct
at ncsbe.gov

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COURT-ORDERED ELECTION LAW CHANGES

On July 29, a federal court of appeals struck down challenged provisions of North Carolina Session Law 2013-381 ("HB-589"). The information below reflects the law in place as of August 15. In the event of any change, we will post updates to ncsbe.gov.

NO PHOTO I.D. REQUIRED TO VOTE IN THIS ELECTION

Voters will no longer be required to present photo identification at the polls. Please note: the Help America Vote Act of 2002 (HAVA) will still require certain first-time voters to present proof of identity if a valid social security number or driver license number was not provided at the time of registration.



REGISTRATION DURING 17-DAY EARLY VOTING PERIOD

Individuals may register and vote at one-stop early voting locations within their county during a 17-day period, beginning October 20 and ending November 5.

OUT-OF-PRECINCT VOTING ON ELECTION DAY

Provisional ballots cast on Election Day outside a voter's assigned precinct but inside the voter's county of residence will count toward all contests in which the voter is eligible to participate. To avoid voting a provisional ballot, voters must appear at their properly assigned precinct on Election Day or at any of their county's one stop early voting locations during the one-stop early voting period.

PRE-REGISTRATION FOR YOUNG ADULTS

Individuals who are at least 16 years old but will not yet be 18 years old on the date of the next election may now preregister to vote by submitting a registration application form. A downloadable form is available at NCSBE.gov.

VOTING OPTIONS IN NORTH CAROLINA

North Carolina offers a number of ways for voters to participate in the process. We encourage you to review your schedule and select the option that works best.

MAIL-IN ABSENTEE

Any registered voter or the voter's near-relative may submit an Absentee Ballot Request form (centerfold). Civilian absentee ballots must arrive at the county elections office by Election Day at 5:00 p.m. Ballots postmarked on or before Election Day are accepted until November 14 at 5 p.m. The U.S. Postal Service does not consistently postmark ballot return envelopes, so please allow ample time for delivery. For additional details regarding absentee voting. Including special deadlines applicable for military and overseas voters, visit goo.gl/lzz5XE.

ONE-STOP EARLY VOTING

Individuals may register and vote at any one-stop early voting location in their county, beginning October 20 and ending November 5. For locations and hours, please contact your county elections office or visit goo.gl/T9e7Xv.

ELECTION DAY

Polls will open November 8 at 6:30 a.m. and close at 7:30 p.m. (those in line at this time will be permitted to vote). Each voter is assigned a precinct polling location. To locate your precinct, contact your county elections office or visit: goo.gl/ksTM2N.

NOTE: ASSISTANCE IS AVAILABLE FOR THOSE LIVING IN CARE FACILITIES

Upon request, county elections offices now provide Multi-partisan Assistance Teams (MATs) to assist persons living in hospitals, clinics, nursing homes, and other care facilities in voting absentee. MATs are available to residents who need assistance, but have no near relative or guardian available. Care facilities may arrange for MATs visits by contacting the board of elections office in their county.

CANDIDATE CONTESTS IN THIS GUIDE

The name of each candidate to the N.C. Supreme Court and N.C. Court of Appeals is provided below, along with the page number for that candidate's information and statement within this guide.

SUPREME COURT

(VOTE FOR ONE)

Michael R. Morganpage 5

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COURT OF APPEALS

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(VOTE FOR ONE)

Valerie Zachary (R).....pg 13

Ricky McKoy-Mitchell (D)..pg 14

(VOTE FOR ONE)

Hunter Murphy (R).....pg 19

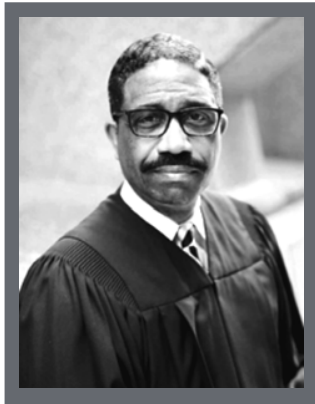
Margaret Eagles (D).....pg 20

Donald Buie (U).....pg 21

ABOUT THE APPELLATE COURTS

The N.C. Supreme Court is the State's highest court. One chief justice and six associate justices review cases from the N.C. Court of Appeals, the N.C. Business Court, and cases in which the death penalty has been imposed. In limited cases involving federal law, the U.S. Supreme Court may hear appeals from this Court.

The N.C. Court of Appeals reviews cases first decided in the superior and district courts, as well as appeals from administrative agencies. Fifteen judges sit on rotating panels of three, considering errors in legal procedures or in judicial interpretation of the law. If a panel is divided (2-1), the losing party has an automatic right to appeal to the N.C. Supreme Court.

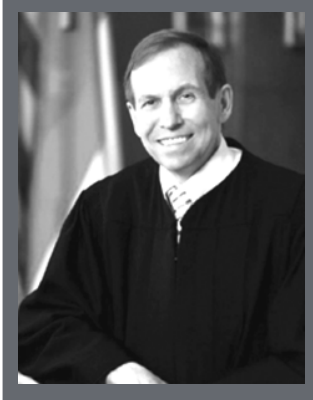
N.C. SUPREME COURT**CONTEST:
MORGAN/EDMUNDS****Michael R. Morgan****Place of residence:** Raleigh**Education:** JD with honors, NC Central University School of Law, 1979; BA, History and Sociology, Duke University, 1976**Occupation:** Superior Court Judge**Employer:** State of North Carolina, Administrative Office of the Courts**Date admitted to the bar:** 1980**Legal/Judicial experience:**

- Superior Court Judge, 2005-Present
- District Court Judge, 1994-2004
- State Administrative Law Judge, 1989-1994
- Staff attorney, NC Department of Justice, 1980-1989
- Research Assistant, NC Department of Justice, 1979-1980

CANDIDATE STATEMENT

I am proud to run for the position of Associate Justice of the Supreme Court on the strength of the diversity of my professional, teaching and community background which has eminently prepared me with the wealth of experience which this judicial office inherently requires. With more than 26 years of current judicial service, 24 years of current teaching tenure at The National Judicial College instructing other judges and a long record of community involvement and uplift, I have a unique preparation in the ability to legally analyze, assiduously study yet humanely understand the challenges of society with which the Supreme Court is presented. As a Supreme Court Justice, I shall continue my judicial and personal commitment to promote and preserve fairness, impartiality and justice for all in North Carolina's court system.

Please visit my website at www.judgemichaelmorgan.com for more information about my credentials and this campaign. I humbly ask for your vote and support, and thank you for your consideration.

N.C. SUPREME COURT**CONTEST:
MORGAN/EDMUNDS****Robert Edmunds****Place of residence:** Greensboro**Education:** AB, Vassar College; JD, UNC-CH; LLM, UVa**Occupation:** Senior Associate Justice**Employer:** Supreme Court of North Carolina**Date admitted to the bar:** 1975**Legal/Judicial experience:**

- Assistant District Attorney
- Assistant United States Attorney
- United States Attorney, Middle District of North Carolina
- Partner, Stern & Klepfer
- Judge, North Carolina Court of Appeals
- Justice, Supreme Court of North Carolina

CANDIDATE STATEMENT

As the only candidate with experience on the Supreme Court, my record is an open book. The opinions I have written are available at www.nccourts.org. These opinions demonstrate impartiality, respect for our state and Federal constitutions, and dedication to the rule of law. As a result, I enjoy bipartisan support of most of North Carolina's leading lawyers, including four former Chief Justices, former presidents of the North Carolina State Bar and North Carolina Bar Association, and almost all of North Carolina's elected sheriffs.

The best guide to my qualifications is the judgment of those who have observed my work. In 2006, United States Chief Justice Rehnquist asked me to be the only state judge on the Federal Criminal Rules Committee. Chief Justice Roberts later reappointed me to that committee. Other judges selected me to chair the 2015 Appellate Judges Education Institute and to co-edit the American Bar Association's Judges Journal. I will become Chair-elect of the American Bar Association's Appellate Judges Conference this August. I did not seek any of these positions. My peers asked me to undertake them.

I would greatly appreciate your support. For additional details, please visit my web page, www.JusticeEdmunds.com.



Republican

Phil Berger, Jr.

Place of residence: Hillsborough, NC

Education: Wake Forest University School of Law, 1999; UNC Wilmington, BA, History, 1994.

Occupation: Administrative Law Judge

Employer: State of North Carolina

Date admitted to the bar: 1999

Legal/Judicial experience:

- Administrative Law Judge, 2015 - present
- District Attorney, 2007-2014
- Private Practice, 1999-2006

CANDIDATE STATEMENT

Are you concerned about the news coming from the justice system? Do you believe decisions made in our courtrooms reflect your values and beliefs?

As I travel across North Carolina, citizens have told me that they want judges who respect the law and our traditions, have common sense, and don't legislate from the bench.

As District Attorney, I was tough but fair in pursuing justice. My office made the community a safer place to live, work, and raise a family.

As an administrative law judge, I have fairly and impartially applied our laws and regulations in cases affecting our schools, our neighbors, and the business community. As your judge on the Court of Appeals, I promise you:

- I will be fair and consistent,
- I will use common sense and follow the law,
- I will hold people accountable, and
- I will not legislate from the bench.

If you want a judge who believes in the Constitution, stands for the rule of law, and is firmly grounded in North Carolina values, please visit my website at philbergerjr.org.

Thank you for your consideration, and for your vote.



Linda Stephens

Place of residence: Wake County

Education: BA Journalism and English, magna cum laude, University of South Carolina, 1973; JD UNC Chapel Hill, 1979

Occupation: Associate Judge, NC Court of Appeals

Employer: State of North Carolina, NC Court of Appeals

Democrat

Date admitted to the bar: 1979

Legal/Judicial experience:

- Associate judge, NC Court of Appeals, 2006 – present
- Partner, Teague, Campbell, Dennis & Gorham, LLP, 1984-2006
- Deputy Commissioner, NC Industrial Commission, 1980-1984
- Law Clerk, NC Court of Appeals, 1979-1980

CANDIDATE STATEMENT

My grandparents, who raised me, worked hard all their lives in the mills and fields. They couldn't give me much, but they made sure I graduated high school – the first in my family. They instilled in me the work ethic that I relied on to work my way through law school and serve my clients for 27 years, and that I have relied on during my 10 years on the Court of Appeals.

On the bench, I have earned a reputation for working hard, judging fairly, and treating everyone with respect. Former appellate judges from both parties are supporting my re-election because they know from experience that politics has no place in the courtroom.

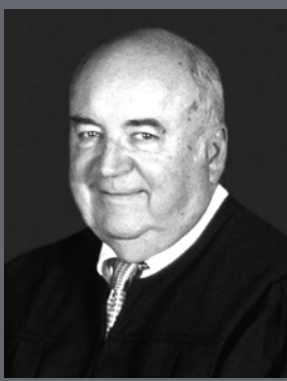
Lawyer organizations representing opposite sides presented me with their highest awards: the Outstanding Appellate Judge Award, and the Elster Award for Professional Excellence. I also received the 2013 Woman of Justice Award. I apply the law as written – not based on any agenda or favoritism.

Law enforcement and citizens' groups endorsed me. I ask for your vote if you believe I have earned it. Visit:

www.JudgeLindaStephens.org

[Facebook.com/JudgeLindaStephens](https://www.facebook.com/JudgeLindaStephens)

[Twitter@Vote4Stephens](https://twitter.com/Vote4Stephens)



Republican

Bob Hunter

Place of residence: Morehead City

Education: Greensboro Page High School, 1965; University of North Carolina, B.A. Degree in History, 1969, and J.D. in Law, 1973; Duke University School of Law, LL.M. degree in Judicial Studies, 2014.

Occupation: Judge, NC Court of Appeals

Employer: State of North Carolina, NC Court of Appeals

Date admitted to the bar: 1973

Legal/Judicial experience:

- Justice, N.C. Supreme Court, 2014
- Judge, N.C. Court of Appeals, 2009-2014, currently serving since 2015.
- Private practice of law, 1975-2008
- NC Deputy Attorney General 1974
- Chairman State Board of Elections
- FINRA Arbitrator, Certified Mediator,
- NCAJ Appellate Judge of the Year, 2011;
- 2012 McNeill Smith Constitutional Law Award.
- Adjunct law professor at Elon, Wake Forest, and North Carolina Central Law Schools.
- Admitted to practice before all federal and state courts in North Carolina, the 4th Circuit and the U. S. Supreme Court

CANDIDATE STATEMENT

After a lifetime in private practice, the voters of North Carolina gave me the opportunity to serve them in the appellate division. Since joining the court I have heard over 1,000 appeals. I work hard to bring my experience and pragmatic approach to answer complex legal questions with fair, common sense solutions which can be applied by practicing attorneys. My decisions are impartial without favoritism to any person or the State.

I would appreciate your vote. For information about my family, faith and personal life go to bobhunterforjudge.com.



Abe Jones

Place of residence: Raleigh

Education: Harvard Law School (JD),
Harvard College

Occupation: Attorney and Adjunct
Law Professor

Employer: UNC School of Law; and
self-employed

Democrat

Date admitted to the bar: 1977

Legal/Judicial experience:

- Superior Court Judge (North Carolina Superior Court, 10th Judicial District)
- Associate (Adams, McCullough & Beard)
- Administrative Law Judge (North Carolina Office of Administrative Hearings)
- Associate Attorney General (North Carolina Department of Justice)
- Associate (Kirby, Gillick, Schwartz and Tuohey)
- Assistant United States Attorney (United States Attorney's Office for the Eastern District of North Carolina)
- Circuit Court Clerk (United States Court of Appeals for the District of Columbia)
- Law Clerk to Chief Judge William B. Bryant, Jr. (United States District Court for the District of Columbia)

CANDIDATE STATEMENT

I am honored to run for the Court of Appeals in my native state of North Carolina. While there is an abundance of legal talent in our state, I believe it would be difficult to find a candidate with the extent of my experience and the breadth of my perspective. Before the bench, I have served as both a prosecutor and defense attorney in criminal cases. I have also represented both plaintiffs and defendants in civil cases. Behind the bench, I had the pleasure of presiding over many cases for 17 years as a superior court judge. These multi-angled perspectives give me the uniquely balanced, practical skills that are necessary to fulfill the duties of an appeals court judge. Fairness, honesty, intellectual capacity, a working knowledge of the law, and a strong work ethic are qualities that I value and possess. I would greatly appreciate your vote.



Richard Dietz

Place of residence: Winston-Salem

Education: J.D., Wake Forest University School of Law, B.S.B.A., Shippensburg University, 2002

Occupation: Judge, NC Court of Appeals

Employer: State of North Carolina, NC Court of Appeals

Republican

Date admitted to the bar: 2002

Legal/Judicial experience:

- Judge, NC Court of Appeals
- Constitutional law & business law attorney, Kikpatrick Townsend & Stockton

CANDIDATE STATEMENT

I ask for your support to keep my seat on the Court of Appeals this November.

Unlike many judges, I don't come from a family of lawyers. I grew up in a small town and was the first in my family to attend college. Through hard work, I went on to graduate first in my class at Wake Forest law school. I later joined one of North Carolina's largest law firms and became one of the best known appeals lawyers in the State. I focused on constitutional law and business law—two areas where most Court of Appeals candidates have no expertise.

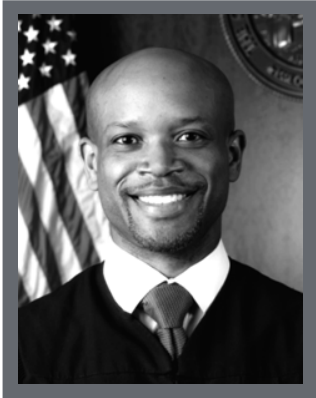
Here are some of the reasons I should keep my seat:

- I have personally argued in the U.S. Supreme Court – something no other appellate judge or candidate has done.
- I have been ranked as one of NC's "Super Lawyers" and "Legal Elite."
- I am the only board certified specialist in appeals on the 15 member Court of Appeals.

Finally, I spent years as a practicing lawyer representing real people with real legal problems. I understand the struggles people face in our court system. I ask for your vote because the Court of Appeals needs judges like me, who have actual experience defending your rights.

www.DietzforCourt.com

N.C. COURT OF APPEALS

CONTEST:
DIETZ/ROZIER

Democrat

Vince Rozier

Place of residence: Raleigh**Education:** North Carolina Central University School of Law; UNC Chapel Hill; Tar Heel High School (Valedictorian)**Occupation:** Wake County District Court Judge (10 years)

- Certified as Juvenile and Family Court Judge
- Felony Drugs and Property Crimes
- Driving While Impaired
- Domestic Violence
- Adult Drug Treatment Court

Employer: Citizens of Wake County and North Carolina**Date admitted to the bar:** 2001**Legal/Judicial experience:**

- Prosecutor (2001-2006)
- Nearly 70 jury trials (ranging in severity from minor traffic violations to murder)
- Ombudsman to the NC State Bureau of Investigation

CANDIDATE STATEMENT

As the son of an Air Force Veteran and an elementary school teacher, I understand service. As a former prosecutor who worked alongside law enforcement officers, I understand service. I have been honored to serve as a judge in Wake County for 10 years. Each day that I serve, I endeavor to make fair decisions based upon the Constitution and NC law. I have also served my community:

- Wake Juvenile Crime Prevention Council
- Teen Court
- SAFEchild Child Abuse Prevention
- Passage Home & PLM Families Together (for homeless families)
- Sunday School teacher

I have presided over thousands of cases. I understand how court decisions directly affect individuals, businesses and communities. I will bring both judicial experience and prosecutorial experience to the NC Court of Appeals. These are experiences that only three of the currently sitting judges possessed prior to becoming an appellate judge. This experience matters.

I hope to take my experience as a fair and impartial judge to your Court of Appeals.

I humbly ask for your vote www.judgerozier.com.

N.C. COURT OF APPEALS

CONTEST:
ZACHARY/McKOY-MITCHELL



Valerie Zachary

Place of residence: Yadkinville, NC

Education: Harvard Law School, JD cum laude, 1987; Michigan State University, BA with honors, 1984

Occupation: Judge, NC Court of Appeals

Employer: State of North Carolina, NC Court of Appeals

Republican

Date admitted to the bar: 1988 NC, 4th Circuit Court of Appeals, Western District of NC; 1992 Middle District of NC; 1993 U. S. Tax Court

Legal/Judicial experience:

- 2015 – present: Judge, North Carolina Court of Appeals
- 1989 – 2015: general practice, Yadkinville, NC
- 1987 – 1989: Kennedy, Covington, Lobdell & Hickman (now K&L Gates), Charlotte, NC
- 1986 – 1987: Professor Laurence H. Tribe – assist in research and writing of American Constitutional Law, 2nd edition

CANDIDATE STATEMENT

Our State is best served by having judges with a diversity of professional backgrounds and experiences. Upon joining the Court of Appeals, I quickly noticed that the types of cases were very similar to those encountered in a general practice. For over 25 years, I practiced law with my husband in Yadkin County. As a result, I understand the issues impacting North Carolina's residents and small business owners. At the Court, I bring a different judicial perspective to cases that I review. I have authored about 85 opinions, which you may review at nccourts.org.

In addition, legislatures, not judges, should make the laws. Appellate judges should decide each case with impartiality and fairness.

I enjoy bipartisan support and have been endorsed by former Justice Bob Orr, former Chief Judge John Martin and many other accomplished jurists.

It is my privilege to serve on the Court of Appeals. Please refer to my website: JudgeZachary.com. I would appreciate your vote.

N.C. COURT OF APPEALS

CONTEST:
ZACHARY/McKOY-MITCHELL



Democrat

Rickye McKoy-Mitchell

Place of residence: Charlotte, Mecklenburg County – State of North Carolina

Education: University of North Carolina at Chapel Hill School of Law Juris Doctorate (1984); University of North Carolina at Chapel Hill – Bachelor of Arts Degree – (1981)

Occupation: District Court Judge

Employer: State of North Carolina

Date admitted to the bar: 1984

Legal/Judicial experience:

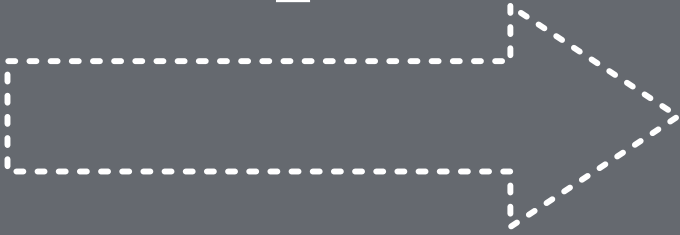
- 1998 – Present: District Court Judge (26th Judicial District, Mecklenburg County)
- 1994 – 1998: Assistant District Attorney (26th Prosecutorial District – Mecklenburg County)
- 1988 – 1994: Senior Trial Attorney, Equal Employment Opportunity Commission
- 1986 – 1988: Attorney Advisor, Office of Hearings and Appeals for the Social Security Administration
- 1984 – 1986: Reginald Heber Smith Fellow/Trial Attorney, Legal Services of the Southern Piedmont

CANDIDATE STATEMENT

North Carolina deserves an appellate court judge who is experienced, fair, committed and respected by peers and community. I believe an appellate court judge must see “faces and not just cases” because of the broad impact of these decisions. Having 14 years of prior State and Federal Court criminal and civil legal experience and 18 years of judicial experience presiding over thousands of cases in every facet of district court (32 years total) distinguish my qualifications to render decisions in these same types of cases at the appellate level. I train judges at every level and am highly rated by lawyers and judges alike for my legal ability, integrity, judicial demeanor, leadership and community services as also recognized by my receipt of the Distinguished UNC Law Alumnus Award and North Carolina Bar Association Citizen Lawyer Award. I need your vote November 8, 2016.

STATE ABSENTEE REQUEST FORM

RETURN THE COMPLETED FORM TO YOUR COUNTY ELECTIONS
OFFICE TO RECEIVE AN ABSENTEE BALLOT BY MAIL.



TO REMOVE THE FORM, PULL CENTERFOLD GENTLY FROM THE BINDING



State Absentee Ballot Request Form

North Carolina

NC STATE BOARD OF ELECTIONS
P. O. BOX 27255
RALEIGH, NC 27611-7255

PHONE: 1-866-522-4723 FAX: 919-715-0135
elections.sboe@ncsbe.gov

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES.

I am requesting an absentee ballot for the: _____ on _____
Election Type (Primary, General, Municipal, Special, etc.) Election Date

Voter Information						
Last Name		First Name		Middle Name	Suffix	Date of Birth
Home Address (NC Residential Address.)			Mailing Address (If different than home address.)			
City	State	Zip Code	City	State	Zip Code	
Have you lived at this address for more than 30 days? <input type="checkbox"/> Yes <input type="checkbox"/> No			County of Residence	Previous Name (if applicable)		
If "No," indicate the date of your move: ____/____/____						
You must provide at least one identification number below. (or see instructions) NC License or ID Number <input type="checkbox"/> SSN <input checked="" type="checkbox"/>			Voter Registration No.	Phone (optional)	Email (optional)	
X X X - X X - _____			Optional			

Absentee Voting Information				
Absentee Mailing Address (Where should the ballot be mailed?)		City	State	Zip Code
If voter is registered as <i>Unaffiliated</i> and requesting a ballot for a partisan primary, choose a primary ballot preference. <input type="checkbox"/> Democratic <input type="checkbox"/> Republican <input type="checkbox"/> Libertarian <input type="checkbox"/> Non-partisan				
If voter is a patient in a hospital, clinic, nursing home or rest home, please indicate whether you will need assistance in marking your ballot. <input type="checkbox"/> Yes <input type="checkbox"/> No				
If "Yes," what is the name and address of the hospital or facility:				
If requesting an absentee ballot on behalf of a near relative, list your name, address, contact information and relationship to the voter:				
Requestor's Name		<input type="checkbox"/> spouse <input type="checkbox"/> brother/sister <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> stepparent <input type="checkbox"/> child <input type="checkbox"/> grandchild <input type="checkbox"/> stepchild <input type="checkbox"/> mother-in-law <input type="checkbox"/> father-in-law <input type="checkbox"/> son-in-law <input type="checkbox"/> daughter-in-law <input type="checkbox"/> legal guardian		
Requestor's Address		Name of Corporation (if appointed legal guardian)		
City	State	Zip Code	Requestor's Phone	Requestor's Email

For Military/Overseas Citizens Only (may only be signed by the voter; may not be signed by a near relative/guardian)	
Select one of the options below to qualify as a military or overseas voter: <input type="checkbox"/> Member of the Uniformed Services or Merchant Marine on active duty and currently <u>absent</u> from county of residence <u>or</u> an eligible spouse/dependent. <input type="checkbox"/> U.S. citizen residing outside the U.S. temporarily or indefinitely	
Current Address (Address where you are currently stationed or living overseas.)	Transmit my ballot by: (Military/Overseas Voters Only) <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Email Fax Number or Email Address

Signature of Voter (voter only)	Signature of Near Relative/Guardian (if applicable)
X _____	X _____
Date	Date

ABSENTEE REQUEST FORM INSTRUCTIONS

GENERAL INSTRUCTIONS

A person must be a registered voter in his or her North Carolina county of residence in order to request an absentee ballot. If not registered to vote in the proper county a person must submit a voter registration application along with this form. Voter registration applications are available online at www.ncsbe.gov.

The deadline to register to vote is 25 days prior to the date of the election, which is October 14.

COMPLETING THE FORM

The voter's full name, residential address, date of birth and an identification number (see **Proof of Identification** below) must be provided on this form. This information will be used to confirm your voter registration. In addition, this form must be signed by the voter or the voter's near relative or qualified legal guardian.

WHO MAY MAKE A REQUEST FOR AN ABSENTEE BALLOT

Either the voter or the voter's near relative or qualified legal guardian may request an absentee ballot. A "near relative" is defined as the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild.

WHO MAY NOT MAKE A REQUEST FOR AN ABSENTEE BALLOT

If a registered voter is a patient in any hospital, clinic, nursing home or rest home in this state, it is unlawful for any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to request an absentee ballot on behalf of the voter. The voter's county board of elections should be contacted if a voter in a hospital, clinic, nursing home or rest home in this State needs assistance requesting or voting an absentee ballot.

UPDATING VOTER INFORMATION

This form may also serve as a voter change form; however, changes in voter registration may only be made by the voter.

PROOF OF IDENTIFICATION

If the voter's identification number (NC driver license number, NC DMV-issued identification card number, or last four digits of social security number) is not provided, then a copy of one of the following must be provided along with this request:

- A current and valid photo identification; OR
- A document that shows the name and residential address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

BALLOT AVAILABILITY

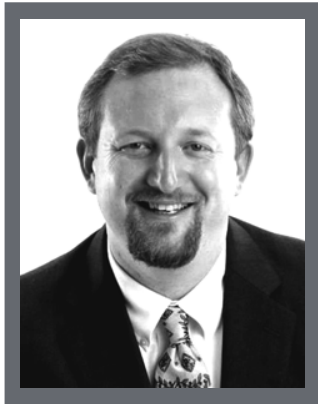
Absentee balloting materials are mailed to voters once ballots for an election are available. For most elections, ballots will be available 50 days prior to the date of the election. Absentee ballots are available 60 days prior to the date of a statewide general election and 30 days prior to the date of a city or municipal election.

SUBMITTING THE FORM

Submit this form to the voter's county board of elections (addresses provided on the back of the form) no later than 5:00 p.m. on the Tuesday before the date of the election (November 1). This form may be mailed, faxed, emailed, or delivered in person. Visit ncsbe.gov for the contact information for all county boards of elections. The status of your absentee request may also be checked on this website.

N.C. COURT OF APPEALS

CONTEST:
MURPHY/EAGLES/BUIE



Republican

Hunter Murphy

Place of residence: Waynesville

Education: UNC-Chapel Hill, BA, Economics and Religious Studies; University of the Pacific, JD

Occupation: Attorney

Employer: Hunter Murphy Law, PC

Date admitted to the bar: 2006

Legal/Judicial experience:

I have practiced law in the mountains of North Carolina my entire career. I spend my days helping real people. As a small town attorney, I represent clients in all facets of civil litigation, estate administration, and criminal accusations. I won my first case before the Court of Appeals after only seven months of practicing law.

CANDIDATE STATEMENT

My wife, Kellie, and I are the proud parents of six-year-old twins, Brayden and Eden, and are members of Pinnacle Church in Canton.

Our Court's greatest strength is the public's trust. To maintain this trust, judges must stand up for our rights recognized by the United States Constitution and the North Carolina Constitution. Judges are elected to honestly, fairly and impartially decide each case on its own merits. However, these are not the only responsibilities of an appellate judge. Due Process requires that the law be applied to all people equally whether they are in court in Albemarle, Bryson City, Charlotte, Durham or Edenton. To meet this obligation, an appellate judge must ensure that his or her opinions are written with clarity and legal reasoning that can be applied in a consistent manner. I am ready to accept this responsibility and humbly ask for your vote.

You can learn more about me, the cases I have handled at the Court of Appeals, and those who support my candidacy at:

www.HunterMurphyForJudge.com or
www.facebook.com/HunterMurphyforJudge/

N.C. COURT OF APPEALS

CONTEST:
MURPHY/EAGLES/BUIE



Margaret Eagles

Place of residence: Raleigh

Education: JD with honors, Norman Adrian Wiggins School of Law, Campbell University; BA, Wake Forest University

Occupation: District Court Judge

Employer: State of North Carolina

Date admitted to the bar: 2000

Democrat

Legal/Judicial experience:

- District Court Judge, 10th Judicial District
- Attorney, Larcade and Heiskell, PLLC – Civil practice in District and Superior Court
- Assistant Attorney General, NC Department of Justice – Environmental and Appellate practice
- Judicial Research Assistant for Justice George Wainwright, NC Supreme Court

CANDIDATE STATEMENT

Throughout my judicial career I have dedicated myself to the rule of law, remained steadfast in my respect for the public trust, and been totally committed to impartiality to all who appear before me, and I will continue to do so on the Court of Appeals.

I am the only candidate for this seat with judicial experience having served on the District Court bench in the 10th Judicial District since 2009 presiding in criminal, civil and juvenile courtrooms. I received my judicial juvenile certification while presiding in the Abuse, Neglect and Dependency Courtroom and am currently the lead Domestic Violence Judge, presiding in the criminal and civil Domestic Violence Courtrooms.

I am co-chair of the Wake County Domestic Violence Task Force and serve on the Domestic Violence Fatality Review Team as well as a member of various civic and professional organizations.

I am excited about this opportunity to continue to serve the people of North Carolina on its second highest court and am honored and humbled that many former justices and judges have endorsed my candidacy. I ask you for your support and vote.

Please visit: www.eaglesforjudge.com

N.C. COURT OF APPEALS

CONTEST:
MURPHY/EAGLES/BUIE



Donald Buie

Place of residence: Greensboro, NC

Education: 1981, Juris Doctor, North Carolina Central University; 1978, Bachelor of Arts, Elon College; 1976

Occupation: Attorney at Law

Employer: Self-employed

Date admitted to the bar: 1981

Unaffiliated

Legal/Judicial experience:

- 1998 – Present: Sole practitioner
- 1992 – 1997: Partner, Buie & Thompkins
- 1987 – 1992: Sole practitioner
- 1982 – 1987: Associate, Billy D. Friende, Jr.
- 1981 – 1982: Associate, Beaty & Friende

CANDIDATE STATEMENT

I have had the privilege of practicing law in North Carolina for 35 years. I have represented all types of clients and in many different types of cases, Criminal, Civil, Domestic, Juvenile, Wills & Estates, Special Proceedings, Bankruptcy, Etc. I have handled cases on every level of the state court system. In every case that I have handled, whether in the North Carolina Supreme Court or in Small Claims Court, every client has wanted and expected a fair, honest and impartial resolution of their case.

I consider it an honor and a privilege to be a candidate for the North Carolina Court of Appeals. I believe my wide range of experience as a practicing attorney uniquely qualifies me for this position. Having experience in the preparation and presentation of cases at the trial court levels naturally gives me a better understanding when reviewing at the appellate level.

The Court system in North Carolina has a rich tradition of providing its citizens with fair, honest and impartial access to justice. I will do everything I can to make sure that North Carolina's tradition of quality access to justice continues.

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ABOUT THE STATE BOARD OF ELECTIONS

The State Board of Elections is the agency charged with overall responsibility for the administration of elections and enforcement of campaign finance requirements in North Carolina. The Board itself is composed of members nominated by the state's Republican Party and Democratic Party and appointed by the Governor for four-year terms.

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Joshua Lawson
GENERAL COUNSEL

PRODUCTION OF THIS GUIDE

No general tax dollars were spent producing this guide. Rather, the N.C. Public Campaign Fund (repealed in 2013) will continue to support production of the guide until remaining funds are exhausted. The State Board ships this guide to every residential address as a resource for voters regarding candidates to the State's appellate courts. Candidates' information and statements are printed without editing or fact-checking by the agency, and the order in which candidates appear mirrors that of the general election ballot: Supreme Court candidates appear as ordered by a random drawing process that occurred in December, while Court of Appeals candidates appear according to partisan affiliation pursuant to S.L. 2015-292. These contests are not partisan elections.

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Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

KIM WESTBROOK STRACH
Executive Director

NUMBERED MEMO 2016-12

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

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

Wednesday, August 24 (11:59 p.m.): Unanimous Plans

Wednesday, August 24 (11:59 p.m.): Majority Proposed Plan and Petition

Thursday, August 25 (5:00 p.m.): Minority Proposed Plan and Petition

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

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

IN THE
SUPREME COURT OF THE UNITED STATES

No. 16A168

STATE OF NORTH CAROLINA, *ET AL.*,

Applicants,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *ET AL.*,

Respondents,

v.

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, *ET AL.*,

Respondents,

v.

LOUIS M. DUKE, *ET AL.*,

Intervenors/Respondents

v.

UNITED STATES OF AMERICA,

Respondents.

ON APPLICATION FOR STAY FROM THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

CERTIFICATE OF SERVICE

I, Daniel T. Donovan, a member of the Supreme Court Bar, hereby certify that the original and two copies of the attached Response to Applicants' Emergency Motion for Recall and Stay of Mandate were filed by hand-delivery to the United States Supreme Court, and were served via Next-Day Service on the following parties listed below on this 25th day of August, 2016:

Robert C. Stephens
OFFICE OF THE GOVERNOR
OF NORTH CAROLINA
20301 Mail Service Center
Raleigh, NC 27699

Karl S. Bowers, Jr.
BOWERS LAW OFFICE LLC
Post Office Box 50549
Columbia, SC 29250

Counsel for Governor Patrick L. McCrory

Paul D. Clement
Erin E. Murphy
Robert M. Bernstein
BANCROFT PLLC
500 New Jersey Ave., NW, 7th Fl.
Washington, DC 20001
(202) 234-0090

Thomas A. Farr
Phillip J. Strach
Michael D. McKnight
OGLETREE DEAKINS NASH
SMOAK & STEWART, PC
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609

*Counsel for Appellees North Carolina
and State Board of Elections*

An electronic pdf of the Response has been sent to the following counsel via e-mail:

tom.farr@odnss.com
Phil.Strach@ogletreedeakins.com
Michael.McKnight@ogletreedeakins.com
Butch@ButchBowers.com
pclement@bancroftpllc.com
emurphy@bancroftpllc.com
RBernstein@bancroftpllc.com
amata@bancroftpllc.com
slakin@aclu.org
cmackie@poynerspruill.com
jking@poynerspruill.com
klowell@poynerspruill.com
boconnor@kirkland.com
eweston@poynerspruill.com
allison@southerncoalition.org
espeas@poyners.com
jking@poyners.com
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bhorn@perkinscoie.com
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SupremeCtBriefs@USDOJ.gov
winn.allen@kirkland.com
ronald.anguas@kirkland.com
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melias@perkinscoie.com
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dale.ho@aclu.org
jdiaz@aclu.org
lcarpenter@aclu.org
jkaul@perkinscoie.com
christine.ku@usdoj.gov



Daniel T. Donovan
Counsel of Record

KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5174
ddonovan@kirkland.com