

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DEMOCRACY NORTH CAROLINA,
THE LEAGUE OF WOMEN VOTERS
OF NORTH CAROLINA, DONNA PERMAR,
JOHN P. CLARK, MARGARET B. CATES,
LELIA BENTLEY, REGINA WHITNEY
EDWARDS, ROBERT K. PRIDDY II, SUSAN
SCHAFFER, and WALTER HUTCHINS,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD
OF ELECTIONS, DAMON CIRCOSTA, in his
official capacity as CHAIR OF THE STATE
BOARD OF ELECTIONS, STELLA
ANDERSON, in her official capacity as
SECRETARY OF THE STATE BOARD OF
ELECTIONS, KEN RAYMOND, in his official
capacity as MEMBER OF THE STATE
BOARD OF ELECTIONS, JEFF CARMON
III, in his official capacity as MEMBER OF
THE STATE BOARD OF ELECTIONS,
DAVID C. BLACK, in his official capacity as
MEMBER OF THE STATE BOARD OF
ELECTIONS, KAREN BRINSON BELL, in
her official capacity as EXECUTIVE
DIRECTOR OF THE STATE BOARD
OF ELECTIONS, THE NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION, J.
ERIC BOYETTE, in his official capacity as
TRANSPORTATION SECURITY, THE
NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES, and
MANDY COHEN, in her official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES,

Defendants,

Case No. 20-cv-457

**BRIEF OF *AMICUS CURIAE*
THE PUBLIC INTEREST
LEGAL FOUNDATION IN
OPPOSITION TO THE
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

and

PHILIP E. BERGER, in his official capacity as
PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE, and
TIMOTHY K. MOORE, in his official capacity
as SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES,

Defendant-Intervenors.

INTRODUCTION

Plaintiffs ask this Court to enjoin various North Carolina laws in light of the COVID-19 pandemic, including laws designed to promote the integrity of absentee voting. Such laws foster trust in the absentee voting process and deter those who might attempt to cast a ballot in someone else's name. Simply put, they are layers of protection against absentee ballot fraud. If those layers are removed, as Plaintiffs desire, absentee ballot fraud will become more tempting and easier to accomplish.

Research done by *amicus curiae* Public Interest Legal Foundation (the “Foundation”) demonstrates the acute inaccuracies of North Carolina's voter registration rolls. The Foundation's research reveals thousands of active registrants in North Carolina who are potentially registered to vote more than once *and* who were apparently assigned voting credits in the 2016 and 2018 General Elections.¹

While election officials alone are the final judge of voter eligibility and are perfectly capable of replicating the Foundation's research, the Foundation believes this Court should be aware of potential serious problems with the voter rolls that could be exploited if the Plaintiffs' requested relief is granted.

¹ Pursuant to Local Rule 7.5(d), the Foundation states that (1) no party's counsel authored the brief in whole or in part, (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and (3) no person—other than *amicus curiae* or its counsel—contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

I. The Foundation's Research and Submission of Findings to the North Carolina State Board of Elections.

As part of its organizational mission, the Foundation analyzes voter rolls across the Nation. In January 2020, the Foundation received a copy of North Carolina's statewide voter roll extract via the North Carolina State Board of Election's website.² Then, at considerable expense for a 501(c)(3) charitable organization, using detailed methodologies and matching techniques (described *infra* and in the attached letter), the Foundation flagged registrations that are potentially duplicated within the same North Carolina county (intracounty) and across county lines (intercounty). The Foundation also reviewed voting histories to determine if one or more voting credits were assigned to these potentially problematic entries. A voting credit is a government record indicating whether a registrant voted in an election. On July 1, 2020, the Foundation sent a letter to the North Carolina State Board of Elections that describes the Foundation's methodology and findings and asks the North Carolina State Board of Elections to investigate and take corrective action where necessary.³ Exhibit A (hereafter, the "Letter").

² See North Carolina State Board of Elections, Current Voter Registration & Voter History Data by County, <https://www.ncsbe.gov/Public-Records-Data-Info/Election-Results-Data>.

³ Election officials are the final judge of voter eligibility. The Foundation asks election officials to do what is permissible under state and federal law to investigate the leads the Foundation submits.

II. The Foundation Identified Potentially Duplicated Registrations with Apparent Voting Credits Assigned for the 2016 and 2018 General Elections.

The Foundation's Letter alerted the North Carolina State Board of Elections to registrations that are potentially duplicated within the same North Carolina county (intracounty) and across county lines (intercounty) that were apparently assigned voting credits for the same election. Letter at 1. For the 2016 General Election, more than 1,700 potential intercounty duplicates were apparently assigned voting credits according to government records, and more than 9,700 potential intracounty duplicates were apparently assigned voting credits according to government records. For the 2018 General Election, 7,000 potential intracounty duplicates were apparently assigned voting credits according to government records. *Id.* To ensure a high degree of confidence, the Foundation flagged only those registrations with identical addresses and identical dates of birth and nearly identical first and last names. *Id.*

The number of individuals with two or more registrations is assuredly even higher because the Foundation flagged only registrations that were apparently assigned voting credits. The Foundation has not yet accounted for some well-known causes of duplication, such as married-name confusion, which happens when a registrant becomes married and then submits a subsequent registration using a different last name. The Foundation has seen those circumstances result in significantly higher numbers of likely duplicated registrations in other jurisdictions.

It is paramount that the North Carolina State Board of Elections investigate and confirm the registrations the Foundation flagged and further examine North Carolina's rolls for other duplicate entries prior to the entry of any injunctive relief that would exacerbate these defects.

III. The Foundation Invites the Court to Appoint an *Amicus Curiae* to Verify the Foundation's Research.

The Foundation's research can be replicated. The Foundation hopes that replication can resolve any doubts concerning ambiguities in the data. The Foundation therefore invites the Court to verify its research. The Foundation welcomes efforts to verify and improve upon its work so that the Court is working with the most accurate and up-to-date data when rendering a decision in this matter. For example, the Foundation invites the Court to appoint its own *amicus curiae* to replicate the study to ascertain the number of duplicate registrations on the public voter rolls in North Carolina, if the Court believes it is warranted. The Foundation is happy to work with any such designee to assist with replicating the Foundation's analysis and cataloging the numbers of problematic registrations on the rolls that would undermine the integrity of the election if the Plaintiffs' motion was granted.

CONCLUSION

Inaccurate voter rolls create risks for the franchise. For that reason, the research discussed herein merits consideration and further investigation by election officials and this Court alike.

Dated: July 8, 2020

Respectfully Submitted,

Kaylan L. Phillips*
Public Interest Legal Foundation
32 E. Washington St., Suite 1675
Indianapolis, Indiana 46204
Tel: 317-203-5599
Fax: 888-815-5641
kphillips@publicinterestlegal.org
Counsel for Amicus Curiae Public Interest Legal Foundation
**Special Appearance Pursuant to Local Civil Rule 83.1(d)*

/s/ Joshua Howard
Joshua Howard
NC Bar No. 26902
Gammon, Howard & Zeszotarski, PLLC
115 ½ West Morgan Street
Raleigh, NC 27601
(919) 521-5878
Fax: (919) 882-1898
jhoward@ghz-law.com
Local Civil Rule 83.1 Counsel for Amicus Curiae Public Interest Legal Foundation

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Memorandum contains 920 words as measured by counsel's word processing program.

/s/ Joshua Howard

Joshua Howard

NC Bar No. 26902

Gammon, Howard & Zeszotarski, PLLC

115 ½ West Morgan Street

Raleigh, NC 27601

(919) 521-5878

Fax: (919) 882-1898

jhoward@ghz-law.com

Local Civil Rule 83.1 Counsel for Amicus

Curiae Public Interest Legal Foundation

CERTIFICATE OF SERVICE

I certify that on July 8, 2020, I caused the foregoing to be filed with the United States District Court for the Middle District of North Carolina via the Court's CM/ECF system, which will serve all registered users.

/s/ Joshua Howard

Joshua Howard

NC Bar No. 26902

Gammon, Howard & Zeszotarski, PLLC

115 ½ West Morgan Street

Raleigh, NC 27601

(919) 521-5878

Fax: (919) 882-1898

jhoward@ghz-law.com

*Local Civil Rule 83.1 Counsel for Public
Interest Legal Foundation*