

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20-CVS-5035

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et.
al,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS, et. al,

Defendants.

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiffs respectfully move this Court for a preliminary injunction prohibiting Defendants from using the ExpressVote ballot-marking device (“BMD”) in any future election in North Carolina, including but not limited to the November 3, 2020, general election, while taking all necessary steps to comply with the Americans with Disabilities Act and the Help America Vote Act of 2002. In support thereof, Plaintiffs further state:

1. There are four voting systems currently certified for use in North Carolina elections.
2. The ExpressVote is the only BMD certified for use in North Carolina that tabulates votes based on a human-unreadable barcode that cannot be read or verified by voters.
3. The ExpressVote prints a ballot summary card that contains a barcode and human-readable text that only includes an incomplete summary of the information that the voters saw on the screen. The tabulators read only the barcode and ignore the human-readable text.
4. The ExpressVote is an unreliable and insecure voting machine that does not enable voters to verify that their votes have been accurately recorded.

5. The North Carolina Constitution provides voters with the right to vote in free elections and to equal protection of the laws. *See* N.C. Const. Art. 1 §§ 10, 19. This entitles North Carolinians to an election that will “ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 169 N.C. 405 (1915).

6. Absent an injunction, Plaintiffs and many other voters in Defendant Counties will be required to vote on insecure, unreliable machines. These voters will not be able to verify that their votes were correctly recorded and will not know whether their votes were accurately cast or tabulated.

7. Other voters in North Carolina will have the opportunity to either hand-mark their ballots or vote on accessible technology that is not reliant on barcodes.

8. Absent an injunction, Plaintiffs and other voters in Defendant Counties will therefore be at substantial risk of immediate and irreparable injury to their right to vote in free elections and to equal protection of the laws. This is an injury to which no party should be required to submit, and which will recur in each election in which the ExpressVote is used. *See A.E.P. Indus. Inc. v. McClure*, 308 N.C. 393, 406-07 (1983).

9. “The need for immediate relief is especially important [in the context of voting rights] given the fact that once 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 [the] law.” *Holmes v. Moore*, 840 S.E. 2d 244, 265-66 (N.C. Ct. App. 2020) (quoting *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 244, 247 (4th Cir. 2014) (quotation marks omitted)).

10. North Carolina voters will be voting during a pandemic that has already taken the lives of more than 130,000 Americans and which has been devastating for millions of Americans and their families.

11. The ExpressVote creates unique and substantial risks to the lives and health of voters in Defendant Counties in which all voters are required to vote on BMDs. In these counties, voters will have to vote on frequently touched machines, be in close proximity to poll workers, and stand in long lines because only a limited number of people can vote simultaneously on machines and because each machine will have to be taken out of use while being disinfected.

12. Defendant Counties that require all votes to vote on BMDs are forcing voters to choose between their right to vote, their health and potentially their lives.

13. Other voters in North Carolina are not required to risk their lives in order to vote because they will have the option of voting on hand-marked paper ballots, which will limit reliance on frequently touched surfaces, limit the risk of overcrowding, and preserve BMDs for use by individuals who need or prefer them.

14. Without a preliminary injunction, Plaintiffs will face immediate and irreparable injury to which no party should be required to submit—namely, having to risk their lives and health in order to vote, or having to give up their votes in order to protect their health.

15. Attached in support of this Motion are the Affidavits of Duncan Buell, Professor in the University of South Carolina Department of Computer Science and Engineering; Dr. David J. Weber, Professor of Medicine in the Division of Infectious Diseases at the University of North Carolina; Virginia Martin, who served as Democratic Election Commissioner in Columbia County, New York from 2008 to early 2020; Candice Hoke, Founding Co-Director of the Center for Cybersecurity and Privacy Protection and Professor of Law, Emerita, at Cleveland State University; Dr. Andrew W. Appel, the Eugene Higgins Professor of Computer Science at Princeton University; Gloria B. Hill, Chair of the Hoke County Board of Elections; Rev. Dr. T. Anthony Spearman, President of Plaintiff North Carolina State Conference of the NAACP;

Plaintiff Kathleen Barnes; Plaintiff Enrique Gomez; Plaintiff Harriet Mendinghall; Plaintiff Glencie S. Rhedrick; and Donald Mark Ritchie, who served as Secretary of State of Minnesota from 2007 to early 2015 (Exhibits 1 through 12, respectively). These affidavits and their attached exhibits, as well as the arguments in the forthcoming Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, demonstrate that Plaintiffs are likely to succeed on the merits of their constitutional claims.

16. The relief requested by Plaintiffs is demonstrably feasible. Defendant Counties already own scanners capable of tabulating hand-marked paper ballots. They already use these scanners to tabulate absentee and provisional ballots. County boards of elections can tabulate regular ballots cast on Election Day at their offices once voting has concluded.

17. Given the fundamental constitutional rights at issue in this case, the irreparable harm to those rights, and the increased risks of exposure to COVID-19 the Plaintiffs (and other North Carolina voters in Defendant Counties) will suffer if they are forced to use the ExpressVote machines, the balance of the equities favor granting injunctive relief.

Wherefore, Plaintiffs' motion for preliminary injunction to prohibit Defendants from using the ExpressVote BMD in any election should be granted.

Respectfully submitted, this 22nd day of July 2020.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND SUPPORTING AFFIDAVITS was served on Defendants by email, by written consent pursuant to Emergency Directive 6 issued by the Chief Justice of North Carolina on May 30, 2020, to:

Paul M. Cox
Special Deputy Attorney General
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This the 22nd day of July, 2020

A handwritten signature in black ink, appearing to read "M. Cox", is written over a horizontal line.