

STATE OF NORTH CAROLINA **FILED**  
 COUNTY OF WAKE . 2019 OCT -4 AM 10:03

IN THE GENERAL COURT OF JUSTICE  
 SUPERIOR COURT DIVISION  
 18 CVS.14001

COMMON CAUSE, et al.,

BY \_\_\_\_\_  
 Plaintiffs,

v.

REPRESENTATIVE DAVID LEWIS in his  
 official capacity as Senior Chairman of the House  
 Select Committee on Redistricting; et al.,

Defendants.

NOTICE OF FILING:  
 AFFIDAVIT OF KAREN BRINSON BELL

**NOW COMES** Defendants the North Carolina State Board of Elections and its members (collectively "State Defendants"), by and through the undersigned counsel, and hereby submit the attached Affidavit of Karen Brinson Bell in support of State Defendants' Memorandum on Election Administration and Deadlines. A copy of that Memorandum is being delivered to the Court via email to the Trial Court Administrator, pursuant to the Case Management Order in this action.

Respectfully submitted this 4<sup>th</sup> day of October, 2019.

N.C. DEPARTMENT OF JUSTICE

*Stephanie A. Brennan*

Amar Majmundar  
 Senior Deputy Attorney General  
 State Bar No. 24668

Stephanie A. Brennan  
 Special Deputy Attorney General  
 State Bar No. 35955

Paul M. Cox  
 Special Deputy Attorney General  
 State Bar No. 49146

North Carolina Dept. of Justice  
Post Office Box 629  
Raleigh, N.C. 27602  
Emails: amajmundar@ncdoj.gov  
sbrennan@ncdoj.gov  
pcox@ncdoj.gov  
Tel: (919) 716-6900  
Fax: (919) 716-6763

*Attorneys for State Defendants*

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by depositing a copy by email and addressed as follows:

Edwin M. Speas, Jr.  
[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)  
Caroline P. Mackie  
[cmackie@poynerspruill.com](mailto:cmackie@poynerspruill.com)  
Poyner Spruill LLP  
P.O. Box 1801  
Raleigh NC 27602-1801  
*Counsel for Common Cause,  
the North Carolina Democratic Party,  
and the Individual Plaintiffs*

R. Stanton Jones  
[stanton.jones@arnoldporter.com](mailto:stanton.jones@arnoldporter.com)  
David P. Gersch  
[David.gersch@arnoldporter.com](mailto:David.gersch@arnoldporter.com)  
Elisabeth S. Theodore  
[Elisabeth.theodore@arnoldporter.com](mailto:Elisabeth.theodore@arnoldporter.com)  
Daniel F. Jacobson  
[Daniel.jacobson@arnoldporter.com](mailto:Daniel.jacobson@arnoldporter.com)  
Arnold & Porter Kaye Scholer, LLP  
601 Massachusetts Ave. NW  
Washington DC 20001-3743  
*Counsel for Common Cause  
and the Individual Plaintiffs*

Mark E. Braden [mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)  
Richard Raile [rraile@bakerlaw.com](mailto:raille@bakerlaw.com)  
Trevor Stanley [tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com)  
Baker & Hostetler, LLP Washington Square,  
Suite 1100 1050 Connecticut Ave., NW  
Washington, DC 20036-5403  
*Counsel for Legislative Defendants*

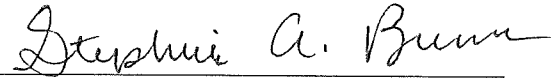
Marc E. Elias [melias@perkinscoie.com](mailto:melias@perkinscoie.com)  
Aria C. Branch [abranch@perkinscoie.com](mailto:abranch@perkinscoie.com)  
Perkins Coie, LLP  
700 13<sup>th</sup> Street NW  
Washington DC 20005-3960  
*Counsel for Common Cause and the  
Individual Plaintiffs*

Abha Khanna [akhanna@percinscoie.com](mailto:akhanna@percinscoie.com)  
Perkins Coie, LLP  
1201 Third Ave.  
Suite 4900  
Seattle WA 89101-3099  
*Counsel for Common Cause and the  
Individual Plaintiffs*

Phillip J. Strach [Phillip.strach@ogletree.com](mailto:Phillip.strach@ogletree.com)  
Michael McKnight  
[Michael.mcknight@ogletree.com](mailto:Michael.mcknight@ogletree.com)  
Alyssa Riggins  
[Alyssa.riggins@ogletree.com](mailto:Alyssa.riggins@ogletree.com)  
Ogletree, Deakins et al.  
4208 Six Forks Rd., St. 1100  
Raleigh, NC 27609  
*Counsel for Legislative Defendants*

John E. Branch, III  
[jbranch@shanahanmcdougal.com](mailto:jbranch@shanahanmcdougal.com)  
H. Denton Worrell  
[dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com)  
Nathaniel J. Pencock  
[npencock@shanahanmcdougal.com](mailto:npencock@shanahanmcdougal.com)  
Shanahan McDougal, PLLC  
128 E. Hargett Street, Suite 300  
Raleigh, NC 27601  
*Attorneys for Defendant-Intervenors*

This the 4<sup>th</sup> day of October, 2019.

A handwritten signature in cursive script, reading "Stephanie A. Brennan", written in dark ink.

Stephanie A. Brennan  
Special Deputy Attorney General

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18 CVS 14001

COMMON CAUSE, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID LEWIS in his  
official capacity as Senior Chairman of the House  
Select Committee on Redistricting; et al.,

Defendants.

AFFIDAVIT OF  
KAREN BRINSON BELL

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit. I have consulted with senior staff at the State Board in the preparation of this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27 (2019 Spec. Supp.). As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. In our state, the county boards of elections administer elections in each county,

including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System (“SEIMS”), which includes managing functions that assign voters to their relevant voting districts, a process known as “geocoding.” The State Board also supports the county boards and their vendors in the preparation and proofing of ballots.

4. For North Carolina House and Senate districts, the geocoding process starts when the State Board receives legislative district shapefiles, which include geographic data setting the boundaries for legislative districts. The State Board’s staff then works with county board staff to use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. This process then allows the State Board to work with county board staff and ballot-preparation vendors to prepare ballots. The State Board must perform an audit of the geocoding to ensure its accuracy before ballot preparation.

5. The amount of time required for geocoding generally corresponds with the number of district boundaries that are redrawn within the counties. In this case, I understand that there are 37 counties that are subject to remedial redistricting, between the state House and Senate maps, and a significant number of those counties are likely to have newly drawn district boundaries within the counties’ borders. Staff estimates that, given what we currently know, geocoding would likely take between 17 and 21 days (including holidays and weekends) for the 2020 primary for state legislative offices, depending on the degree of change to intracounty district lines.

6. Ballot preparation and proofing can begin after geocoding is complete and

candidate filing closes. For the 2020 primary elections, candidate filing for state legislative districts occurs between noon on December 2, 2019, and noon on December 20, 2019. *See* N.C.G.S. § 163-106.2(a). The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. Staff estimates that, given what we currently know, ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2020 primary for state legislative offices, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intracounty district lines, and the number of contested nominations.

7. Geocoding and candidate filing may occur concurrently, although that is not ideal because the completion of geocoding permits candidates and county boards to verify if a candidate desiring to file for election lives in a particular district. It is possible, however, to check candidate eligibility while geocoding is still taking place.

8. Geocoding and ballot preparation must occur consecutively, however, not concurrently. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS. Additionally, the end-of-year holidays could pose difficulties for available staff time for the State Board, county boards, and vendors. Therefore, the total time required for geocoding and ballot preparation is likely between 34 and 42 days (including holidays and weekends).

9. Under N.C.G.S. § 163-227.10(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless the State Board authorizes a reduction to 45 days or there is “an appeal before the State Board or the courts not concluded, in which case

the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal.” The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that absentee ballots that include elections for federal office be made available by 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I request a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.<sup>1</sup> Based on the current primary date of March 3, 2020, for state legislative districts, 50 days before the primary election falls on January 13, 2020, and 45 days before the primary election falls on January 18, 2020.

10. In sum, the State Board would need to receive the shapefiles for geocoding and ballot preparation between now and 34 to 42 days before the deadline for distributing absentee ballots. Currently, that deadline is January 13, 2020, which means the shapefiles must arrive between now and December 2–10, 2019. If that deadline were moved to January 18, 2020, the shapefiles would need to arrive between now and December 7–15, 2019.

11. If the deadlines for distributing absentee ballots were extended beyond what is required by UOCAVA, the State Board would also have to factor in additional administrative steps that must be prepared before in-person voting occurs. Currently, early voting is set to begin on February 12, 2020 for the 2020 primary.

12. Before in-person voting occurs, the State Board must work with county boards to load data onto physical media cards that are placed in voting tabulation machines, a process called

---

<sup>1</sup> [https://www.fvap.gov/uploads/FVAP/EO/2012\\_waiver\\_guidance.pdf](https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf).



“burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings. The county boards must also conduct logic and accuracy testing to ensure that tabulation machines accurately read ballots and to correct any errors in coding. Staff estimates that burning media, preparing ballot marking devices and tabulators, and logic and accuracy testing would likely take the counties 14 days. After that process, the State Board works with the county boards to conduct a mock election, which takes one day, and generally affords two weeks thereafter to remedy any technical problems identified during the mock election. That two-week period could be reduced, but the State Board generally believes that the two-week period fully insures against risks associated with technical problems that may be identified in the mock election.

13. Accordingly, regardless of when the absentee ballot distribution deadline falls, allowing 29 days after ballots have been prepared to prepare for in-person election voting is preferable. Under the current deadlines for distributing absentee ballots, which falls roughly a month before early voting begins, these processes can be accommodated. The time requirements for these processes would only become relevant if the absentee distribution deadline is shortened to less what is currently required by UOCAVA.

14. If the Court were to order a separate primary for state legislative districts, a different set of administrative requirements would be triggered.

15. First, it is not technically possible to perform geocoding while in-person voting is occurring, and it is difficult to perform geocoding during the canvass period after the election. This is because making changes in SEIMS related to geocoding inhibits the actual voting process. County canvass takes place 10 days following an election. Generally, at that point, geocoding may begin, assuming no recount has been ordered. Accordingly, we recommend that geocoding for any separate legislative primary not begin any earlier than March 14, 2020. Relying on the aforementioned estimates, it would take between 34 and 42 days after March 14, 2020, to geocode and prepare

ballots for a separate primary. Candidate filing could occur before or simultaneous with geocoding.

16. Second, state law regarding the deadline for distributing absentee ballots would again require 50 days' time prior to the primary election day, unless the State Board reduced that time to 45 days or there is "an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal."

N.C.G.S. § 163-227.10(a). The federal UOCAVA deadline would not apply if the primary did not involve federal offices.

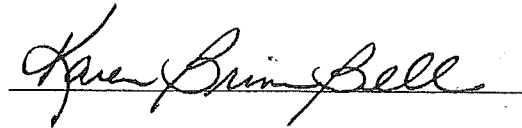
17. Third, one-stop early voting would have to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated to take between 63 and 71 days total, would need to occur between March 14, 2020, and 20 days before the date of the separate primary.

18. Fourth, there are additional administrative challenges that counties would face if a separate legislative primary were held (assuming that the legislative primary were not to coincide with a second primary that may need to be held in any event, due to an unresolved nomination contest from the March primary). Chief among these challenges would be recruiting poll workers and securing polling locations, along with the associated costs. Increasingly, county elections officials have found it necessary to spend more time recruiting early voting and election day poll workers, especially because of statutorily mandated early voting hours weekdays from 7 a.m. to 7 p.m. and technological advances in many counties now require that elections workers be familiar with computers. Additionally, a large portion of precinct voting locations in the state are housed in places of worship or in schools, with still others located in privately owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early

voting sites requires advance work by county board of elections staff and coordination with the State Board.

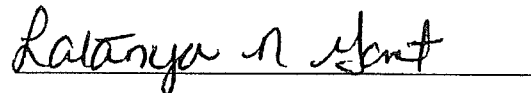
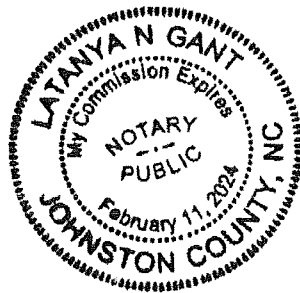
This concludes my affidavit.

This the 4<sup>th</sup> day of October, 2019.



Karen Brinson Bell, Executive Director  
N.C. State Board of Elections

Sworn to and subscribed before me this 4 day of October, 2019.



(Notary Public)

My commission expires: February 11, 2024