

No. 18-1020

**IN THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

Kenneth J. Lecky, *et al.*,
Plaintiffs-Appellants,

v.

Virginia State Board Of Elections, *et al.*
Defendants-Appellees.

On Appeal from the United States District Court
For the Eastern District of Virginia
Case No. 1:17-CV-01336
The Honorable T.S. Ellis III

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
THE VIRGINIA STATE CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
IN SUPPORT OF APPELLANTS**

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IN SUPPORT OF APPELLANTS**

Pursuant to Rule 29 of the Rules of Appellate Procedure, the Virginia State Conference of the National Association for the Advancement of Colored People, (hereinafter “The Virginia NAACP”), by and through undersigned counsel, hereby respectfully moves this court for leave to file a brief of *amicus curiae* in support of Plaintiff-Appellants’ Emergency Motion for Injunction Pending Appeal. In support of the motion, *amicus* states as follows:

1. The Virginia NAACP is a non-partisan, non-profit membership organization with more than one hundred active branches and approximately 16,000 members throughout the Commonwealth of Virginia, including the House districts relevant to this litigation. The Virginia NAACP’s core mission includes advancing and defending the rights of African-American voters to be free from racial discrimination in voting and to elect candidates of their choice to all levels of political office in Virginia.

2. The Virginia NAACP and its members have regularly participated in litigation in Virginia courts and within the Fourth Circuit to ensure the voting strength of people of color. The Virginia NAACP and its members also engage in extensive civic engagement work, from voter education to voter registration and mobilization. This experience has lead the Virginia NAACP to conclude that the

lower court's decision, if permitted to stand, will deny African-American voters in House of Delegate District 28 their ability to elect the candidate of their choice, and their constitutionally afforded right to vote on equal footing with all other members of the Commonwealth

3. The contemporaneously filed, proposed *amicus* brief is helpful to the Court in that it will provide perspective to the Court as to the impact that the district court's decision below could have on the African-American community, thus informing the course of remedial action to be taken in light of the circumstances.

4. Proposed *amicus* has sought the consent of all parties. All Plaintiffs-Appellants have provided their consent. All State Defendants-Appellees (the Virginia State Board of Elections and its members in their official capacities, the Virginia Department of Elections, and Edgardo Cortes in his official capacity as the Commissioner of the Virginia Department of Elections) additionally consent to the filing of the accompanying brief. Due to the expedited nature of this filing, proposed *amicus* was unable to ascertain whether the remaining parties, the local elections boards and the Intervenors (the Republican Party of Virginia, Danielle J. Davis, and Mark L. Cole) give their consent despite attempts to contact these parties.

CONCLUSION

Proposed *amicus curiae* the Virginia NAACP respectfully requests that this Court grant its motion for leave to file the *amicus curiae* brief attached as Exhibit A in support of Plaintiff-Appellants Motion for Injunction Pending Appeal.

Dated: January 8, 2018

Respectfully submitted,

/s/ Allison Riggs

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CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of January, 2018, I served the foregoing **Motion for Leave to File Brief of *Amicus Curiae*** via the Court's ECF system upon all counsel.

/s/ Allison Riggs

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EXHIBIT A

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**FED. R. APP. P. AND CIRCUIT RULE 26.1
DISCLOSURE STATEMENT**

Amicus Curiae the Virginia NAACP hereby furnishes the following information in accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the Fourth Circuit. The Virginia NAACP is a non-profit entity, has no corporate parent and otherwise has nothing to disclose pursuant to these Rules.

Counsel for *Amicus Curiae* sought consent from all parties for the filing of this brief, and received consent from all who replied to counsel's inquiry.

INTERESTS OF *AMICUS CURIAE*

The National Association for the Advancement of Colored People, one of the premier grassroots civil rights organizations in the United States, has been a leading force for equality since its inception in 1909. Under the umbrella of the national NAACP, the Virginia State Conference of the NAACP (hereinafter “Virginia NAACP” or “Amicus”) has more than one hundred active branches and approximately 16,000 members throughout the Commonwealth of Virginia, including the House districts relevant to this litigation. Both the NAACP and Virginia NAACP are nonpartisan, nonprofit membership organizations whose core missions include advancing and defending the rights of African-American voters to be free from racial discrimination in voting and to elect candidates of their choice to all levels of political office in Virginia.

In furtherance of this mission, the Virginia NAACP hosts a variety of public education and community outreach activities related to exercising the right to vote. Through its voter empowerment efforts, the Virginia NAACP works tirelessly to achieve full political empowerment for African American citizens. Moreover, the Virginia NAACP and its members have regularly participated in litigation in

Virginia courts and in the Fourth Circuit to challenge government decisions and policies that might diminish the voting strength of people of color.¹

The Virginia NAACP's experience as a voting rights litigant in the Fourth Circuit and its extensive civic engagement work leads it to conclude that the lower court's decision, if not vacated, will deny African American voters an opportunity to elect their candidate of choice. Due to the decisions of the Virginia State Board of Elections, and the Fredericksburg and Stafford County Electoral Boards, the constitutionally guaranteed voting rights of thousands of District 28 voters have been diluted, and in some cases, denied altogether. Without redress of this

¹ Most recently, the Virginia NAACP has participated in the ongoing litigation challenging the constitutionality of Virginia's Congressional District 3 and the remedial phase that has followed. *See Wittman v. Personhuballah*, 136 S. Ct. 1732 (2016) (participating as *amicus curiae*); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016) (submitted proposed redistricting plan during remedy phase); *Page v. Va. State Bd. of Elections*, No. 3:13-cv-678, 2015 U.S. Dist. LEXIS 73514 (E.D. Va. June 5, 2015) (sought to intervene in remedy phase). *See also White v. Daniel*, 909 F.2d 99 (4th Cir. 1990); *Collins v. City of Norfolk*, 883 F.2d 1232 (4th Cir. 1989); *Hall v. Virginia*, 276 F. Supp. 2d 528 (E.D. Va. 2003); *Moon v. Meadows*, 952 F. Supp. 1141 (E.D. Va. 1997); *Smith v. Bd. of Sup'rs of Brunswick Cnty.*, 801 F. Supp. 1513 (E.D. Va. 1992); *McDaniels v. Mehfoud*, 702 F. Supp. 588 (E.D. Va. 1988); *Neal v. Coleburn*, 689 F. Supp. 1426 (E.D. Va. 1988); *Henderson v. Bd. of Sup'rs of Richmond County*, No. 87-0560-R, 1988 WL 86680 (June 6, 1988); *Cosner v. Robb*, 541 F. Supp. 613 (E.D. Va. 1982); *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981).

egregious error, the lawful votes cast by African American voters will be diluted and those who received the wrong ballot will continue to be disenfranchised.

As an organization dedicated to ensuring the equality of voters, proposed *Amicus* hopes that their perspective will help the Court to determine the appropriate course of action to be taken in light of the circumstances. For this reason, *Amicus* urges this Court to grant Appellants' request to reverse the decision below and issue a preliminary injunction.

SUMMARY OF THE ARGUMENT

The ruling of the court below is based on a gross misunderstanding of the nature of the district assignment errors and of the drastic impact those errors had on voters, especially African-American voters. If allowed to stand, these voters will face irreparable harm. The federal judiciary has the authority to intervene in cases such as this where there has been a denial or abridgment of the right to vote. Appellants have no remedy at law that can adequately address this harm.

Amicus urges swift entry of an injunction to begin to correct the systematic and prolonged errors with the assignment of voters in their House of Delegates districts, which has resulted in the violation of the federally protected rights of all the voters in House of Delegates District 28 to elect the candidate of their choice, but is felt most keenly by black voters in the district.

ARGUMENT

The court below denied Appellants' Motion for Summary Judgment and Motion for Preliminary Injunction seeking a special election on the grounds that the Virginia election officials' errors, which resulted in assignment errors of 384 voter addresses, did not warrant federal intervention. In doing so, the lower court failed to take into consideration new evidence demonstrating that these were not mere "garden variety irregularities," *Hutchinson v. Miller*, 797 F.2d 1279, 1283 (4th Cir. 1986), but problems which state and local election officials have known about for at least two years, and yet have failed to address time and again. *See* Appellants' Emergency Motion, Ex. 11 at 2, 6.

Amicus does not take lightly the weight of what Appellants ask this Court to do. Federal courts' hesitancy to intervene on administrative minutia is understandable, but the district assignment errors in this case extend far beyond minor errors. Here, Virginians have been disenfranchised and the expressed interests of many have been unlawfully diluted as a result of state action. Eighty-six voters who were legally entitled to vote in House District 28 were denied a ballot that gave them the choice between Robert Thomas and Rev. Joshua Cole. And another 61 voters who were not entitled to vote in that same election did so, which diluted the votes rightfully cast by residents of the district. These improper ballots, cast because election officials chose not to correct a known mistake, were

more than double the size of the margin between Mr. Thomas's votes and Rev. Cole's votes.

These facts are the very sort that warrant federal intervention. To ensure continued protection of the right to vote and the other “most basic” rights for which it forms the foundation, *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964), it is important that this Court carefully consider the irreparable nature of the harm, which will stand if this Court does not act swiftly to ensure that a new, properly administered, election is conducted.

I. Federal intervention is appropriate in this case where there is a violation of the fundamental right to vote.

At stake here is the voting strength—and, indeed, the right to cast a meaningful ballot—of some 54,000 Fredericksburg City and Stafford County voters.² Through the actions of state and local election officials, voters have been denied the opportunity to vote for the representative of their actual district, denied access to statutorily-required provisional ballots,³ and have been illegally lumped in with residents of the bordering districts to which they do not belong. “No right is more precious in a free country than that of having a voice in the election of those

²There are currently 53,561 voters residing in the House of Delegates District 28, which encompasses both Stafford County and Fredericksburg City. *See* Virginia Public Access Project, House of Delegates District 28 Profile, <https://www.vpap.org/offices/house-of-delegates-28/district/>.

³ *See* Va. Code Ann. § 24.1-643(A).

who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The right to vote “is of the essence of a democratic society, and any restriction on that right strikes at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

Given the weight of what is stake when the right to vote is implicated, “any alleged infringement . . . must be carefully and meticulously scrutinized.” *Reynolds*, 377 U.S. at 562. This court has acknowledged that “federal courts have assumed an active role in protecting against dilution of the fundamental right to vote and the denial of this right through class disenfranchisement.” *Hutchinson v. Miller*, 797 F.2d 1279, 1282 (4th Cir. 1986); *Hendon v. North Carolina State Board of Election*, 710 F.2d 177 (4th Cir. 1983). “In decision after decision, [the Supreme] Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The case here, where the votes of an entire district have been diluted and an identifiable class of voters have been disenfranchised, represents the very circumstances in which a federal court has recognized a duty to intervene.

II. The incorrect districts assignments in this case are more than a “garden variety irregularity” and justify a federal remedy.

The erroneous assignment of 384 voters to the wrong district is not “inadvertent,” as the Local Election Official Defendants claim, but instead represents a serious failure to correct a known problem, which then amounts to a federal constitutional violation. Elections are rarely if ever error free, and some margin of error is inevitable, but “[w]here the election process itself reaches the point of patent and fundamental unfairness, as it has here, a “violation of the due process clause may be indicated and relief under § 1983 therefore in order.” *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978). In this case, the failure to correct the large and known problems reaches that level.

In their briefing in the court below, Local Election Official Defendants rely on *Hendon v. North Carolina State Board of Elections* for the proposition that “[w]hether an irregularity amounts to a constitutional claim depends on its severity, whether it was intentional or more of a negligent failure to carry out properly the state election procedures, and whether its erodes the democratic process.” 710 F.2d 177, 182 (4th Cir. 1983). But *Hendon* does not define “severity,” even in the context of that case, and Local Election Official Defendants do not offer a meaningful definition here, instead just concluding that “garden type” election irregularities cannot, per se, be severe.

First, this Court should rely upon the analogous line of cases assessing constitutional challenges to the burdens created by election regulations in

understanding how to measure the severity of election irregularities and whether they rise to the level of constitutional violations. As explained by the Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992), a court reviewing a challenge to a burdensome voting law or regulation must apply a balancing test that weighs the severity of the burden imposed (assessed by examining the burden’s “character and magnitude”) against the state’s “precise interests.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). Under this measure, restrictions may be only moderate in their character, but affect many voters—or vice versa—and still be deemed severe, but having this multi-dimensional understanding of “severity” acts as a proper check to ensure that federal court intervention is warranted.

Using that “character and magnitude” assessment results here in a conclusion that the election irregularity was severe. The magnitude of the irregularity here was large given the context of this election. The undisputed fact is that the State Board of Elections found that, in a race decided by only 71 votes, 86 voters who should have been allowed to vote in District 28 were denied their right to do so.⁴ See *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016) (finding “severe” burden on the right to vote where

⁴ Memorandum from Edgardo Cortes, Commissioner of Va. Dep’t of Elections, to Chairman Alcorn, Vice Chair Wheeler, and Secretary McAllister, Va. St. Board of Elections (Nov. 27, 2017) (Plaintiff’s Ex. 13) (hereinafter “Cortes Memo”) at 3.

approximately 100 people were disenfranchised). And, significantly, a huge portion of those voters wrongly excluded from voting in District 28 lived in Fredericksburg, a jurisdiction where voters overwhelmingly voted for Rev. Cole. *See* Appellants' Emergency Motion at 7.

Additionally, because of the incorrect voter assignments, other voters were allowed to vote in the House District 28 election who did not reside in the district, thus diluting the voting strength of voters who actually live within the borders of the district. The overall number of improper ballots cast—147—is more than double the reported margin of victory, and that point alone casts serious doubts on the legitimacy of the election results.

The character of the irregularity is also severe, which also goes to the second part of the *Hendon* test. The administrative problems made noted here were not the sort of common errors made in the pressure of a compressed election timeline. As far back as 2015, Fredericksburg election officials have known about voters receiving incorrect ballots in Districts 28 and 88. *See* Appellants' Emergency Motion, Ex. 1, Marshall Dec. The problem was brought to election officials' attention again in March 2016, March 2017, and November 2017. Yet in all that time, despite knowledge of the problem, election officials failed to resolve the problem. Moreover, on November 4, 2017, when voters directly asked election officials about receiving the incorrect ballot, officials dismissed their concerns and

even went so far as to deny them the legal recourse of casting provisional ballots. *See* Appellants' Emergency Motion, Ex. 8. Thus, this was not, as alleged by Local Election Officials, a simple transcription error understandable in the context of a large volume of addresses. *See* Defs.' Br. in Opp'n to Mo. for Prelim. Inj., *Lecky, et al. v. Va. State Bd. of Elections, et al.*, No. 1:17-cv-1336, ECF No. 89, at 3 (Dec. 22, 2017). It was, instead, reckless disregard by officials for a well-known problem raised by the citizenry. Assessing the severity of the election irregularity in this well-established way will ensure that federal court intervention is limited to appropriate situations, where the dereliction of election administrators' duties does create "patent and fundamental unfairness."

This reckless disregard for ensuring that voters were not disenfranchised further satisfies the last two inquiries under *Hendon*: "whether it was intentional or more of a negligent failure to carry out properly the state election procedures, and whether it erodes the democratic process." 710 F.2d at 182. If voters or advocates bring problems like these to the attention of election officials, they need to rest assured that those problems will be addressed. Nothing can erode trust in the democratic process or legitimacy of elections more than election officials' total disregard for attempts to correct problems and ensure that no voter is disenfranchised. As such, the irregularities seen in this election—where election officials knowingly allowed nearly a hundred voters to be disenfranchised and kept

from voting in the District 28 election, represents a breach of a core administrative duty. The election process has thus reached a point of “patent and fundamental unfairness,” and this Court should intervene. *Hendon*, 710 F.2d at 177.

III. The incorrect voter assignments place a unique burden on the voting rights of African Americans in District 28.

Black voters in District 28 and specifically in Fredericksburg have been increasing in population and are poised to be powerful political voice in Virginia elections.⁵ In light of this, African-American voters in particular will bear severe hardships on exercising their right to vote in the future if this Court fails to intervene on behalf of the Appellants. The refusal to respond to these clear and significant errors by the Commonwealth’s local election officials have in effect undermined the purpose of the Voting Rights Act itself. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 229 (4th Cir. 2014) (noting that the Voting Rights Act was aimed at preventing “an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives”). An election irregularity so egregious, if left unaddressed, in a locality where black

⁵The African-American population in Fredricksburg is growing rapidly, from 20.41% in 2010 to approximately 23.8% in 2016. *Compare* Census Viewer Fredericksburg 2000 Population, available at <http://censusviewer.com/city/VA/Fredericksburg>, with United States Census Bureau QuickFacts, Fredericksburg, 2016 population estimate, available at <https://www.census.gov/quickfacts/fact/table/fredericksburgcityvirginiacounty/PS T045216>.

voters are an emergent political voice, sends the message that neither the courts nor state officials will act to ensure that the ability of voters of color to cast a proper and effective ballot. Any such impression, which would run counter to our Constitution's clear guarantees, must be solidly rejected.

The local NAACP branch witnessed the strong support that black voters in Fredericksburg expressed for Joshua Cole, a young black minister with deep ties to the community and a lifelong Stafford County resident.⁶ After decades without the opportunity or ability to elect their candidate of choice to the House of Delegates,⁷ African-American voters finally had the opportunity to elect a candidate who represented their interests.

Yet when voters arrived at the polls, they were met with distrust and indifference by election administrators. Voters pointed to a map on the wall, showing their appropriate district assignment, but the local election officials ignored the possibility of error and tore the map down from the precinct wall. *See* Pl. Appellant Ex. 8. (describing interactions with pollworkers). Worse yet, the same officials denied voters the federally-mandated opportunity to cast a

⁶Additionally, Rev. Cole was also endorsed by Persist RVA, which supports progressive African-American candidates at all levels of elected office. *See* <http://calendar.persistrva.org/persistrva/detail/528/1501882200000>.

⁷Michael Pope, One of Virginia's Most Powerful Politicians is Stepping Down, radioIQ (Feb. 20, 2017), <http://wvtf.org/post/one-virginias-most-powerful-politicians-stepping-down>. (“Republican Delegate Bill Howell of Fredericksburg first arrived as a freshman in the minority back in 1988.”).

provisional ballot when told they had received the wrong ballot. *See id.* *See also* Va. Code Ann. § 24.20643(A). Voters were left with little option, other than to simply not vote, or cast a ballot in the wrong district.

African-American voters in Virginia have fought throughout the 20th Century to secure the right to vote in cases that have reached the United States Supreme Court, and yet some residents in Fredericksburg were denied the opportunity to elect their candidate of choice on November 7th. In response to the official errors that led to the disenfranchisement of several Fredericksburg voters, grassroots organizers across the state staged rallies in Alexandria, Fredericksburg, and Richmond, Virginia.⁸ On December 30, 2017, African-American residents in Fredericksburg, among others, organized a rally to highlight the protracted struggle for voting rights in Virginia and to urge state officials to correct the errors in

⁸ *See* Rally for Electoral Justice, event page, <https://www.facebook.com/events/1404117706365559/>; *Voting Rights Activists Rally Throughout Virginia for Electoral Justice*, Richmond 2day (Dec. 28, 2017), <http://richmond2day.com/voting-rights-activists-rally-throughout-virginia-electoral-justice/>; Kenny Allen Boddy, *Virginia Rallies for Electoral Justice!*, DAILY KOS (Dec 30, 2017, 7:05 pm), <https://www.dailykos.com/stories/2017/12/30/1728708/-Virginia-Rallies-for-Electoral-Justice>.

District 28.⁹ Elected officials, congressional candidates, and grassroots leaders, including the President for the local NAACP chapter, spoke at the event.

By refusing to address the known issues with voter assignments in District 28 and the surrounding districts, state officials have acted willfully to diminish the voices of District 28's African-American voters. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. at 554. Because this reckless failure to ensure that all voters received the proper ballot undermined the opportunity of black voters in Fredericksburg to elect their candidate of choice, this Court should grant Appellants' Emergency Motion and afford this case the judicial scrutiny it deserves.

IV. The voters have no other remedy at law.

If the court does not issue a preliminary injunction and ultimately ensure that a new election is conducted, the voters in District 28 will be left without recourse. The citizens in this case have done everything in their power to ensure that their vote was properly counted. *See e.g.*, Appellants' Emergency Motion, Ex. 9 at 13-15 (after voting the ballot, Mrs. Lecky informed two of the three members of the

⁹ Ali Symons, Video: Rallies for Electoral Justice in Fredericksburg, Richmond, Blue Virginia (Dec. 30, 2017), <https://bluevirginia.us/2017/12/video-rallies-for-electoral-justice-in-fredericksburg-richmond>.

Fredericksburg Board that she incorrectly received a House District 88 ballot). Instead of working expeditiously to correct the assignment problem, elections officials denied these voters any remedy and refused them their mandated fail-safe against pre-election errors: provisional ballots. *See id.* This is a direct violation of the Help America Vote Act. 107 P.L. 252, 116 Stat. 1666. “[The Help America Vote Act] HAVA requires every jurisdiction . . . to offer voters who claim to be registered in a jurisdiction but do not appear on the voter rolls for that jurisdiction the right to cast a provisional ballot . . . No voter will be turned away from the polls because of a mistake or oversight at the administrative level.” 148 Cong. Rec. 510488-02 (daily ed. Oct. 16, 2002) (statement by Sen. Bond). This requirement is mirrored in Virginia state law. Va. Code Ann. § 24.2-643(A) (“each qualified voter at a precinct shall be permitted to vote.”). Provisional ballots are required when “a person offers to vote . . . and the general registrar is not available or cannot state that the person is registered to vote.” *Id.*

Having been denied provisional ballots, the voters in this case then had and still have no other means to have their voice heard. State law provides an administrative remedy for losing *candidates*, but it does not afford voters the same reprieve. Va. Code Ann. § 24.2-803. The administrative procedure dictated by statute is not designed to address the specific constitutional harms that these voters have experienced, but to serve the interests of candidates when there has been a

close election. Despite the defendant's assertions, Appellants voters and candidate Joshua Cole do not share an attorney. Rev. Cole's choice not to pursue an election contest with the state legislature has absolutely no bearing on this case or the legal rights of Appellants and *Amicus*. It would be entirely inequitable to deny voters who were entitled to vote in an election a meaningful remedy for the constitutional injuries they suffered due to independent decisions made by a political candidate on his administrative remedies.

Appellants are not asking this Court to supplant the role of Virginia's election administration by examining the validity of individual ballots or otherwise policing every bit of election minutia. Rather, they ask the court to remedy an illegal, systematic and prolonged, state policy that can only be characterized as official recklessness, which undermines the fairness of this election and infects public's confidence in the reported election results. The only remedy for Appellants under these circumstances is to order a new election and afford voters the opportunity to cast a meaningful vote for their candidate of choice.

CONCLUSION

For the reasons articulated above, *Amicus* respectfully requests that the Court grant Appellants' Emergency Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of January, 2018, I served the foregoing **Proposed Brief of *Amicus Curiae*** via the Court's ECF system upon all counsel.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

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COUNSEL FOR: The Virginia State Conference of the NAACP

as the (party name)

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CERTIFICATE OF SERVICE

I certify that on Jan. 8, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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/s/ Allison Riggs Signature

January 8, 2018 Date