EXHIBIT R

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WAKE CO., C.S.C.

BY

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 014476

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, COMMON CAUSE, MARILYN HARRIS, GARY GRANT, JOYAH BULLUCK, and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; 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*; STACY EGGERS IV, *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*; TOMMY TUCKER, *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*

Defendants.

AFFIDAVIT OF GARY BARTLETT

I, Gary Bartlett, hereby declare as follows:

1. I am a United States citizen and a resident of Wayne County, North Carolina. I am currently an independent consultant based out of Goldsboro, North Carolina. I am President and Executive Director of the Elections Administration Resource Center 501(c)(3) d/b/a Ranked Choice Voting Resource Center. I am a 1976 graduate of University of North Carolina at Chapel Hill, having earned a B.A. in history.

2. I have prepared this affidavit in support of Plaintiffs' Motion for a Preliminary Injunction.

3. From 1993 to May 15, 2013, I served as the Executive Director of the North Carolina State Board of Elections (hereinafter "State Board of Elections" or "State Board"). Before serving as Executive Director, I served as a legislative assistant to North Carolina Congressman H. Martin Lancaster. I have appended my full curriculum vitae as Exhibit 1 to this Declaration.

4. My responsibilities as Executive Director of the State Board were designated in Chapter 163 of the North Carolina General Statutes. In this role, I was responsible for staffing, administering, and executing the State Board's decisions and orders, as well as other responsibilities assigned to me by the State Board, and was the chief state elections official in North Carolina. My responsibilities also included overseeing North Carolina's 100 county election boards to ensure that they correctly managed all primary and general elections at the state, county, and local levels. All officials involved in election procedure in North Carolina either directly or indirectly reported to me.

5. There is tremendous variation between the budgets, tax bases, and resources of the 100 North Carolina counties. County elections officials likewise bring a range of experience to their role in overseeing local and county elections. The North Carolina State Board of Elections

provides a second pair of eyes for county officials with respect to administering elections. For example, State Board staff help county staff ensure that ballots are laid out correctly and that voting equipment is properly tested in advance of an election. Sufficient time before a general or primary election day is necessary to allow state and county officials to work together to cure any potential errors and maintain election integrity.

6. During my tenure as Executive Director, I oversaw dramatic changes in North Carolina's voting practices. These included: (*i*) bringing North Carolina into compliance with the National Voter Registration Act of 1993 by implementing agency voter registration and management systems; (*ii*) the 2000 initiation of early voting options; (*iii*) the 2001 expansion of absentee ballots to all voters without requiring a qualifying excuse; (*iv*) offering a system for voters to check their registration status online prior to an election; and (*v*) allowing for same-day registration during early voting starting in 2007. I was also personally involved with ensuring that voters with disabilities had the means to cast their ballots, both with absentee voting procedures and ensuring that polling places would be handicap-accessible to the extent possible. Also, with the assistance of staff, I developed and implemented an election certification program to train and educate election officials. I implemented innovations including a procedure and policy manual covering every part of election duties and responsibilities, an online elections library, and a self-audit program for counties to ensure that they are compliant and up-to-date.

7. North Carolina's voter turnout increased dramatically under my leadership. Shortly after the beginning of my tenure, in 1996, North Carolina ranked almost last (fortieth) of all states.[1] By the end of my tenure, in 2012, North Carolina ranked twelfth nationally in voter turnout.[2]

8. During my tenure as Executive Director of the State Board of Elections, I was an active member in the National Association of State Election Directors (better known as NASED). I am a former board member of the Election Center, which is an association of election officials from across the United States and some areas of Canada that work together to help resolve election issues, expand educational opportunities, and explore new or better ways to administer elections. I have also been involved with the National Task Force on Election Reform, and served as the national co-chair of the National Task Force on Elections Accessibility for four years. I also served on the Federal Elections Commission Advisory Panel and the Standards Board of the United States Election Assistance Commission.

9. I have served as an expert witness in *Gilbert v. Guilford County*, Case No. 13 CVS 3227 (Guilford Cty. Super. Ct), *Third Sector Development, Inc. v. Kemp*, Civil Action No. 2014CV252546 (GA Super. Ct), and *Ga. State Conf. of the NAACP v. Georgia*, No. 1:17-cv-1427 (N.D. Ga.). I also provided testimony relevant to my position as former Executive Director of the State Board of Elections in *Democracy N.C. v. N.C. State Board of Elections*, No. 1:20-cv-00457 (M.D.N.C. 2020). I will be paid a fee of $2,500 for preparing reports in this case, with additional compensation should my testimony be required in this case.

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[1] *See* Voter Registration and Turnout – 1996, United States Election Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/1996%20Voter%20Registration%20and%20Turnout%20by%20State.pdf.

[2] *See* The 2012 Election Administration and Voting Survey at p. 9, United States Election Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/2012ElectionAdministrationandVoterSurvey.pdf.

Concerns About the Legislature's Delayed Redistricting Process in 2021

10. Even-numbered years are major election years in North Carolina because of the number of federal, state, and county offices on the ballot. In 2022, all state legislative races will be on the ballot. The primary is currently scheduled for Tuesday March 8, 2022, with an early voting period set from February 17, 2022 to March 5, 2022. The current candidate filing period is set to begin on December 6, 2021 and close on December 17, 2021. Sections 6 and 7 of Article II of the North Carolina Constitution require Senators and Representatives to have lived in their districts for one year immediately preceding their election, and North Carolina Senate candidates must also have been residents of the state for at least two years. This would require candidates to be residents of their districts no later than November 8, 2021, one year prior to the scheduled general election day on November 8, 2022.

11. Since the 1990s, North Carolina has required additional time before administering primary elections due to redistricting litigation and preclearance requirements. As the Executive Director of the State Board of Elections, I experienced multiple delayed primaries due to redistricting lawsuits. I oversaw delayed primaries in the 1990s, in 2002, and in 2004. In the 2002 election cycle, following the 2000 Census, the North Carolina Legislature passed a State Senate and House district plan on November, 13, 2001. In that instance, the federal Voting Rights Act of 1965 required preclearance of the districting plan. To provide adequate time for preclearance to be granted and for litigation to be resolved, the primary date was scheduled for May 7, 2002. Although preclearance was granted on February 11, 2002, the Supreme Court of North Carolina enjoined the primary elections for the State Senate and House on March 7, 2002 after a trial court concluded the legislative redistricting plans violated the North Carolina Constitution. *See Stephenson v. Bartlett*, 355 N.C. 281 (2002). On March 12, 2002, the State Board, under my direction, voluntarily

postponed primaries for all other offices. It was a necessary step because, historically, standalone elections have had very low voter turnout. I believe the North Carolina Supreme Court's decision to enjoin the primaries was important to ensure that the litigation was resolved with enough time remaining to then provide notice of district assignments to voters and potential candidates. Those same considerations are at issue again now, as fully described below.

12. The United States Census Bureau released block-level 2020 Census Data on August 12, 2021.[3] This release was five months later than the data was released last cycle, and I understand that delay was due to the COVID-19 pandemic. I also understand that the first joint meeting of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting was not until August 5, 2021, and that these committees thereafter adopted redistricting criteria (on August 12) and a public hearing schedule (on September 1).

13. Although I cannot comment on the reasons for the committees' timing on these matters, based on my experience, I believe that an earlier start to this process would have benefited all participants in the election process, including voters, candidates, political parties, and elections officials. Having adequate time to prepare for and conduct an election, following redistricting, helps elections officials ensure that the election runs smoothly and it gives other participants the time they need to learn about the newly redrawn districts.

14. Finally, I understand that leadership of the Senate and House redistricting committees initiated the map-drawing process on October 5, 2021, without setting any deadlines for the Legislature to finish drawing the maps or setting a deadline for a vote on proposed maps. As of the date of this Declaration, I understand the Senate and House redistricting committees

[3] *See* August 12, 2021 Joint Meeting of Committees, https://ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf.

jointly heard public comment on Congressional maps on Monday, August 25, and on Senate maps on Tuesday, August 26.

15. At this time, I foresee many likely disruptions to the upcoming primary elections that could result from failing to delay the December 2021 candidate filing period and the March 8, 2022 primary date at this time. Such disruptions could harm the ability of voters and candidates to participate in the primaries. These harms include a shortened absentee voting period, having to rush ballot preparation and machine programming, shortening the time to canvass for elections, dissuading potential candidates from running, and creating uncertainty for all campaigns, potential candidates, and their supporters. Additional challenges are likely if judicial intervention is necessary to ensure any enacted maps comport with applicable law.

Ensuring Accurate District Assignments

16. For state legislative seats, redistricting requires state and county elections staff to assign voters to new districts and to inform voters of their new districts. Officials in all 100 counties must assure that every voter is properly assigned to the correct districts.

17. Reassignment because of redistricting requires the work of information technology personnel from both state and county elections staff. For example, someone from the state information technology staff has to reassign voters to new districts. Staff must change all address geocode ranges in their databases to reflect district changes. Geocoding is the process by which block-level census data for every district, precinct, and other boundary, such as for local school boards, is entered into the districting software being used by state and county elections officials. After voters are assigned to districts via the software, an auditing process is necessary to ensure accuracy. This is a critical step to ensure that voters are assigned to their correct districts.

18. The reassignment process is more complicated, and takes additional time and resources, when districts have split precincts. For example, if a county's precincts are split, then it takes additional time by one of the State Board's staff members for each county, in addition to the normal course of work that county staff must perform, to reassign voters in split precincts. Issues arise during this process. Such issues primarily arise in districts where there is a higher population of African American or other minority voters. But such issues can be addressed when elections officials have adequate time to review and audit district assignments.

19. If a potential candidate for the state legislature brings a challenge based on their district assignment, this also would then require additional time for the State Board or a county board to hold a hearing. Candidate challenges must be filed within ten days of the close of the candidate filing period. There are two types of challenges that can occur: (*i*) those before a county board of elections, and (*ii*) those before the State Board. If the elected office sits within one county, that county's board of elections will hold the hearing. However, if the elected office covers multiple counties, the State Board will oversee the hearing. Because challenges before the State Board often take more time than those before county boards, timing issues arise. For example, although other elections can move forward while candidate challenges are pursued, such challenges can be disrupted, and may even be disputed following election day. Also, if candidate challenges are not timely filed, then they have to be filed as an election protest after the election date.

20. Thus, the time for state and county elections officials to process the new districts and to ensure their accuracy is already extremely limited between now and the December 6, 2021 opening of the candidate filing period, even assuming maps were enacted immediately and did not require any judicial review.

Ballot and Equipment Preparation

21. Following the close of the candidate filing period, state and county elections officials must prepare and print ballots, review the ballots for any errors, and then prepare and test the voting equipment. In some populous counties, there can be several different ballot styles. For example, there can be multiple ballots styles used by voters in one precinct to ensure a voter votes the ballot for the offices that they are eligible to cast. Elections officials need time to ensure that the correct ballots are going to the correct voters. Typically, state and county officials require at least 21 days to prepare and review ballots.

Mailing Absentee Ballots

22. North Carolina must have adequate time for absentee ballots to be mailed to members of the armed services, their dependents living overseas, and other overseas citizens, and those voters must have adequate time to return their completed ballots. Foreign mail services can delay the delivery and return of absentee ballots. To overcome these potential challenges, and to comply with the Federal Voting Assistance Program, North Carolina has enacted particular requirements for the timing of the absentee voter period. State law requires absentee ballots for armed services members and other overseas voters to be ready 60 days before a general election and 50 days before a primary. N.C. Gen. Stat. § 163-258.9(a). However, the State Board may be authorized to reduce this time for primary elections to 45 days. N.C. Gen. Stat. § 163-22(k). Thus, in calculating an election schedule, at least 45 days for absentee voting must be allowed before the primary. Even so, the United States Department of Defense recommends 60 days for absentee balloting in order to reach defense personnel in remote locations.

Candidate Residency Requirement

23. As noted above, candidates for State Senate and House must have resided in their district for one year prior to the general election, which is currently scheduled to be held on November 8, 2022 for this election cycle. If the new districts are finalized after November 8, 2021, candidates who have been drawn into a new district will not have the opportunity to meet the one-year residency requirement prior to the November 8 deadline, absent an order from the court modifying that requirement.

24. These potential candidates for the state legislature, who are not eligible because they cannot meet the residency requirement as a result of circumstances out of their control, i.e., the delayed finalization of districts, may bring a legal challenge. Such legal intervention would further delay the process.

Districts of Potential Candidates

25. Creating districts so close to the candidate filing period creates a number of other problems for individuals considering running for an office in the North Carolina state legislature. Registered voters interested in running for a public office need to know the configuration of new legislative districts to determine their potential for success. A potential candidate must confirm whether they are a resident of a newly drawn district as part of determining whether to file for a given seat. In order to campaign effectively, a candidate must know the parameters of the district they are seeking to represent. Knowing the constituency is essential to evaluating the prospects of a candidacy, as are factors such as political or grassroots support, fundraising potential, and the ability to communicate with voters.

26. Any delays in establishing district boundaries creates an unfair and uneven playing field with a decisive advantage to wealthy candidates and incumbents. The creation of districts

shortly before the candidate filing period can have a chilling effect on potential new candidates, or can result in litigation, as discussed above. Without adequate time to prepare, raise money, and campaign, potential candidates may forego seeking election. And if the current primary schedule remains, delays caused by litigation may result in an abbreviated candidate filing period. In my tenure as Executive Director of the State Board of Elections, my office received calls from such candidates who expressed their frustration with issues like these.

Voter Education

27. Redistricting that is close in time to candidate filing deadlines can also impact voters who support a particular candidate. Their candidate's district may be carved up such that their preferred candidate has no chance to win. And voters must be educated early and often by candidates and elections officials about the districts to which they have been assigned and the candidates for office in those districts. North Carolina has approximately 7 million registered voters,[4] and providing adequate public information about election changes such as redistricting is an arduous task. As a result of the 2020 Census, districts will have been redrawn not just for state legislative offices and the United States Congress, but for school boards, county commissions, and municipal offices as well. Because of this necessary, widespread redistricting, education about reassignments is most important in the first election following the census. An abbreviated primary cycle can also shorten the time for voters to familiarize themselves with new candidates if they find themselves in a new district.

28. In summary, significantly shortening the time period for completion of elections tasks undermines the ability of elections officials to address the challenges posed by the first

[4] *See* N.C. Voter Turnout Statistics 2020 General Election, https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Voter%20Turnout%20Statistics/voter_turnout_stats_20201103.pdf.

election following redistricting. And this in turn can negatively impact voters, candidates, and political parties.

Timing of Candidate Filing Periods and Primary Days

29. Recent past election cycles in North Carolina have been successfully conducted with candidate filing periods in February and primary days in May. The 2018 election cycle had a candidate filing period from February 12 to February 28, 2018, and a primary day on May 8, 2018. The 2014 election cycle had a candidate filing period from February 10 to February 28, 2014, and a primary day on May 6, 2014. The 2012 election cycle had a candidate filing period from February 13 to February 29, 2012, and a primary day on May 8, 2012. Likewise, North Carolina had its primary day in May for the 2010, 2008, 2006, and 2000 election years. These are first round primaries, with second round primaries taking place in the case of runoffs when no candidate meets the vote threshold. Typically, about seven weeks are required to ensure that there is sufficient time to hold second-round primary elections. Holding the first-round primary in May leaves plenty of time for second-round primaries, if needed, and for the general election in November.

30. Of particular relevance here, for the past two post-Census election cycles, which I oversaw as Executive Director of the State Board, the primary dates were originally set in May. Most recently, the 2012 primary date, following the 2010 Census results, occurred in May. And, as discussed above, the 2002 primary day was also originally set for May, but was then delayed due to ongoing litigation. A May primary date is normal practice for an election year following a decennial census, and does not have a concerning impact on the general election in November.

31. Due to the delayed release of the 2020 Census results, the current March 8 primary date poses a challenge for the State Board and county elections officials. In light of this situation, it is critical to delay the primary dates and candidate filing period as soon as possible to establish

certainty and stability in the process, and to ensure that the 2022 elections run as smoothly as possible.

32. The more time every participant in the election process has to prepare for the election, the better the process will be for election board staff, voters, and potential candidates. Voters need time to learn about what district they are voting in, just as elections officials, candidates, and political parties need time to conduct outreach and voter education regarding new districts. Potential candidates need to know what district they are in with enough time to assess their chances of winning in that district. And elections officials need time to implement the safeguards required to minimize errors in the election process and ensure that whoever gets the most eligible votes wins. Elections officials and the public alike benefit when elections officials have time to correct errors and ensure smooth elections. This allows elections officials to serve as good and faithful public servants in the democratic process.

33. In light of the above precedents, there is no question that a primary date in May 2022 is feasible. An abbreviated time period can be managed, if necessary, but it invites more room for errors at every step of the process. Additional time following the delayed 2020 Census results would ensure fewer errors. And it would allow all participants in the election process to have sufficient notice of, and time to prepare for, the election under newly redrawn district maps, whether they be voters, activists, candidates, political parties, or elections officials.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed November 3, 2021

Gary Bartlett

Gary Bartlett

Subscribed and sworn to before me this the 20th day of January, 2021.

Cindy Pendergraph
exp. 2-14-2026

CINDY PENDERGRAPH
NOTARY
PUBLIC
WAYNE COUNTY, NC