

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
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SUPERIOR COURT DIVISION
WAKE COUNTY, C.S.C.

ADVANCE NORTH CAROLINA,

Plaintiff,

BY

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COMPLAINT

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

v.

THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; and DAMON CIRCOSTA, in
his official capacity as CHAIR OF THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendants.

Plaintiff, complaining of Defendants, says and alleges:

INTRODUCTION

1. Since 2001, North Carolina has allowed all of its eligible citizens to vote by mail without excuse in all federal and state elections. This expansion of absentee voting has played an important role in extending the franchise to thousands of North Carolinians. In the 2016 and 2012 general elections alone, 174,402 and 202,841 North Carolinians, respectively, voted by mail.

2. This lawsuit challenges North Carolina's recent, unnecessarily burdensome restrictions on absentee voting by mail (hereinafter "absentee voting"), which thousands of North Carolinians rely on to participate in the political process. In October 2019, the General Assembly passed Senate Bill 683, which, among other provisions, prohibits the vast majority of individuals and organizations from assisting voters in completing absentee ballot applications and from submitting absentee ballot applications on a voter's behalf. *See* An Act to Amend the Laws

Governing Mail-In Absentee Ballots (“SB 683”), S.L. 2019-239, § 1, <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-239.pdf>.

3. While the law was introduced in the immediate aftermath of a criminal investigation into the alleged fraudulent scheme perpetrated by Leslie McCrae Dowless—a Republican political operative who at the time was working with Republican candidate Mark Harris’s campaign—and his associates during the 2018 general election in North Carolina’s 9th congressional district, SB 683’s sweeping restrictions extend well beyond the Republican operative’s fraudulent conduct and instead take aim at lawful, constitutionally protected activities, like grassroots organizing and absentee voting application drives.

4. Dowless’s scheme, which is now the subject of criminal charges, involved collecting and fraudulently voting hundreds of absentee ballots in areas of Bladen and Robeson Counties with high concentrations of black voters; but the General Assembly, rather than simply targeting the Republican operative’s criminal conduct, significantly hindered efforts to assist voters in *applying* for absentee ballots. In doing so, the General Assembly has burdened those same groups of voters who were victimized by the Republican operative’s fraud that led to SB 683 and who have the most significant need for assistance in completing absentee ballot applications and voting absentee due to systemic barriers.

5. It is particularly striking that SB 683 targets the legitimate voter assistance activities of organizations, like Plaintiff Advance Carolina, that are committed to encouraging black political participation when Republican operatives, including Dowless, had for years baselessly accused such organizations of absentee ballot fraud in order to depress black voter turnout. Then when it became clear that it was Dowless who engaged in absentee ballot fraud to benefit a Republican candidate, Dowless’s fraudulent scheme became the impetus for additional legislation further

restricting efforts to increase turnout—through absentee voting—and political participation among black voters.

6. Specifically, SB 683 requires: (1) that a voter’s absentee ballot request be completed only by that voter, their near relative/guardian, or a member of a county-board authorized multipartisan team, unless the voter is disabled or illiterate and there is no near relative/guardian available to assist, *id.* § 1.3.(a) (amending N.C.G.S. § 163-230.2(e) and adding § 163-230.2(e1)); and (2) that the voter’s absentee ballot request be returned to the county board of elections only by that voter, that voter’s near relative/guardian, or members of a multipartisan team authorized by the county board to return requests, *id.* § 1.3.(a) (amending N.C.G.S. § 163-230.2(c)) (together, the “Application Organizing Ban”).

7. By contrast, a voter may obtain assistance from a third party to complete an absentee ballot provided that the voter signs the ballot. *See* N.C.G.S. §§ 163-226.3(a), 163-229(b)(4), 163-231(a). Thus, North Carolina law now imposes greater restrictions on completing absentee ballot *applications* than it does for filling out and submitting absentee *ballots*.

8. Not only does the Application Organizing Ban deny voters valuable assistance in obtaining absentee ballots to facilitate their political participation, but it also infringes on the core political speech and associational activities of organizations and citizens working to increase voter turnout. “Get-out-the-vote” (or “GOTV”) efforts play an important role—particularly in North Carolina, which ranks in the bottom half of states in voter turnout as a percentage of registration—in ensuring that eligible citizens are able to exercise their right to vote and that elections fairly and truthfully ascertain the will of the people.

9. By restricting Plaintiff’s and other organizations’ ability to assist voters in obtaining absentee ballots, the Organizing Ban inhibits constitutionally protected political activity

and obstructs the will of North Carolina voters by making it harder for them to participate in the political process. For these reasons and those stated below, this Court should enjoin the Organizing Ban as unconstitutional and order that North Carolina reinstate the absentee ballot application procedures that were in place before SB 683's passage.

PARTIES

10. Advance North Carolina (“Advance Carolina”), a statewide, independent, 501(c)(4) nonprofit organization, brings this action on its own behalf and on behalf of its members or constituents who are registered voters in North Carolina and have voted or intend to vote absentee. The organization’s mission is to build political and economic power in Black communities and institutions in North Carolina, and, in furtherance of this purpose, Advance Carolina educates, mobilizes, assists, and turns out voters in North Carolina elections. In 2020, Advance Carolina expects to make contributions and expenditures to educate, mobilize, and turn out voters in state and federal elections in North Carolina, but is compelled to curtail its GOTV program—which in the past has typically included efforts to assist voters in completing and submitting absentee ballot applications—because of the Application Organizing Ban.

11. By prohibiting individuals and organizations from assisting voters in completing or submitting absentee ballot applications, the Organizing Ban frustrates Advance Carolina’s mission and impedes the organization’s efforts to educate, mobilize, assist, and turn out voters in North Carolina. Advance Carolina will also be required to divert resources from its other programs and day-to-day activities in order to assist community groups, organizers, and volunteers in tailoring their GOTV activities to comply with North Carolina’s Organizing Ban and identify other programs to advance GOTV goals. Advance Carolina will need to educate voters who are intimidated and confused by the Ban and thus discouraged from seeking assistance to vote absentee. The Ban also impacts Advance Carolina’s volunteer recruitment and retention because

it both prohibits an opportunity to mobilize voters in which volunteers previously engaged and deters volunteers from providing any kind of assistance to absentee voters for fear of violating the law. Finally, the Ban also burdens Advance Carolina’s speech and associational rights when engaging in GOTV activities aimed at prospective absentee voters.

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

13. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

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

JURISDICTION AND VENUE

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

16. Under N.C.G.S. § 1-81.1(a1), the exclusive venue for this action is Wake County Superior Court.

17. Pursuant to N.C.G.S. § 1-81.1(a1), a three-judge panel must be convened because this action involves a determination as to the facial validity of an act of the General Assembly.

FACTUAL ALLEGATIONS

A. North Carolina amends its long-standing absentee ballot laws following the 2018 election.

18. North Carolina first adopted “no-excuse” absentee voting by mail—under which any qualified citizen may vote absentee without justification—in 2001. N.C.G.S. § 163-226(a). At that time, North Carolina was one of several states that expanded eligibility for absentee voting in an effort to make it easier for people to vote and alleviate crowds at the polls on Election Day. After no-excuse absentee voting, among other measures expanding access to the franchise, took

effect, voter turnout in North Carolina's general elections increased from 59% in 2000 to 64% in 2004. Absentee voting also grew significantly. In 2000, 72,447 North Carolinians cast their ballots for the general election by mail; that number increased by thousands of voters in 2004, and nearly tripled (215,258) by the 2008 presidential election.

19. To vote by mail, one must first apply for an absentee ballot. Before SB 683 took effect, voters were able to submit their completed application form either directly or through a third party to the county board of elections. *Id.* § 163-230.2(c). Voters could also receive assistance in completing their applications. This allowed GOTV organizations to assist voters in requesting absentee ballots through absentee ballot registration drives and campaigns, during which these organizations would engage with voters to encourage them to participate in the political process and vote absentee; provide absentee ballot applications and assist voters to complete the applications correctly; and collect and submit absentee ballot applications to the appropriate election authority.

20. Once the voter receives their absentee ballot, they can vote by marking the ballot, signing the ballot envelope before a notary or two witnesses who must certify the voter's identity, and submitting the ballot to their county board of elections "by mail or by commercial courier service, at the voter's expense, or in person, or through the voter's near relative or verifiable legal guardian." *Id.* §§ 163-231(a), 163-229(b), 163-231(b). North Carolina's absentee voting law makes it a felony for anyone other than a near relative or verifiable legal guardian to possess for delivery the absentee ballot of any voter, *id.* § 163-226.3(a)(5).

21. During the 2018 general election, the North Carolina State Board of Elections (the "Board") initiated an investigation into potential fraud in North Carolina's 9th congressional district committed by operatives working for Republican candidate Mark Harris's campaign. The

Board “uncovered overwhelming evidence that a coordinated, unlawful, and substantially resourced absentee ballot scheme operated during the [election] in Bladen and Robeson Counties.” *Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District* at 9, North Carolina State Board of Elections, March 13, 2019 (“Order”), https://dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf. The investigation also revealed “absentee by mail irregularities [that] were enabled by a well-funded and highly organized criminal operation,” led by Harris’s campaign associate Leslie McCrae Dowless. Order at 10.

22. The Board found that Dowless paid workers to collect absentee ballots, some of which were unsealed and unvoted, and deliver them to him, Order at 18-25, that he “frequently instructed his workers to falsely sign absentee by mail container envelopes as witnesses,” and that, “[i]n some cases, Dowless’s workers fraudulently voted blank or incomplete absentee by mail ballots at Dowless’s home or in his office.” Order at 19. Dowless’s fraudulent scheme appeared to have focused on areas of Bladen and Robeson counties where minority voters are disproportionately concentrated.

23. Based on the Board’s finding that Dowless and his associates coordinated the widespread collection and forgery of absentee ballots—actions which were already prohibited by existing law criminalizing forgery and the collection and submission of absentee ballots by individuals other than the voter’s near relatives or guardians or members of a bipartisan team authorized by the county board—the Board “conclude[d] unanimously that irregularities or improprieties occurred” on behalf of the Harris campaign “to such an extent that they taint the results of the entire election and cast doubt on its fairness.” Order at 44; *see also* N.C.G.S § 163-237(d) (criminalizing fraud in connection with absentee ballots, first adopted as An Act to Amend

Certain Sections of the Election Law of the State, ch. 164, § 40, 1929 N.C. Sess. Laws 180, 201); *id.* § 163-226.3(a)(5) (criminalizing collection and submission of absentee ballot by unauthorized individual, first adopted as An Act to Prevent Fraud in Absentee Voting, ch. 799, § 4, 1979 N.C. Sess. Laws 925, 926-27).

24. In the following legislative session, the General Assembly passed SB 683, which imposes additional restrictions on the absentee ballot *application* process, as opposed to the collection or handling of absentee ballots that the Harris campaign associates exploited to perpetuate their fraud on the electoral system. The law instead prohibits most third party organizations and individuals from assisting a voter to complete an absentee ballot application, and specifies that: “A request for absentee ballots is not valid if . . . [t]he completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter’s near relative or verifiable legal guardian. A member of a multipartisan team trained and authorized by the county board of elections . . . may assist in completion of the request.” SB 683, § 1.3.(a) (amending N.C.G.S. § 163-230.2(e)). The only exception to this prohibition is for a voter who needs assistance “due to blindness, disability, or inability to read or write” and who does not have “a near relative or legal guardian available to assist.” *Id.* (adding N.C.G.S. § 163-230.2(e1)).

25. The law also prohibits those same organizations and individuals from assisting a voter to return an absentee ballot application and specifies that: “The completed request form for absentee ballots shall be delivered to the county board of elections only by any of the following: (1) The voter. (2) The voter’s near relative or verifiable legal guardian. (3) A member of a multipartisan team trained and authorized by the county board of elections,” SB 683, § 1.3.(a) (amending N.C.G.S. § 163-230.2(c)), and invalidates requests for absentee ballots if “[t]he completed written request is returned to the county board by someone other than a person listed in

subsection (c) of this section, the United States Postal Service, or a designated delivery service.”
SB 683, § 1.3.(a) (amending N.C.G.S. § 163-230.2(e)).

26. By imposing additional restrictions on the absentee ballot application process, the Organizing Ban proscribes conduct that is only tangentially related to, and several steps removed from, the forgery and fraudulent submission of ballots that tainted the 2018 election in North Carolina’s 9th congressional district. And the Ban also burdens voters, especially minority voters—the primary victims of Dowless’s fraud which led to the Ban in the first place—as well as the organizations that serve minority communities, like Advance Carolina.

B. The Application Organizing Ban severely burdens protected political speech and associational rights.

27. Advance Carolina funds and engages in voter education and turnout efforts, including campaigns and drives during which their volunteers and other community groups assist voters to complete and submit their absentee ballot applications. In past election cycles, for example, Advance Carolina organized events at churches for entire congregations to apply to vote absentee.

28. These voter education and turnout efforts, including assisting voters to complete and request absentee ballots, are among the most important mediums through which Plaintiff communicates its belief in the power and importance of participating in democratic elections. And these initiatives facilitate the political participation of voters who have experienced historically low turnout rates when compared to the rest of the population, or who for various reasons, including disability, advanced age, or lack of access to transportation, would have difficulty voting. That is why Advance Carolina also focuses its efforts on disabled and elderly voters who, because of their ages and health conditions, rely on assistance to apply for their absentee ballots.

29. Advance Carolina engages in protected political speech and association when it interacts with North Carolina voters to educate them on issues pertinent to an election, registers North Carolinians to vote, assists voters in requesting absentee ballots, and persuades them to cast their ballots. Encouraging voters to participate in the democratic process through absentee voting and assisting voters to apply for absentee ballots are forms of political speech and expressive conduct inherently tied to Plaintiff's mission.

30. As a result of the Organizing Ban, Advance Carolina and other community groups have suspended portions of their GOTV programs related to absentee voting. The Ban, through its restriction on assisting voters in completing their absentee ballot application and submitting the applications on the voters' behalf, burdens Plaintiff's speech and associational rights by limiting the number of voices communicating Plaintiff's messages and thus the size of the audience that can be reached, thereby limiting the effectiveness of those messages. Furthermore, because the Ban targets conduct distinct from the fraudulent actions in North Carolina's 9th Congressional District in 2018, the Ban has caused confusion among voters and individuals engaging in lawful GOTV efforts.

31. The Organizing Ban also restricts the expressive conduct of Plaintiff's members, volunteers, and canvassers during GOTV campaigns and drives for absentee registration and makes it less likely that these activities will result in increased absentee voting. By limiting the effectiveness of their GOTV efforts, the Organizing Ban makes it more difficult for Plaintiff to recruit members, volunteers, and canvassers who no longer view absentee ballot organizing activities as an effective means to increase political participation.

32. The Organizing Ban likewise burdens voters who engage in protected political speech and association when they choose to entrust members of GOTV organizations, like Plaintiff, with completing and submitting their absentee ballot request forms.

C. The Application Organizing Ban unnecessarily burdens North Carolinians' right to vote.

33. Voting by mail expands access to the ballot box, particularly for voters whose work schedules, health conditions, family care responsibilities, or lack of transportation make in-person voting difficult or impossible.

34. Those same factors—i.e., health conditions, work schedules, family care responsibilities, and lack of transportation—can make completing and submitting an absentee ballot application difficult for some voters, including Advance Carolina's members. GOTV organizations, friends, neighbors, and others barred by SB 683 from assisting voters in completing and submitting absentee ballot applications play an important role in ensuring that these voters have an opportunity to exercise their right to vote.

35. By imposing barriers to requesting an absentee ballot, and invalidating requests that do not adhere to the State's new restrictions, the Organizing Ban reduces access to vote-by-mail opportunities on which Advance Carolina's members and other voters have come to rely or would otherwise utilize, thereby burdening their fundamental right to vote.

D. The Application Organizing Ban is not appropriately tailored to the State's purported interest in preventing fraud.

36. The Organizing Ban's restrictions on political speech can neither be justified by the State's interest in preventing fraud nor by the unfortunate actions of Republican operatives in North Carolina's 9th Congressional District during the 2018 election. Their attempt to steal the election by submitting fraudulent absentee ballots was (and still is) illegal under North Carolina

law, which criminalizes any attempt to aid or abet fraud or to forge signatures on absentee ballots. N.C.G.S § 163-237(d).

37. Furthermore, the fraudulent scheme did not go undetected. Because the State Board’s investigation revealed blatant violations of existing law, it unanimously ordered a new election for the compromised races, and the individuals who committed the fraud have been charged with multiple counts of illegal ballot handling and conspiracy.

38. SB 683’s restrictions on absentee ballot applications address conduct that occurs even before an absentee ballot is issued and focuses on the wrong step of the voting process. Because pre-existing North Carolina law already prohibits the forging and fraudulent submission of absentee ballots, SB 683’s additional restrictions on the absentee ballot application process provide little to no incremental protection against fraud. Thus, the statute fails to advance the State’s purported interest in preventing absentee ballot fraud; restricts the constitutionally-protected activities of GOTV organizations that assist voters in completing and submitting absentee ballot applications as a means to encourage political participation and increase turnout; and burdens voters who require assistance to obtain an absentee ballot.

CAUSES OF ACTION

COUNT I

**Violation of the North Carolina Constitution
Freedom of Speech, Art. I, § 14, Freedom of Assembly, Art. I, § 12, and Equal Protection,
Art. I, § 19
(Unconstitutional Burden on Right to Vote)**

39. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

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

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

42. Article I, §§ 12 and 14 of the North Carolina Constitution protect the right of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote. “Voting, like donating money to a candidate or signing a petition for a referendum, constitutes ‘expressive activity’ that ‘express[es] [a] view’ about the State’s laws and policies.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *119 (N.C. Super. Sep. 03, 2019) (quoting *Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 153 (1999). *Evans v. Cowan*, 122 N.C. App. 181, 184, 468 S.E.2d 575, 577 (1996), *aff’d*, 345 N.C. 177, 477 S.E.2d 926 (1996).

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

44. Voting by mail expands voting opportunities, especially for those whose work schedules, family care responsibilities, or lack of transportation make in person voting difficult or impossible.

45. By imposing barriers to requesting an absentee ballot, and invalidating requests for absentee ballots when completed with assistance from, or submitted by, third parties, the Organizing Ban reduces access to vote-by-mail opportunities on which these voters, including Advance Carolina’s members, have come to rely and which prospective voters would otherwise use. The law’s restrictions impose severe burdens on the fundamental right to vote and the freedom of speech and freedom of assembly that cannot be justified by any State interest and thus violates the North Carolina Constitution.

46. And even if the burdens were not severe, the State’s purported interests are not sufficiently weighty to justify the Application Organizing Ban’s unnecessary restrictions on the absentee voting process.

COUNT II
Violation of the North Carolina Constitution’s
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14
(Unconstitutional Infringement on Associational and Speech Rights)

47. Plaintiff hereby incorporates all other paragraphs in this Complaint as if fully set forth herein.

48. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014).

49. Article I, § 14 of the North Carolina Constitution provides that “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.” The North Carolina Supreme Court has taken this admonition to heart in protecting freedom of speech.

50. “The North Carolina Supreme Court has held that the North Carolina Constitution’s Free Speech Clause provides broader rights than does federal law.” *Common Cause*, 2019 WL 4569584, at *118.

51. The U.S. Supreme Court has applied “exacting scrutiny” to review laws governing election-related speech. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995); *see also League of Women Voters v. Hargett*, No. 3:19-CV-00385, 2019 WL 4342972, at *8 (M.D. Tenn. Sept. 12, 2019) (“[L]aws that govern the political process surrounding elections—and, in

particular, election-related speech and association—go beyond merely the intersection between voting rights and election administration, veering instead into the area where ‘the First Amendment has its fullest and most urgent application.’”) (quoting *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). The Supreme Court has found restrictions on such speech unconstitutional when they “significantly inhibit” election-related speech and association and are “not warranted by the state interests . . . alleged to justify [the] restrictions.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 (1999).

52. Likewise, the North Carolina Supreme Court has explained that “[r]egulation of so-called pure speech, a term that most often refers to political advocacy, must pass strict scrutiny: the government must show a compelling interest in the regulation, and the regulation must be narrowly tailored to achieve that interest.” *Hest Techs., Inc. v. State ex rel. Perdue*, 366 N.C. 289, 298, 749 S.E.2d 429, 436 (2012) (citing *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)).

53. Voter turnout efforts, including assisting voters to complete and request absentee ballots, are a means by which citizens communicate their belief in the power and importance of participating in democratic elections. Such activity is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988). See *League of Women Voters*, 2019 WL 4342972, at *8 (“Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity.”) (internal quotation marks and alterations omitted). The act of assisting voters with obtaining an absentee ballot is inherently expressive, and an individual or organization that conducts such activities engages in speech by encouraging absentee

voting. *See Bernbeck v. Moore*, 126 F.3d 1114, 1115 (8th Cir. 1997) (rejecting the argument that regulating an election “process” raises no First Amendment concerns).

54. Furthermore, First Amendment rights “include the right to band together for the advancement of political beliefs.” *Hadnott v. Amos*, 394 U.S. 358, 364 (1969). “An organization’s attempt to broaden the base of public participation in and support for its activities is conduct ‘undeniably central to the exercise of the right of association.’” *Am. Ass’n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1202 (D.N.M. 2010) (citing *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214-15 (1986)). In fact, the North Carolina Supreme Court has specifically recognized that “assist[ing] others in casting votes in alignment with [one’s political] beliefs” “affect[s] individual associational rights.” *Libertarian Party of N.C. v. State*, 365 N.C., 41, 49, 707 S.E.2d. 199, 204-05 (2011).

55. The conversations and interactions between Plaintiff, its members, and voters surrounding the completion and submission of absentee ballot requests are forms of protected political speech and association. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (describing the “overlapping” rights “of individuals to associate for the advancement of political beliefs” and “of qualified voters . . . to cast their votes effectively”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (explaining that “participation in voter registration implicates a number of both expressive and associational rights which . . . belong to—and may be invoked by—not just the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls”). Thus, by prohibiting most third parties from assisting voters to complete absentee ballot applications or delivering the applications, the Application Organizing Ban burdens the speech and associational rights of Plaintiff, its members, and voters.

56. These burdens are severe and the Organizing Ban is not narrowly tailored to advance a compelling state interest.

57. The Organizing Ban thus represents an overbroad restriction on political speech and political organizing that infringes Plaintiff's and other North Carolinians' rights under Article I, §§ 12 and 14 of the North Carolina Constitution.

COUNT III
Violation of the North Carolina Constitution's
Free Elections Clause, Art. I, § 10

58. Plaintiff hereby incorporates all other paragraphs in this Complaint as if fully set forth herein.

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

60. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868) (emphasis added). Another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” N.C. Const. art. I, § 10 (Emphasis added). As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” for proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

61. “[T]he object of all elections is to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915). “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

62. The Application Organizing Ban obstructs the will of North Carolinians and violates the Free Elections Clause because its restrictions on third-party assistance in completing and submitting applications for absentee ballots will have the effect of curtailing absentee voting, which makes it more difficult for certain groups of voters—including those whose work schedules, health conditions, family care responsibilities, or lack of transportation make in-person voting difficult or impossible—to participate in the political process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants, and:

- a. Enter a declaratory judgment pursuant to N.C.G.S. § 1-253, *et seq.*, that the Application Organizing Ban is unconstitutional and invalid because it violates the rights of Plaintiff and North Carolina voters under the North Carolina Constitution’s Equal Protection and Law of the Land Clauses, Art. I, § 19; Free Elections Clause, Art. I, § 10; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;
- b. Enter an order preliminarily and permanently enjoining the Application Organizing Ban pursuant to North Carolina Rule of Civil Procedure 65;
- c. Award to Plaintiff its costs and expenses, pursuant to applicable statutory and common law, including N.C.G.S. §§ 6-20 and 1-263; and

d. Grant Plaintiff such other and further relief as the Court deems necessary.

Dated: March 4, 2020

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