No. COA 22-16 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., *Plaintiffs-Appellees*, v. TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *Defendants-Appellants*.	From Wake County 18-CVS-15292

MOTION OF THE NORTH CAROLINA REPUBLICAN PARTY FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The North Carolina Republican Party (the "NCGOP") respectfully moves this Honorable Court for leave to file the attached brief *amicus curiae*.

Pursuant to North Carolina Rule of Appellate Procedure 28(i), the NCGOP sets forth herein the nature of its interests, the issues of law its brief will address, its positions on those issues, and the reasons why it believes that an *amicus curiae* brief is desirable.

NATURE OF APPLICANT'S INTEREST

The North Carolina Republican Party ("NCGOP"), founded in 1867, is the state political organization of the Republican Party. The NCGOP represents the interests of Republican voters, poll observers, and candidates at all levels throughout the State, including developing and promoting the NCGOP's state platform, supporting Republican candidates for public office at all levels of government throughout the state, educating freedom-minded voters, providing trainings, and raising funds to support NCGOP operations and candidates.

Additionally, the NCGOP has the statutory right to appoint 100 statewide poll observers who serve to further the interests of the NCGOP, Republican voters, and Republican candidates by ensuring the security, fairness, and integrity of elections in the State of North Carolina. *See* Peter K. Schalestock, Election Law: *Monitoring of Election Processes by Private Actors*, 34 Wm. Mitchell L. Rev. 563, 590 ("Private monitoring and enforcement can help identify errors and misconduct in elections, increasing the level of integrity beyond what government resources can provide.")

If the Wake County Superior Court's decision is not overturned in part, it will significantly undermine the NCGOP's ability to exercise its statutorily granted

rights and to ensure the integrity of elections in North Carolina. The NCGOP respectfully urges this Court to sever the challenged portions of Senate Bill 824 ("S.B. 824") from the unrelated, unchallenged, and valid poll observer provisions found in Part III, Section 3.3 of S.B. 824.

REASONS WHY *AMICUS* SHOULD BE HEARD

The NCGOP is one of only three state political parties whose rights are affected by the trial court's decision to eliminate 100 statewide observers. Section 3.3 of S.B. 824 provision provides that "[t]he chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State." 2018 N.C. Sess. Law 144, § 3.3 (codified at N.C.G.S. § 163–45(a) (2019)). The NCGOP is thus directly affected by the case at bar–should Section 3.3 of S.B. 824 be struck down, NCGOP loses its ability to appoint poll observers, which it considers an important part of its role in the electoral process. This section was not challenged by Plaintiffs-Appellees. As an enactment of the General Assembly, Section 3.3 is presumed constitutional; therefore, this Court should uphold it. The trial court erred by failing to sever the challenged voter ID portions of S.B. 824.

QUESTION OF LAW ADDRESSED IN THE *AMICUS* BRIEF

The NCGOP will address the error of the Wake County Superior Court in its Order of September 17, 2021, wherein it failed to sever the voter ID portions from the unchallenged Section 3.3 of S.B. 824 and consequently enjoined the bill in its entirety.

POSITION OF *AMICUS CURIAE* ON THE QUESTION OF LAW

The Wake County Superior Court did not find the statewide observer section to be unconstitutional. Further, the section is altogether unrelated to the voter ID portions under scrutiny; therefore, the voter ID provisions should be severed and Section 3.3 left intact.

CONCLUSION

For the foregoing reasons, the North Carolina Republican Party respectfully requests the Court grant it leave to file an *amicus curiae* brief addressing the issue of severability posed by the Wake County Superior Court in its order of September 17, 2021.

Respectfully submitted this the 7th day of February 2022.

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No. COA 22-16 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., *Plaintiffs-Appellees*, v. TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *Defendants-Appellants*.	From Wake County 18-CVS-15292

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AMICUS CURIAE BRIEF OF THE NORTH CAROLINA REPUBLICAN PARTY[1]

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[1] No person or entity—other than *amici curiae* and their counsel—directly or indirectly wrote the brief or contributed money for its preparation.

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INTRODUCTION

In challenging 2018 Senate Bill 824 as unconstitutional, Plaintiffs-Appellees only took issue with the provisions implementing North Carolina's constitutional amendment requiring identification to vote. Appellees did not challenge the remainder of the bill—such as the section providing for the appointment of 100 statewide at-large poll observers—and the trial court thus erred in striking down the bill in its entirety.

BACKGROUND

The genesis of this litigation is the Appellees' claim that the voter ID provisions of S.B. 824 are unconstitutional. That bill contains various sections mostly related to voter ID, but also includes Section 3.3 which amends Section 163-45 of the North Carolina General Statutes by providing that "[t]he chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State" and requiring that "[p]ersons appointed as observers by the chair of a State political party must be registered voters of the State and must have good moral character." 2018 N.C. Sess. Law 144, § 3.3 (codified at N.C.G.S.. § 163–45(a) (2019)).

Appellees filed this suit the day S.B. 824 became law but failed to challenge specifically the statewide poll observer section of the bill. {R. at 6-60}. Appellees moved for injunctive relief "prohibiting the enforcement of Senate Bill 824 and allowing all qualified registered voters who present to vote to cast a regular ballot." {R. at 10}. Appellees' prayer for relief requests, in substantive part, a declaratory

judgment that S.B. 824 violates the "North Carolina Constitution both on its face and as-applied to Plaintiffs and those similarly situated North Carolina-qualified, registered voters that lack acceptable photo ID to vote when presenting to vote at the polls." {R. at 57-58}. Further, Appellees sought an "injunction allowing qualified, registered voters without acceptable photo ID at the polls to cast regular ballots." {R. at 58}.

After the trial court initially denied a preliminary injunction, {R. at 362}, this Court reversed and remanded "with instructions to grant Plaintiff's Motion and preliminarily enjoin Defendants from implementing or enforcing *the voter-ID provisions* of S.B. 824—including, specifically, Parts I and IV of 2018 N.C. Sess. Law 144 . . . ." *Holmes v. Moore*, 270 N.C. App. 7, 36, S.E.2d 244, 267 (2020) (emphasis added). Accordingly, the trial court issued a preliminary injunction on 10 August 2020 enjoining the implementation or enforcement of "*the voter-ID provisions* of S.B. 824—including, specifically, Parts I and IV of 2018 N.C. Sess. Law 144 . . . ." *Holmes v. Moore*, No. 18 CVS 15292, 2019 (N.C. Super. Aug. 10, 2020) (emphasis added).

A majority of the three-judge panel on 17 September 2021 entered final judgment and ordered S.B. 824 enjoined in its entirety. {R. at 896-1004}. The court noted that "[i]f a court finds only part of the law unconstitutional, it may sever the offending provision and leave the inoffensive portion of the law intact." {R. at 1001} (citation omitted). Despite not making a single finding of fact or conclusion of law regarding Section 3.3, the court nonetheless concluded that "relief in this case must address S.B. 824 in its entirety" because "[t]his action challenges the constitutionality

of S.B. 824 in its entirety, not certain challenged provisions of an omnibus bill." {R. at 1003}. In reaching this decision, the court concluded that "S.B. 824 does not contain a severability clause, and there are no provisions within the law—which serves to implement a statewide voter photo ID requirement—that can 'be enforced without reference to' the overall scheme for implementing voter photo ID." {R. at 1001}.

It is this erroneous application of law with which *amici curiae* take issue.

RELATED BACKGROUND

I. Addition of County At-Large Observers

In 2013, several groups challenged provisions of Session Law 2013-381 as unconstitutional and moved for injunctive relief of the same, including those related to voter ID and the provisions related to the addition of county at-large poll observers. *See N.C. State Conf. of NAACP v. McCrory*, 997 F. Supp. 2d 322, 338–39 (M.D.N.C. 2014), *aff'd in part, rev'd in part and remanded sub nom. League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 248–49 (4th Cir. 2014).

Recognizing that "[i]n the absence of the clear showing for preliminary relief required by the law, it is inappropriate for a federal court to enjoin a State law passed by duly-elected representatives," the court ruled that plaintiffs failed to prove they would be irreparably harmed absent a preliminary injunction and denied the plaintiffs' motion. *Id*. at 384. The Fourth Circuit affirmed the court's denial of injunctive relief as it related to the poll observer provisions while simultaneously

reversing and remanding as to other provisions of the bill. *See League of Women Voters of N.C.*, at 237, 248–49.

In 2016, the Fourth Circuit held discriminatory intent impermissibly motivated the passage of the voter ID provisions of the law; the court severed and enjoined those provisions while leaving intact the poll observer provisions. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 239 (4th Cir. 2016). The court reasoned that if it "finds only part of the law unconstitutional, it may sever the offending provision and leave the inoffensive portion of the law intact." *Id.* at 238. Accordingly, the court held that only the provisions it found unconstitutional, which did not include the poll observer provisions, should be enjoined. *Id.* at 238–39.[2]

II. Federal Litigation Over S.B. 824

After initiation of the suit *sub judice*, a group filed a federal complaint challenging S.B. 824. Complaint at 32, *N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019) (No. 1: 18-CV-01034). There, plaintiffs challenged the voter ID provisions and the poll observer provisions of S.B. 824. *Id.* at 32.

The court preliminarily enjoined the voter ID provisions of the bill. *Id.* at 53 (M.D.N.C. 2019) (vacated on other grounds, *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295 (4th Cir. 2020)). However, the court was "not convinced" plaintiffs would succeed in their claim regarding poll observers; therefore, it denied injunctive relief and "allowed [those provisions] to go into effect." *Id.* at 47.

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[2] The court also found the presence of a severability clause supported severability. *NAACP v. McCrory* at 239. However, as provided *infra*, the existence or omission of a severability clause in a bill is not determinative as to the issue of severance.

The Fourth Circuit ultimately reversed the district court's ruling on separate grounds without addressing the issue of poll observers. *N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d at 54.[3]

ARGUMENT

"The Constitution of North Carolina is not a grant of power; rather, the power remains with the people and is exercised through the General Assembly, which functions as the arm of the electorate." *Pope v. Easley*, 354 N.C. 544, 546, 556 S.E.2d 265, 268 (2001). "An act of the people's elected representatives is thus an act of the people and is presumed valid *unless it conflicts with the Constitution*." *Id.* (emphasis in original) (citation omitted). Our courts "will not declare a law invalid unless we determine that it is unconstitutional beyond a reasonable doubt." *State ex rel. McCrory v. Berger*, 368 N.C. 633, 781 S.E.2d 248 (2016) (citation omitted). If a statute complies with the requirements of the state and federal constitutions, it must be upheld. *See Town of Boone v. State*, 369 N.C. 126, 794 S.E.2d 710 (2016).

Even when part of an act is found to be unconstitutional, "Connor, J., reminds us that confusion is caused 'by speaking of an act as unconstitutional in a general sense.'" *Fox v. Bd. of Comm'rs of Durham Cty.*, 244 N.C. 497, 501, 94 S.E.2d 482, 486 (1956) (quoting *St. George v. Hardie*, 147 N.C. 88, 97, 60 S.E. 920, 924 (1908). An act "may be valid in part and invalid in part." *Id.* (citation omitted).

[3] The merits trial of this case is currently pending while a separate issue of legislative intervention is on appeal. *See Berger v. N. Carolina State Conf. of the NAACP*, No. 21-248, 2021 WL 5498793 (U.S. Nov. 24, 2021).

Similarly, where it is clear that one section of a bill is separable in purpose from others, this Court should presume the General Assembly intended to retain the valid section of the bill. *See State v. McCleary*, 65 N.C. App. 174, 178–79 (1983), *aff'd*, 311 N.C. 397 (1984) (holding that it was error for the trial court to assume that where a distinct statutory exception was invalid, the legislature intended that the remainder of the statutory scheme also be invalidated). As recently articulated by the Supreme Court of the United States:

> The Court's presumption of severability supplies a workable solution—one that allows courts to avoid judicial policymaking or *de facto* judicial legislation in determining just how much of the remainder of a statute should be invalidated. The presumption also reflects the confined role of the Judiciary in our system of separated powers—stated otherwise, the presumption manifests the Judiciary's respect for Congress's legislative role by keeping courts from unnecessarily disturbing a law apart from invalidating the provision that is unconstitutional. Furthermore, the presumption recognizes that plaintiffs who successfully challenge one provision of a law may lack standing to challenge *other* provisions of that law.

Barr v. Am. Ass'n of Political Consultants, Inc., 140 U.S. 2335, 2350–51, 207 L. Ed. 2d 784 (2020).

I. The trial court erred in concluding that the voter ID sections of Senate Bill 824 were not severable from Section 3.3, which provides for statewide poll observers.

Here, the trial court erred by misapplying the test for severability and enjoining Section 3.3 of S.B. 824. That section must be presumed constitutional and should not be invalidated absent a finding by the court of unconstitutionality beyond a reasonable doubt. *See State ex rel. McCrory*, 368 N.C. at 639, 781 S.E.2d at 252. Furthermore, "[t]he party challenging the constitutionality of a statute has the burden of establishing its unconstitutionality." *City of Asheville v. State*, 192 N.C. App. 1, 45, 665 S.E.2d 103, 133 (2008). Appellees here presented no evidence or argument to shed a scintilla of doubt as to the constitutionality of Section 3.3 of S.B. 824.

The test for severability turns on whether the non-offending provisions of the legislation can be enforced on their own. *Pope,* 354 N.C. at 548, 556 S.E.2d at 268; *Flippin v. Jarrell*, 301 N.C. 108, 118, 270 S.E.2d 482, 488 (1980). Courts also look to legislative intent and attempt to determine whether the General Assembly would have enacted those provisions absent the offending portion. *Pope,* 354 N.C. at 556 S.E.2d at 268 (2001); *Jackson v. Guilford Cty. Bd. of Adjustment*, 275 N.C. 155, 166 S.E.2d 78 (1969); *People for the Ethical Treatment of Animals, Inc. v. Stein*, 466 F. Supp. 3d 547 (M.D.N.C. 2020); *Fulton Corp. v. Faulkner*, 345 N.C. 419, 481 S.E.2d 8, 9 (1997).

A. The statewide poll observers section can be enforced on its own.

Here, whether Section 3.3 of S.B. 824 can be independently enforced does not require a theoretical analysis. During the pendency of this suit, the addition of statewide poll observers was implemented and utilized.

As proven by that reality, there is not even a diminutive amount of crossover between statewide poll observers and the implementation of voter ID. Section 3.3 is *sui generis* to the other sections of S.B. 824—that is, separate, unrelated, and wholly independent of any other provisions for voter ID. The statewide poll observer provision is "complete in itself and capable of enforcement," and thus the statute should not "stand or fall as a whole." *Flippin*, 301 N.C at 118, 270 S.E.2d at 488–89.

Poll observers have one job: to observe whether election officials are conducting the election in accordance with the law. This function is carried out regardless of whether or not voter ID is required to vote; poll observers take no part in administering the voter ID process.

In 2020, Section 3.3 was implemented by the State Board of Elections which provided guidance to the political parties regarding the appointment and conduct of statewide observers. *See* N.C. State Bd. of Elec. Numbered Memo 30 (2020).

Indeed, during the 2020 Election, the Republican Party State Chairman appointed 100 statewide poll observers for early voting and Election Day. [App. 1–2]. Those poll observers operated despite the fact that voter ID was not in place at the time.

Furthermore, in 2021, the State Board of Elections adopted rules approved by the North Carolina Rules Review Commission utilizing nearly identical language as found in Section 3.3 of S.B. 824. *See* Election Observers, 08 N.C. Admin. Code 20.0101 (2021).

It is thus clear that Section 3.3 of S.B. 824 can be enforced on its own; it has been done.

B. The General Assembly intended for the statewide poll observer section to be enforced regardless of the voter ID provisions

Next, it is clear the General Assembly intended for enforcement of the poll observer section of the bill separate and apart from voter ID as evidenced by the clear and unambiguous language used, the disjunctive nature of the section, the absence of any unintended results, subsequent proposals assuming the validity of the section, and the time-honored tradition of poll observers in this state.

Where a section of a bill has been determined to be enforceable absent other invalid parts of the bill, this Court undertakes an analysis to determine legislative intent. The court will sever the invalid portions of a bill and leave intact the other provisions if "the invalid part was not the consideration or inducement for the Legislature to enact the part that is valid." *Jackson*, 275 N.C. at 168, 166 S.E.2d at 87 (citing *Am. Exch. Nat'l Bank v. Lacy*, 188 N.C. 25, 27, 123 S.E. 475, 476 (1924)).

"While the existence of a severability clause would be a 'clear statement of legislative intent,' *Appeal of Springmoor, Inc.*, 348 N.C. 1, 24, 498 S.E.2d 177, 184–85 (1998), its presence is not required for this Court to find that the Act can be enforced absent its unconstitutional provisions." *People for the Ethical Treatment of Animals, Inc.* 466 F. Supp. 3d at 586 (applying North Carolina law in determination to sever part of an Act that lacked a severability clause). Moreover, in *Flippin*, this Court held that despite the presence of a severability clause, the various portions of

a statute were "so interrelated and mutually dependent as to be inseparable." *Flippin*, 301 N.C at 118, 270 S.E.2d at 488—89.

Here, the lack of a severability clause in S.B. 824 is of no consequence as the language of Section 3.3 is clear, unambiguous, and enforceable without reference to the voter ID sections of the bill.

Regardless of the existence of a severability clause, in discerning legislative intent, courts give weight to the following: (1) whether the bill is disjunctive, *See People for the Ethical Treatment of Animals, Inc.*, 466 F. Supp. 3d at 586 (finding that disjunctive parts evidenced legislative intent); (2) whether severance of the offensive parts of an Act would result in unintended results, *See Appeal of Springmoor, Inc.*, 348 N.C. at 24, 498 S.E.2d at 184–85 (holding that where severance of part of a statute changed the result of statute, the legislature must not have intended it to be severed); (3) subsequent actions taken without reference to any invalid provisions, *See Jackson*, 275 N.C. at 168, 166 S.E.2d at 87 (giving credence to the fact that the legislative body took action on one part of an ordinance without reference to an invalid part of the ordinance), and (4) the historical context and circumstances of enactment, *See Shaw v. U.S. Airways, Inc.*, 362 N.C. 457, 665 S.E.2d 449 (2008).

i. Disjunctive Sections

The first consideration in determining legislative intent is the wording chosen by the legislature in the statute. *O & M Indus. v. Smith Eng'g Co.*, 360 N.C. 263, 268, 624 S.E.2d 345, 348 (2006). The language and purpose of Section 3.3 is wholly disjoined from the other sections of the bill. Section 3.3 provides that "[t]he chair of

each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State" and that "[p]ersons appointed as observers by the chair of a State political party must be registered voters of the State and must have good moral character." 2018 N.C. Sess. Law 144, § 3.3 (codified at N.C.G.S. § 163–45(a) (2019)). Section 3.3 makes no reference to voter ID and none of the other sections of S.B. 824 make reference to poll observers. Section 3.3 thus reflects a legislative intent wholly independent from the implementation of voter ID. *See People for the Ethical Treatment of Animals, Inc.*, 466 F. Supp. 3d at 586. (severing invalid portions of act because disjunctive and discrete remaining portions evidenced legislative intent for those portions to operate independently).

ii. Unintended Results

It is axiomatic that in passing legislation, the General Assembly may intend to effectuate a myriad of goals in one bill, often in an effort to achieve legislative efficiency. When determining severability, the structure and breadth of a bill must be taken into account because the severance of a section should not cause unintended results to flow from the remainder of the bill. *See Am. Exch. Nat. Bank*, at 188 N.C. at 27, 123 S.E. at 476. "If by striking out a void exception, proviso, or other restrictive clause, the remainder, by reason of its generality, will have a broader scope as to subject or territory, its operation is not in accord with the legislative intent, and the whole would be affected and made void by the invalidity of such part." *Appeal of Springmoor, Inc.*, 348 N.C. at 24, 498 S.E.2d at 185 (citation omitted).

This issue commonly arises when a bill contains a restrictive provision that if invalidated, would cause enforcement of the remainder to result in something other than that which the legislature intended. *See Keith v. Lockhart,* 171 N.C. 451, 458, 88 S.E. 640, 643 (1916) (disallowing severance where absent the severed provision the applicability of a tax would be expanded to individuals not intended by the legislature). Put simply, severance should not create a more expansive result than that intended by the General Assembly.

Here, the voter ID provisions are not restrictive to the poll observer section and in no way would severance of the voter ID provisions expand the scope of the remaining statewide poll observer section.

Based on the language used in S.B. 824, it is clear that the General Assembly intended two separate goals, (1) to implement voter ID and (2) to allow for 100 statewide poll observers. Failure to sever the voter ID sections here constitutes impermissible judicial imposition upon the legislature's intent. *See State v. Singletary*, 247 N.C. App. 368, 386, 786 S.E.2d 712, 724-725 (2016). It would be error to do so. *See Town of Emerald Isle By and Through Smith v. State*, 78 N.C. App. 736, 338 S.E.2d 581 (1986), *decision rev'd on other grounds*, 320 N.C. 640, 360 S.E.2d 756 (1987) (holding trial court erred in severing restrictive part of a bill when enforcement of the remainder would be inconsistent with legislative intent).

iii. Subsequent Action

The legislative intent that Section 3.3 operate independently of the voter ID provisions of S.B. 824 is further evidenced by subsequent legislation related to poll

observers, which, while not enacted, was put forward in the North Carolina House in May of 2021. *See* H.B. 819, 155th Gen. Assemb., Reg. Sess. (N.C. 2021).

"Courts, when called upon to determine the meaning or validity of a particular statute, should consider all the Legislature has said that has a bearing on the question at issue." *Great Am. Ins. Co. v. Johnson*, 257 N.C. 367, 372, 126 S.E.2d 92, 96 (1962).

H.B. 819 was filed in 2021 with full knowledge that the voter ID provisions of S.B. 824 were enjoined–but, at that time, the statewide poll observer provisions were upheld and effective during the 2020 election. The bill would have added clarifying language to the poll observer statute, N.C.G.S. § 163-45, specifically with regard to statewide at-large observers. *See* H.B. 819, 155th Gen. Assemb., Reg. Sess. (N.C. 2021).

The very fact that legislators filed this bill, fully assuming the validity and enforcement of the statewide poll observers, further evidences their intent that Section 3.3 of S.B. 824 be enforced regardless of the voter ID sections. *See Jackson*, 275 N.C. at 168, 166 S.E.2d at 87. (giving credence to the fact that the legislative body took action on one part of an ordinance without reference to an invalid part of the ordinance).

iv. Historical Context

Poll observers have been an integral part of North Carolina elections since at least 1967, while voter ID was not present in our law until the twenty-first century. The extensive history of poll observers in North Carolina and the recent

addition of county at-large observers in 2013 evidences the legislature's intent to enforce Section 3.3 regardless of the removal of the offending sections of S.B. 824.

Consistently, courts have declined to enjoin or strike down a legislative addition of poll observers in North Carolina. *See Ingram v. Johnson*, 260 N.C. 697, 699, 133 S.E.2d 662, 664 (1963) (considering prior judicial interpretation to determine legislative intent). Federal courts have done so when the specific poll observer provisions of a bill were challenged. *See NAACP v. McCrory*, 997 F. Supp. 2d 322; *N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d 15 (vacated on other grounds. *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295). The Wake County Superior Court has done so. {R. at 362-368}. This Court has done so. *See Holmes v. Moore*, 270 N.C. App. 7, 840 S.E.2d 244.

The erroneous conclusion regarding the severability of the voter ID provisions and resulting injunction of the unchallenged, constitutionally valid, and independently enforceable statewide poll observers section of S.B. 824 is an error this Court should not countenance.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court in part, order the severance of the voter ID provisions from S.B. 824, and dissolve the injunction as to the enforcement of Section 3.3.

Respectfully submitted this the 7th day of February 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, the undersigned counsel certifies that the foregoing *Amicus Curiae* Brief of the North Carolina Republican Party, which was prepared using a 12-point proportionally spaced font with serifs, is less than 3,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and the appendix) as reported by Microsoft Word.

Respectfully submitted this the 7th day of February 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *Amicus Curiae* Brief was served upon all parties by electronic mail addressed to the following:

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Respectfully submitted this the 7th day of February 2022.

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APPENDIX

Contents of Appendix

– App. 1 –

VIA Electronic Mail
10/11/2020

NC State Board of Elections
Attn: Katelyn Love, NCSBE General Counsel
legal@ncsbe.gov

RE: Statewide Poll Observers

Ms. Love:

Please find attached the North Carolina Republican Party's list of statewide poll observers. Let our Chief Counsel, Philip Thomas know if you have any questions.

Sincerely,

Michael D. Whatley
Chairman, North Carolina Republican Party

– App. 2 –

VIA Electronic Mail

10/29/2020

NC State Board of Elections
Attn: Katelyn Love, NCSBE General Counsel
legal@ncsbe.gov

RE: Election Day Statewide Poll Observers

Ms. Love:

Please find below the North Carolina Republican Party's list of statewide poll observers for Election Day. If you have any questions, please let our Chief Counsel, Philip Thomas know.

Sincerely,

Michael D. Whatley
Chairman, North Carolina Republican Party