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STATE OF NORTH CAROLINA

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IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

WAKE COUNTY, C.S.C.

14 CVS _____

STELLA ANDERSON, PAM
WILLIAMSON, MARIANNE
CLAWSON, ALAINA DOYLE,
LAUREN LARUE JOYNER, IAN
O'KEEFE, AND DAVID SABBAGH,

Petitioners,

v.

THE NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Respondent.

PETITION FOR JUDICIAL REVIEW

[N.C. Gen. Stat. § 163-22]

STELLA ANDERSON, PAM WILLIAMSON, ALAINA DOYLE, LAUREN LARUE JOYNER, IAN O'KEEFE, MARIANNE CLAWSON, AND DAVID SABBAGH ("Petitioners"), pursuant to N.C. Gen. Stat. § 163-22(l), file this Petition for Judicial Review of Respondent's adoption on August 29, 2014, of the Watauga One-stop Implementation Plan ("Plan") to determine whether Respondent abused its discretion by adopting a Plan for Watauga County that (i) does not make any of the findings required by law, (ii) does not give any basis for its adoption and does not explain how it took the required geographic, demographic, and partisan interests of the county into consideration, and (iii) erects unnecessary barriers to voting by and otherwise discriminates against voters aged 18-25 in violation of Article I, Section 19, and Article VI, Section 1, of the North Carolina Constitution and of the 14th and 26th amendments to the United States Constitution.

In support of this Petition, Petitioners allege and say¹ that:

1. Petitioners consist of the following individuals:
 - a. Petitioner Stella Anderson is a registered voter in Watauga County and Blue Ridge Precinct. She has voted in the county in every election since 1993. She works at Appalachian State University (ASU). In every election from 2006 to 2012 she voted early, choosing the site at the ASU Plemmons Student Union because it is near where she works. Her election-day polling place is not readily accessible because of her work schedule. In the May 2014 primary, because there was no early voting site on campus, she voted absentee by mail. It took her absentee ballot two weeks to reach the Watauga Board of Elections. She has engaged in efforts to educate students about the voting process and intends to do so again.
 - b. Petitioner Pam Williamson is a registered voter in Watauga County and New River 2 Precinct. She has participated for 24 years in efforts to register ASU students to vote, to educate them about voting opportunities, and to encourage and assist them in getting to both early voting sites and election day polling locations. She is continuing those efforts in the 2014 general election.

¹ Appendix E contains affidavits of all Petitioners in alphabetical order, and that of Kathleen Campbell at the end.

- c. Petitioner Marianne Clawson is a registered voter in Watauga County, is 21 years old as of the filing of this Petition, and is a student at ASU. Ms. Clawson resides in New River I precinct and voted in the May and November 2012 elections by voting early at the ASU Student Union. Ms. Clawson participates in efforts to register students at ASU to vote and to educate them about the voting process. She engaged in these activities for elections in 2011, 2012, and 2013 and plans to do so for the 2014 general election. As part of her activities she encouraged students to vote early at the ASU Student Union when it was an early voting location.
- d. Alaina Doyle is a registered voter in Watauga County and Boone 1 Precinct. She is 21 years old as of the filing of this Petition and a student at ASU. She voted in the 2012 general election, using same-day registration at the early voting site at the ASU Student Union. She cast a provisional vote in the November 2013 municipal election outside her precinct, then New River 3, because of difficulties and confusion about her election-day polling place. She has engaged in efforts to educate students about the voting process and intends to do so again.

- e. Lauren Larue Joyner is a registered voter in Watauga County and in Brushy Fork Precinct. She is 24 years old as of the filing of this Petition and a student at ASU. She voted early in the November 2013 municipal election. She did not vote in the May 2014 primary because there was no voting place on campus, either early or in her then precinct, Boone 3, and her full class schedule prevented her from going off campus to vote. She expects to have similar problems in the 2014 general election. She has engaged in efforts to educate students about the voting process and intends to do so again.
- f. Petitioner Ian O'Keefe is a registered voter in Watauga County and in Blue Ridge precinct. He is 21 years old as of the filing of this Petition, and is a student at ASU. Mr. O'Keefe participates in efforts to register students at ASU to vote and to educate them about the voting process. He engaged in these activities in all elections from November 2012 to July 2014 and plans to engage in these efforts for the 2014 general election. As part of his past activities, he encouraged students to vote early at the ASU Student Union until this early voting location ended in November of 2013.
- g. Petitioner David Sabbagh is a registered voter in Watauga County, is 20 years old as of the filing of this Petition, and is a student at ASU.

Mr. Sabbagh resides in Boone 3 precinct and voted in the November 2012 election by voting early at the ASU Student Union. Mr. Sabbagh voted in the May and July 2014 elections by Absentee Mail-in since there was no early voting location on ASU's campus. Mr. Sabbagh participated in campus efforts to get eligible students to vote on Election Day at Legends (Boone 2 precinct polling place) for the 2013 municipal election and plans to continue his get-out-the-vote activities for the 2014 general election.

2. Respondent:

- a. Is the State agency charged with general supervision over the primaries and elections in this State. N.C. Gen. Stat. § 163-22(a). Respondent Board is headquartered in Wake County and consists of five members appointed by the Governor of North Carolina to four-year terms. N.C. Gen. Stat. §§ 163-19 and 163-20.
- b. Has the responsibility of adopting an early voting plan, referred to in the law as a one-stop implementation plan, for a county if the three-member county board of elections cannot agree unanimously on a plan. N.C. Gen. Stat. § 163-227.2(g).
- c. Is required, when adopting an early voting plan for a county, to “take into consideration factors including geographic, demographic, and partisan interests of the county.” N.C. Gen. Stat. § 163-227.2(g).

- d. May adopt an early voting plan that does not have an early voting site at the county board of elections only if the plan includes a site that is reasonably proximate to the county board of elections office and Respondent “finds that the sites in the Plan as a whole provide adequate coverage of the county’s electorate.” N.C. Gen. Stat. § 163-227.2(g).

Jurisdiction of Wake Superior Court

3. N.C. Gen. Stat. § 163-22(l) requires a person who seeks judicial review of a decision of Respondent rendered in the performance of Respondent’s duties or in the exercise of Respondent’s powers under Chapter 163 of the North Carolina General Statutes to file a petition in the superior court of Wake County.

4. Respondent’s decision to adopt the Plan for Watauga County was rendered both in the performance of Respondent’s duty and in the exercise of its authority under N.C. Gen. Stat. § 163-227.2(g) to adopt an early voting plan for a county when the local board of elections cannot reach unanimous agreement on a plan.

5. The provisions of N.C. Gen. Stat. § 163-22(l) establishing the jurisdiction and venue for a review of Respondent’s decisions applies “[n]otwithstanding any other provision of law.”

6. The Wake County Superior Court is therefore the proper court for judicial review of Respondent’s adoption of the Plan.

Summary of Information Presented to Respondent

7. Respondent met on August 21, 2014, to consider two competing early voting plans for Watauga County. One plan, designated the Compromise Minority Plan, was submitted by Watauga County Board of Elections member Kathleen Campbell. The other plan, the Aceto/Eggers plan was submitted by the other two members of the Watauga Board, the Chair Mr. Luther Eggers and Mr. William Aceto.

8. Ms. Campbell accompanied her plan with voluminous supporting documentation submitted to Respondent by the deadline set by Respondent and also submitted to Respondent at the meeting a synopsis of the reasons in support of her plan. Appendix A contains the information submitted to the Board in support of the Compromise Minority Plan.

9. Neither Mr. Aceto nor Mr. Eggers submitted any information to Respondent in support of their plan by the August 15, 2014, deadline set by Respondent for submission of information on the competing Watauga plans.² The day before the meeting, however, Respondent accepted an admittedly untimely letter from Mr. Eggers in support of the Aceto/Eggers plan. Appendix B contains the Aceto/Eggers plan and the untimely letter submitted by Mr. Eggers in support of that plan.

10. At the hearing, Respondent Board member Mr. Paul Foley submitted for the record two Google maps of portions of Boone and Board member Joshua Malcolm directed that an email concerning costs at Watauga's early voting sites be added to the record. No other Board

member submitted information for the record. Appendix C contains the maps submitted by Mr. Foley and the email added to the record.

11. Respondent did not record the hearing. Respondent board members did not question the accuracy of the information Ms. Campbell provided in support of the Compromise Minority Plan. *See* Appendix E, Affidavit of Kathleen Campbell.

Summary of Applicable Law

12. Respondent has the responsibility of adopting an early voting plan for a county if the county board is unable to reach unanimity in favor of a plan. In adopting a plan, Respondent is required to consider the geographic, demographic, and partisan interests of the county and is required to make certain findings in connection with the plan. N.C. Gen. Stat. § 163-227.2(g) (Appendix F)

13. The discretionary authority of an agency does not include the authority to disregard the law or to violate the constitutional rights of those affected by its decisions. *See State Highway Comm'n v. Batts*, 265 N.C. 346, 356, 144 S.E. 2d 126, 133 (1965) (Commission's broad discretionary powers over highways do not include condemning private property for private, as opposed to public, use)

14. Article I, Section 19, of the North Carolina Constitution and the 14th amendment to the United States Constitution guarantee to each citizen a fundamental right to equal access to the ballot with other citizens. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665, 86 S. Ct.

² See Appendix D. In response to questions about the procedure for the hearing, Respondent's staff stated that "in no instance will [supporting information] be accepted later than

1079, 1081 (1966); *Northampton County Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990). The right to vote is protected in more than the initial exercise of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *Bush v. Gore*, 531 U.S. 98, 104-05, 121 S. Ct. 525, 530 (2000). The right to continued equal access, once offered, extends to early voting. *Ohio State Conf. of the NAACP v. Husted*, No. 2:14-CV-404, 2014 U.S. Dist. LEXIS 123442, 81-85 (S.D. Ohio, Sept. 4, 2014).

15. When a law or policy that is neutral on its face burdens the exercise of a fundamental right and imposes a disparate but not severe impact on a group, there must be "relevant and legitimate state interests sufficiently weighty to justify the limitation." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364, 117 S. Ct. 1364, 1372 (1997); *Ohio State Conf. of the NAACP* at 81-85; *Libertarian Party of N.C. v. State*, 365 N.C. 41, 47, 707 S.E.2d 199, 203-204 (2011).

16. The 26th Amendment to the United States Constitution prohibits the denial of the vote to 18-21 year olds as well as discrimination in voting based on age. *Walgren v. Howes*, 482 F. 2d 95, 101 (1st Cir. 1973). Congress intended to encourage young people to vote by removing barriers and burdens, so their vigor and idealism could be channeled into rather than remain outside lawfully constituted institutions. *Worden v. Mercer County Board of Elections*, 294 A.2d 233, 243 (N.J. 1972).

noon on Friday (8/15)."

17. Purposeful discrimination against young voters violates the 26th Amendment. *U.S. v. Texas*, 445 F. Supp. 1245 (1978), *aff'd*, *Symm v. U.S.*, 439 U.S. 1105, 99 S. Ct. 1006 (1979). Invidious discriminatory purpose may often be inferred from the totality of the relevant facts. *Washington v. Davis*, 426 U.S. 229, 242; 96 S. Ct. 2040, 2048-49 (1976).

18. Young voters are an identifiable group of voters and their right to vote is guaranteed by Article VI, Section 1, of the North Carolina Constitution.

Watauga's Geographic, Demographic, and Partisan Factors

19. Watauga County in 2013 had an estimated population of 52,372.³ Its largest city, Boone, dominates the county with a population of 18,211. Boone is home to Appalachian State University (ASU) and its 17,800 students; ASU is also the largest employer in Watauga with 3,000 employees. (App. A 23, 115) The other cities in the county – Blowing Rock, Beech Mountain, and Seven Devils – are located partly in Watauga County and partly in other counties and have a collective Watauga population of about 3% of the county's total population.

20. Watauga County has 45,281 registered voters.⁴ Of these voters, 32% percent are registered as Republicans, 27% percent are registered as Democrats, 39% percent are registered as Unaffiliated, and the remainder are registered as Libertarians.

21. Students at ASU comprise thirty-four percent (34%) of Watauga's population, which is by far the highest student percentage of University of North Carolina (UNC) enrollment in any county in North Carolina. After Watauga, the counties with the highest percentage of

³ All population estimates are as reported by the U.S. Bureau of the Census for 2013.

UNC students are Jackson County (25%; Western Carolina) and Orange County (20%; UNC-Chapel Hill). The statewide average percentage for those counties with UNC campuses is 11%. (App. A 7, 372)

22. Voters aged 18-25 comprise thirty percent (30%) of Watauga's registered voters, which is by far the highest percentage of young voters in any county. After Watauga, Orange County has the highest percentage (21%) of voters aged 18-25. The statewide average percentage of voters aged 18 to 25 is 12%. (App. A 7, 8)

23. The Appalachian campus is split between Boone 2 and Boone 3 precincts. The dormitories at ASU are also split between these two precincts. In Boone 2, almost 85% of the registered voters are aged 18 to 25. In Boone 3, almost 77% of the registered voters are aged 18 to 25. (App. A 3, 8) Consequently, voting changes that affect Boone 2 and Boone 3 precincts overwhelmingly affect voters aged 18 to 25.

24. Many students at ASU who do not live in the dormitories located on campus live in apartments in Boone 1 and New River 1 precincts close to campus. About 40% of the registered voters in those precincts are aged 18 to 25. (App. A 8 & Appendix G). Consequently, voting changes that affect Boone 1 and New River 1 affect a significant number of voters aged 18 to 25.

25. ASU parking policies limit the use of cars by students who have them. Freshmen are limited to parking at an off-campus lot that is over 2 miles from campus. Parking permits for

⁴ All voter data is obtained from the Watauga Board of Elections or the State Board of Elections.

sophomores and juniors are limited to 700 and parking permits for seniors are limited to 500.

Class schedules and part-time job schedules constrain students' time. (App. A 373)

Watauga's Experience With Early Voting Sites

26. The Watauga County Board of Elections is required to offer early voting in the 2014 general election for at least 237 hours, which is the sum of the number of hours early voting was offered in the county in all early voting sites in the 2010 general election. N.C. Gen. Stat. § 163-227.2(g2). The "hours" requirement applies even though the statutory early voting period in 2014 is one week shorter than in 2010. N.C. Gen. Stat. § 163-227.2 (2012) (Appendix F).

27. From 2000 to 2013, county boards of election were required to offer early voting at the local board of elections office, or a reasonably proximate site, and had the option of offering early voting at other sites in the county. N.C. Gen. Stat. § 163-227.2 (2012) (Appendix F).

28. From at least 2006 until the 2013 municipal election, the early voting plans for all Watauga County general elections included a site on the ASU campus. Starting in 2008, the Plemmons Student Union on the ASU campus served as the ASU site and it drew a large share of the entire county's early votes in general elections – 36% in 2008, 13% in 2010, and 35% in 2012. (App. A 416-17)

29. During the time the Student Union was used as an early voting site, 91% of early voters who were 18-25 cast their early votes there. (App. A 25)

30. At the public workshop organized by the Republican members of the Watauga Board of Elections and held in February of 2014, "about 90% of the comments [Board member

William Aceto] received during the workshop were in regard to having a location at Appalachian State University's student union.” (App. A 147) The Chancellor of ASU and the director of ASU's student union wrote letters supporting the ASU Student Union as an early voting site. (App. A 377-78, 386-87)

31. The ASU Student Union has a parking lot with 74 spaces. The site is accessible to non-university voters. (App. A 377) Affidavits from election officials in Watauga and elsewhere establish that enforcing an electioneering buffer zone at student union buildings with multiple entrances is not a problem. (App. A 435-41)

32. In the years in which the ASU Student Union was an early voting site, there were at least two Boone early voting sites – the ASU site and a site at the courthouse, which is located about six-tenths of a mile from the ASU Student Union. In 2008 and 2010 there was a third Boone site at Agricultural Center, which is located about one-tenth of a mile from the courthouse and about five-tenths of a mile from the ASU Student Center. In 2010, there was also a fourth Boone site at the Boone Town Council Chambers. (App. A 416-17)

33. The early voting plan for the 2014 primary did not include any Boone site other than the required site at the board of elections office or a site reasonably proximate to that office. In addition to the required site, the 2014 primary plan included four sites located in rural parts of the county. Seventy-two percent (72%) of the early votes cast in the 2014 primary were cast at the board of elections site and no more than 9% were cast at any one of the rural sites. (App. A 421) More than a third of the people who lived near the rural early voting sites voted in downtown Boone because they work in Boone. (App. A 22)

34. If the pattern of early voting for the 2014 primary applies in the 2014 general election, the one Boone site can be expected to receive over 5,400 early voters -- 65 per hour if evenly dispersed. (App. A152, 156)

35. The percentage of voters aged 18-25 who voted early in the 2014 primary compared to the 2010 primary decreased by 12% while the number of Watauga voters overall who voted early increased by 40%. (App. A 27)

36. The number of overall voters in Boone 2 precinct who voted in the 2014 primary declined by 73% compared to the number who voted in the 2010 primary and the number of overall voters in Boone 3 who voted in the 2014 primary compared to the 2010 primary declined by 45%. (App. A 26)

The Competing Watauga Early Voting Plans Presented to Respondent

37. At its meeting on July 23, 2014, the Watauga County Board of Elections had before it two early voting plans for the 2014 general election. One was proposed by County Board Member Aceto (Appendix B) and one by County Board Member Kathleen Campbell. The Aceto/Eggers plan proposed the same five sites and the same hours as in the 2014 primary and did not include a site on the ASU campus. Mr. Aceto stated that the plan had “worked well” in the primary. (App. A 23)

38. The Campbell plan included a site at the ASU Student Union and had a few other differences. The Watauga Board did not allow any public comment at the meeting. (App. A 21) Neither plan received a unanimous vote of the three county board members. The executive

director of the Watauga Board of Elections forwarded the Aceto/Eggers plan and the Campbell plan to Respondent.

39. Respondent set a deadline of July 31 for receiving early voting plans from members of the Watauga Board of Elections. Board member Campbell submitted another plan (“Compromise Minority Plan”) (App. A. 14-20) before that deadline. The Compromise Minority Plan superseded the plan she put before the Watauga County Board at its July 23 meeting. The Compromise Minority Plan retained every feature of the Aceto/Eggers plan with one exception – the addition of an early voting site at the ASU Student Union. (App. A 4)

40. According to cost estimates provided by County Election Director Jane Ann Hodges, the ASU Student Union site could be added to the Aceto/Eggers plan at no additional cost because personnel from the election board site would be shifted to the ASU site. (App. A 156)

41. At its August 21, 2014 meeting, Respondent considered the Aceto/Eggers Plan and the Compromise Minority Plan. Mr. Aceto explained the Aceto/Eggers Plan and counsel representing Ms. Campbell presented the Compromise Minority Plan.

42. The arguments advanced by Mr. Aceto for the Aceto/Eggers plan cannot withstand any level of scrutiny for the following reasons:

- a. The purported interest in consistency ignores the inconsistency created by eliminating the customary early voting site at the ASU Student Union. Mr. Aceto and Mr. Eggers have also proposed changes to voting places in every election since they took office on the board. (App. A 30)

- b. The purported inability to maintain the electioneering buffer zone at the ASU Student Union has been refuted by election officials in Boone and elsewhere, and was derided by State Board Members Joshua Malcolm and Maja Kricker at the August 21 meeting.
- c. An argument that early voting sites should be evenly distributed around the county ignores where the bulk of the population lives and wants to vote. The low turnout and high cost-per-voter at the rural sites demonstrates the fallacy of this even-distribution argument. (App. A 156)

43. Board Member Joshua Malcolm moved to modify the Aceto/Eggers Plan to extend the hours at the required site – the one Boone site – and to reduce the hours at the sites outside Boone and then to adopt that plan as modified. The motion passed 4-1. (Appendix K)

44. Respondent's oral decision is set out in a letter dated August 29, 2014, that is accompanied by a "One-stop Implementation Plan Form" that lists the early voting sites and hours for Watauga County. (Appendix H)

The Early Voting Plan Does Not Meet the Statutory Requirements and Is Arbitrary

45. The Plan adopted by Respondent includes no findings but includes a site reasonably proximate to the board of elections office rather than the office itself. The omission of this finding violates N.C. Gen. Stat. § 163-227.2(g) (requiring a plan that does not have a site at the local board of elections office to include a finding that "the sites in the Plan as a whole provide adequate coverage of the county's electorate").

46. The Plan adopted by Respondent does not explain what factors, if any, Respondent considered in adopting the Plan. The absence of any identification of the factors taken into consideration violates N.C. Gen. Stat. 163-227.2(g) (mandating that “The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.”)

47. Respondent’s decision on the Watauga Plan is in direct opposition to its decision on the early voting plan it adopted for Wilson County at the same meeting immediately after adopting the Watauga Plan. The Wilson Plan it adopted concentrates early voting sites in the downtown area of the county to the exclusion of sites in the more rural areas of the county. Respondent rejected a plan by the minority member of the Wilson County Board of Elections to add a rural site. (Appendix I, K) Respondent’s conflicting decisions on these two plans indicates arbitrary decisions.

The Early Voting Plan Erects an Unnecessary Barrier to Student Voting

48. Removing the early voting site from ASU unnecessarily creates a barrier to student voting. The students who are on campus each day at ASU typically live in at least four different precincts – Boone 1, Boone 2, Boone 3, or New River 1. Early voting on campus at the ASU Student Union offers a convenient alternative to travelling to their precinct polling places on election day, which are off campus for most of them.

49. Respondent’s refusal to locate an early voting site at ASU exacerbates recent changes in the law -- the elimination of same day registration, the shortening of the early voting period by one week, and the elimination of out-of-precinct voting – that make it more difficult

for students to vote. (S.L. 2013-381, Parts 16, 25, and 49) Before 2014, the ASU Student Union was the election day polling place for Boone 2. In elections before 2014, students on campus on election day would go to the ASU Student Union whether they lived in Boone 2 precinct or not. If they did not live there, they would vote a provisional ballot and it would be counted. (App. A 26) The new law thwarts this student voting behavior because it prohibits the counting of provisional ballots voted outside the voter's precinct.

50. The majority of the Watauga County Board of Elections attempted to erect a barrier to student voting in 2013 by combining the precincts of Boone 1, Boone 2, and Boone 3 into a super-precinct with more than 9,000 voters. This precinct would have roped in the lion's share of ASU students. Its polling place would have been the county Agriculture Building, a building off campus down a narrow road without a sidewalk. The proposal attracted negative national publicity. Respondent's Executive Director Kimberly Strach, who has the duty under N.C. Gen. Stat. § 163-132.3 to approve changes in precinct lines, recognized the excessiveness of this barrier and declined to allow the Watauga board to erect it. (App. A 44) The single early voting site for these same precincts effectively puts in place for early voting the "super-precinct" plan rejected by Ms. Strach.

51. The Watauga board majority was, however, able to erect a barrier to student voting in late 2013 when they moved the election-day polling place of the Boone 2 precinct from the ASU Student Union to a nightclub down a steep hill on the edge of the campus. The nightclub, called Legends, is subject to frequent flooding. The director of the ASU Student Union raised concerns about using the nightclub and Watauga Election Director Jane Ann Hodges noted

that “traveling to this site from campus could prove to have issues” and that she “did have breathing problems when inside.” (App A 389) State Director Strach did not halt the move, explaining that she does not have the authority to deny approval of a polling place change unless it fails to meet disability requirements. (App A 379) The polling place for Boone 3, the other campus precinct, is the Agriculture Building, the same off-campus building down a road with no sidewalk that was to be the polling place for the super-precinct.

52. When viewed in conjunction with other polling place changes and law changes, the elimination of the ASU Student Union becomes a greater impediment to student voting than it might otherwise seem. Instead of attempting to accommodate student voters in the wake of the other barriers, Respondent’s Plan adds additional barriers.

The Plan Violates the Rights of Voters Aged 18 to 25

53. Respondent’s failure to adopt the Compromise Minority Plan’s addition of an early voting site at the ASU Student Union and the consequent elimination of the customary campus early voting site erects a hurdle to student voting that is not justified by any relevant and legitimate state interest. This burdens the rights of young voters in violation of the Equal Protection clauses of the 14th Amendment to the Constitution of the United States and Article I, Section 19, of the Constitution of North Carolina. Adding an early voting site at the ASU Student Union would not add any cost to the Plan, it would relieve the pressure on the single Boone site, and it would accommodate the stated desires of the citizens of the county for a site on the ASU campus.

54. The early voting plan Respondent adopted for Watauga County was adopted in the face of statistics establishing that elimination of the ASU early voting site had the effect of reducing voter participation by voters aged 18 to 25. For example, as noted in paragraph 35, the percentage of voters aged 18-25 who voted early in the 2014 primary compared to the 2010 primary decreased by 12% while the number of Watauga voters overall who voted early increased by 40%.

55. A purpose of invidious discrimination against young Watauga voters, in violation of the 14th and 26th Amendments to the Constitution of the United States and Article I, Section 19, of the Constitution of North Carolina, can be inferred from the circumstances surrounding the decision of Mr. Eggers and Mr. Aceto on the Watauga County Board of Elections to propose an early voting plan without an ASU Student Union site and Respondent's decision to approve that plan.

56. Beginning with the first meeting of the Watauga County Board of Elections that was installed in August 2013, the majority on that board has pursued a policy of refusing to locate an early voting site on the ASU campus and of taking other actions that make voting more difficult for students. The local Board changed the election day site for Boone 2 from its traditional location at the ASU Student Union, a centrally located building, to a night club located at the edge campus, it established only one Boone early voting site, and it changed the election day polling place for New River 3. (App. A 4, 379)

57. Watauga Board members posed baseless objections to using the ASU Student Union as an early voting site or an election day site. With no evidence to support the claims, Mr.

Aceto maintained that it's "very difficult" to establish electioneering buffers at the ASU Student Union and that "[e]lectioneering is my main concern. (App. A 116) Mr. Eggers' statement in support of the Aceto/Eggers plan echoes this refrain, stating that using the ASU Student Union "does not allow us to control electioneering (which was a persistent and regular complaint which cannot be easily remedied due to the building configuration" and that the ASU Student Union is a 'confusing location' and cannot easily accommodate curbside voting." (App. B 1-2). As noted in paragraphs 31 and 42.b., those contentions were refuted by election officials statement and dismissed by State Board members Kricker and Malcolm. Mr. Eggers cited "security" reasons as the rationale for eliminating the use of the ASU Student Union as an election day polling place even though ASU's Chancellor refuted this pretext. (App. A 386-87)

58. Emails show a continual collaboration between State Board Member Foley and Watauga County Attorney Stacy C. Eggers IV (nicknamed "Four"), a former Watauga Elections Board member and the brother of the current Watauga Board of Elections Chair, Luther Eggers. Their emails reveal a partisan motive behind the actions of members of the Watauga and State boards of elections, frequently referring to "the opposition" and "the other side." They discuss the possibility of removing Jane Ann Hodges, the 27-year Watauga Election Director, who is suspected of being "less than supportive of the new administration." (Appendix J) The new administration, Mr. Luther Eggers and Mr. Aceto, in consultation with Mr. Four Eggers, later changed Ms. Hodges's duties to restrict her participation in board discussion about voting sites. (Appendix L)

59. In an email on August 5 before the initial meeting of the new Watauga elections board, before the proposals were made public, Mr. Four Eggers asked Mr. Foley to look over some proposals he expected the new board's majority would pass, one of which would "[u]ndo the parting shot of the Democrats board where they passed a One-Stop Plan on their way out the door." The outgoing board had approved an early voting plan for the 2013 municipal elections that included a site at the ASU Student Union. Another proposal in the package Mr. Eggers asked Mr. Foley to vet was the merger of all Boone precincts into one precinct with an off-campus polling place. Mr. Four Eggers said he wanted Mr. Foley to vet the plan because "it would be embarrassing to the local party if the State Director [Strach] flipped one of the local board's decisions." (Emphasis added.) Mr. Foley responded in an email on August 8, "Unless something is out of whack with reality, then I don't think it is likely for the State Board to have any issues with it." On the same day, Mr. Four Eggers replied, "Thanks. I'll tell them to proceed." The county board adopted both proposals on a partisan vote. Although State Executive Director Strach did not approve combining the precincts, the State Board did not stand in the way of the early voting plan without the ASU site. (Appendix J)

60. At a public meeting in March 5, 2014, Watauga County Republican Chair Anne-Marie Yates thanked Board Members Luke Eggers and Aceto for "reversing the previous plan that favored urban Democrats." (App. A 107) In Watauga County, "urban Democrat" correlates strongly with young voter. The precincts in Watauga County with the highest percentages of young voters are the precincts that have shown the greatest inclination to vote for Democratic candidates. Boone 2 and Boone 3, which include the ASU campus, and Boone 1 and New River

1, near the campus, are the only precincts in the county that voted for the Democratic candidates in all the following elections: for President in 2008 and 2012, for Governor in 2012, and for U.S. Senate in 2010. Also, the ASU Student Union, where students voted heavily, was the only early voting site in the county that gave majorities to the Democratic candidates in all those elections. (Appendix G)

61. A plan that intentionally disfavors “urban Democrats,” a code term for young voters, is necessarily a plan that disfavors the disproportionately young voters in the county. A plan that intentionally decreases the voting opportunities for young voters discriminates against them in violation of the proscription in the 26th amendment of the United States constitution against abridging the rights of voters based on age.

62. Faced with a choice between a plan that enhanced the voting opportunities of both rural voters and “urban Democrats” and a plan that placed barriers in front of “urban Democrats,” Respondent chose the latter.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays the Court for the following relief:

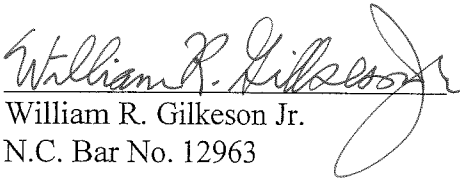
1. That this Petition for Judicial Review be accepted.
2. That the Court remand the Plan to Respondent to enter the findings required by law and to explain how Respondent took the required geographic, demographic, and partisan interests of the Watauga County into consideration in adopting the Plan.
3. That, on remand, the Court direct Respondent to adopt a Plan that does not erect

unnecessary barriers to voting or otherwise discriminate against voters aged 18-25 in violation of Article I, Section 19, of the North Carolina Constitution.

4. That the Court grant such other and further relief as the Court deems necessary or appropriate.

Respectfully submitted, this 19th day of September, 2014.

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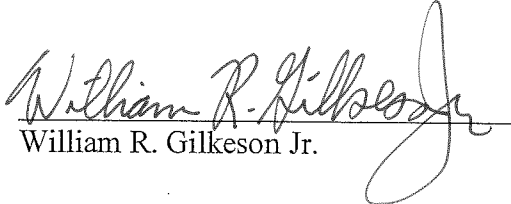
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CERTIFICATE OF SERVICE

The undersigned attorney for Petitioner hereby certifies that on this day the foregoing Petition for Judicial Review was served upon the North Carolina State Board of Elections by hand delivery to the following address:

Mr. Donald Wright
General Counsel
State Board of Elections
441 N. Harrington Street
Raleigh NC 27603

This the 19th day of September, 2014.



William R. Gilkeson Jr.