No. COA01-1311 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

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RANDY B. ROYAL, EDWIN BOOTH, OWEN BURNEY, JR., ED CARTER, GARY GRANT, AILEEN FORD, WILLIAM HARPER, MARY JO LOFTIN, DANIEL MALLISON, GARY PHILLIPS, FANNIE WALDEN, DANIEL JOHNSON WILLIS, THE NORTH CAROLINA STATE CONFERENCE OF NAACP BRANCHES, NORTH CAROLINA FAIR SHARE, THE CONCERNED CITIZENS OF TILLERY, THE NORTH CAROLINA ALLIANCE FOR DEMOCRACY, THE NORTH CAROLINA WASTE AWARENESS REDUCTION NETWORK, CITIZENS FOR RESPONSIBLE GOVERNMENT OF GUILFORD COUNTY, AND THE NORTH CAROLINA CONSUMERS COUNCIL, Plaintiffs, v. THE STATE OF NORTH CAROLINA and THE NORTH CAROLINA BOARD OF ELECTIONS, Defendants.	)	From Wake County

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PLAINTIFFS APPELLANTS' BRIEF

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Plaintiffs,	)	
v.	)	
THE STATE OF NORTH CAROLINA and THE NORTH CAROLINA BOARD OF ELECTIONS,	)	
Defendants.	)	From Wake County

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QUESTION PRESENTED

DID THE SUPERIOR COURT ERR BY DISMISSING PLAINTIFFS' COMPLAINT WITH PREJUDICE FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED?

STATEMENT OF THE CASE

Plaintiffs both filed a complaint in Wake County Superior Court and issued a summons on 9 December 1999 (R. p. 3), and on 28 December 1999, filed and served an amended complaint (R. p. 51), asserting that their exclusion from meaningful participation in North Carolina's General Assembly elections on account of their economic status violated various provisions of the North Carolina Constitution. On 25 February 2000, Defendants moved to dismiss the complaint for failure to state a claim pursuant to Civil Procedure Rule 12(b)(6). (R. p. 101)

This motion came on for hearing before Judge Manning on 30 October 2000. On 2 August 2001, Judge Manning filed an order allowing Defendants' motion to dismiss for failure to state a claim. (R. pp. 104-11)

Plaintiffs filed and served a Notice of Appeal on 28 August 2001. (R. p. 112) The record was docketed in the Court of Appeals on 24 October 2001. By subsequent orders, the Court of Appeals extended the time for Plaintiffs to file their brief to 27 January 2002 and enlarged the page limitation for the briefs of both Plaintiffs and Defendants to 40 pages.

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction over this appeal pursuant to N.C. Gen. Stat. § 1-271 and N.C. Gen. Stat. § 1-277.

STATEMENT OF THE FACTS

During the last decade of the twentieth century, the cost of a viable campaign for a seat in the North Carolina General Assembly rose so dramatically that only those with access to substantial sums of money can now meaningfully participate in elections either as candidates or voters. It cost $113,518 to win a Senate seat in the North Carolina General Assembly in 1998. (R. p. 61, ¶ 46) It cost $56,322 to win a House seat in the North Carolina General Assembly in that same year. (Id.) In 84.26% of North Carolina General Assembly elections between 1992 and 1998, the winner either outspent his or her opponent or faced no opposition. (R. pp. 63-64, ¶ 54) Even "outspent losers" in the 1992 through 1998 races spent an average of $38,038 for a Senate seat and $29,528 for a House seat. (R. p. 65, ¶ 57 Money counts more than qualifications or any other factor in these elections. Candidates for General Assembly seats cannot meaningfully compete in election campaigns unless they spend substantial amounts of money.

Plaintiffs, who are non-wealthy individual voters, former, future and would-be candidates, and organizations whose memberships serve, and are largely comprised of, low-income citizens across North Carolina, bring this case to secure their constitutional rights to participate in self-government, specifically in the process that governs General Assembly

elections.[1] Because candidates cannot compete in North Carolina's elections without raising and spending substantial amounts of money, candidates who lack access to wealth and the voters who support them, like Plaintiffs here, are systematically excluded from an integral aspect of the election process. (R. pp. 61-68, ¶¶ 45-80, pp. 72-79, ¶¶ 96-120) Because of this exclusionary electoral system, prospective candidates for seats in the General Assembly are "primarily evaluated in terms of a candidate's ability to raise money" and "the question of how much money a candidate can raise has become more important than questions regarding a candidate's qualifications or policies." (R. p. 66, ¶ 65, p. 67, ¶ 68) North Carolina therefore administers its elections subject to a *de facto wealth primary*, that critical stage of the electoral process in which persons who have access to wealth pre-select candidates for office through their financial contributions and persons without access to wealth, who cannot contribute

[1] Specifically, plaintiffs Randy B. Royal, Edwin Booth, Owen Burney, Jr., Fannie Walden, and Daniel Johnson Willis are non-wealthy individual voters. Plaintiffs Ed Carter, Gary Grant, Aileen Ford, William Harper, Mary Jo Loftin, Daniel Mallison, and Gary Phillips are individual voters as well as former, future, and would-be candidates for General Assembly. Plaintiffs North Carolina State Conference of NAACP Branches, North Carolina Fair Share, the Concerned Citizens of Tillery, the North Carolina Alliance for Democracy, the North Carolina Waste Awareness Reduction Network, Citizens for Responsible Government of Guilford County, and the North Carolina Consumers

financially, are unable to influence the choice of candidates. (R. pp. 61-71, ¶¶ 45-95)

The manner by which wealth controls the North Carolina elections is a definable process —— both real and quantifiable —— that determines the outcome of every General Assembly election. (R. p. 66, ¶ 64, p. 67, ¶¶ 69-70, p. 68, ¶ 76) With careful detail, Plaintiffs have alleged the exponential increase in the cost of conducting legislative campaigns (R. pp. 61-65, ¶¶ 46-57), and they have quantified the wealth barrier to meaningful electoral participation in precise, real dollar terms. (R. pp. 61-63, ¶ 46-52) To specify the cost of mounting a meaningful, competitive campaign, Plaintiffs have amassed comprehensive data on the four most recent General Assembly election cycles. (R. pp. 61-69, ¶¶ 45-59) Detailed regression analyses of this data confirm that money is the primary determinant of electoral viability, regardless of a candidate's party affiliation, race, gender, district, or previous office held. (R. pp. 65-66, ¶¶ 60-62) Thus, as Plaintiffs allege, "[r]aising and spending a substantial sum of money has become a prerequisite to any meaningful campaign". (R. p. 67, ¶ 69)

Former and future candidates are unable to spread their electoral message for want of adequate funding. (R. p. 72-77,

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Council are organizations whose memberships serve, and are largely comprised of, low-income citizens across North Carolina.

¶¶ 96, 97, p. 75-79, ¶ 100-102) Each of the candidate-plaintiffs, Carter, Ford, Harper, Loftin, and Mallison —— persons of diverse party affiliations —— was eminently qualified to serve his or her respective community (Carter and Ford had already done so) and each enjoyed substantial volunteer grassroots support. (Id.) Each was unable to raise sufficient campaign funding from his or her natural constituency and each faced one or more opponents who did raise and spend substantial sums of money. (Id.) Each found that no amount of grassroots support could compensate for the lack of adequate funding. (Id.) Prevented only by economic status from mounting a viable campaign, none had any meaningful opportunity to compete for office. (Id.; see also R. pp. 65-66, ¶¶ 60-65) Similarly, prospective candidates Grant and Phillips, who are also qualified to represent their communities, would run for office but for the monetary barrier posed by the exclusionary electoral system. (R. p. 75, ¶ 99, p. 80-82, ¶ 104) Thus, the candidate-plaintiffs' right to stand for office has been qualified by the requirement that they raise and spend substantial sums of money.

This economic exclusionary effect also debases and impairs the fundamental right to vote of the non-wealthy voter-plaintiffs —— Royal, Booth, Burney, Walden, and Willis —— and the non-wealthy voters represented by the seven organizational plaintiffs. (R. p. 74, ¶ 98, p. 79-80, ¶ 103, p. 82-90, ¶¶ 105-

14) None of these plaintiffs has the financial resources sufficient to support a viable candidate for office. (Id.) Royal, Booth, and Burney each actively supported one of the aforementioned candidate-plaintiffs, only to find that a lack of adequate campaign funds, for which no amount of hard grassroots effort could compensate, eventually meant certain defeat. (R. p. 74, ¶ 98, p. 79-80, ¶ 103, p. 82-83, ¶ 105) Because the exclusionary financing of election campaigns systematically prevents low-income candidates from mounting viable campaigns, voter-plaintiffs who support such candidates face perennial difficulty identifying candidates on the ballot who will represent their interests. (R. p. 74, ¶ 98, p. 79-80, ¶ 103, p. 82-90, ¶¶ 105-14) Thus, individual voter-plaintiffs, and the non-wealthy members of the seven organizational plaintiffs, suffer a substantial debasement of their vote. (Id.) North Carolina's current electoral process consistently degrades Plaintiffs' influence on the political process as a whole, undermines their vote, and renders North Carolina's non-wealthy citizens unrepresented in the legislature. (R. p. 72-90, ¶¶ 96-114)

SUMMARY OF ARGUMENT

The North Carolina Constitution requires the state to conduct free and fair elections, in which no economic qualification may affect the right to vote or hold office and in

which there is a right to equal participation by all eligible voters. Yet, Plaintiffs have alleged, and documented their allegation, that there is a threshold level of money that all candidates must have or be able to raise in order to mount a meaningful campaign for a seat in the General Assembly. Thus, candidates and voters with neither wealth nor access to it, like Plaintiffs here, are excluded because of their economic status from equal participation in the political process by which those who set the public policy of North Carolina are selected. Such exclusion subverts and undermines the very nature of democratic governance guaranteed by the State's Constitution.

The Superior Court erred in dismissing Plaintiffs' complaint for failure to state a claim. Without clearly specifying its rationale, the Superior Court's opinion suggests that its dismissal was based on the lack of a right to "public funding of campaigns" and the lack of "state action" by Defendants. Plaintiffs, however, do not rely upon some textual constitutional right to public funding. Instead, they allege —— and support with substantial empirical data —— that North Carolina's electoral system excludes them from meaningful political participation on economic grounds. Therefore, the system violates specific enumerated constitutional rights, for which public funding of campaigns is a possible remedy. Moreover, all but one of the constitutional provisions

underlying Plaintiffs' claims impose affirmative obligations on Defendants without regard to the existence, or not, of state action. For the equal protection claim, which requires state action, Plaintiffs have adequately pleaded its existence.

ARGUMENT

I. THE SUPERIOR COURT ERRED BY CONFUSING PLAINTIFFS' RIGHT TO PURSUE RELIEF WITH ONE REMEDY SOUGHT BY PLAINTIFFS.

ASSIGNMENTS OF ERROR NO. 1-6 (R. pp. 51-94, 101, 104-111)

The North Carolina Constitution expressly prohibits "property qualifications" that "affect the right to vote and hold office" as well as "exclusive or separate emoluments or privileges . . . but in consideration of public services," while guaranteeing "equal protection of the law," "free elections," "sovereignty of the people," "rights of conscience," and "rights of assembly." N.C. Const. Art. I, §§ 2, 10, 11, 12, 13, 19, 32. (App. pp. 1-2) Plaintiffs allege violations of these rights, which individually and in the aggregate require the state to conduct free and fair elections in which no economic qualification may affect the right to vote or hold office and in which there is a right to equal participation by all eligible voters. Plaintiffs seek several remedies for these violations including, *inter alia*, declaratory relief, a system of public funding of campaigns, and "any other relief . . . that the Court deems just and proper." (R. p. 95-96)

The Superior Court's order suggests its belief that Plaintiffs are claiming some textual constitutional right to "public funding of campaigns". The order recites, "[T]he Court notes that the North Carolina Constitution, unlike its provisions relating to the duty of the State to fund public education, *does not provide for public funding of any campaigns*. . . ." (R. p. 109 (emphasis added)) Finding no such constitutional right, the court dismissed the complaint. (R. pp. 104-11)

The court thus confused the right upon which Plaintiffs rely in their complaint with one remedy that Plaintiffs request in the complaint's prayer for relief. The right upon which Plaintiffs rely is not the right to public financing of campaigns; it is, rather, the right meaningfully to participate in elections for the General Assembly.

When deciding a motion to dismiss for failure to state a claim, the court must determine "[w]hether the pleading is legally sufficient to state a cause of action. In ruling on the motion, the allegations of the complaint are treated as true, and on that basis the trial court must determine as a matter of law whether the allegations state a claim for which relief may be granted." Leandro v. State, 122 N.C. App. 1, 6, 468 S.E.2d 543, 547 (1996), rev'd in part on other grounds, 346 N.C. 336, 488 S.E.2d 249 (1997). Plaintiffs have alleged detailed,

quantifiable injuries to their rights to vote and to hold office. (R. p. 66, ¶ 64, p. 67, ¶¶ 69-70, p. 68, ¶¶ 76-77, pp. 71-91, ¶¶ 95-120. The constitutional violation is not the lack of public funding *per se* but rather the lack of access to the political system, caused by a state electoral system that requires citizens either to have or be able to raise substantial sums of money as a pre-condition to the exercise of their most basic political rights. Plaintiffs allege a denial of their *political* rights, directly caused by Defendants' sanction and management of the exclusionary electoral and campaign finance system. That public financing would help remedy this exclusion does not mean that Plaintiffs' claim rests on a "right" to public financing, any more than the use of busing as a remedy for school segregation depends on a constitutional right to busing.

Plaintiffs seek a judicial determination that certain qualitative standards for a constitutional democracy, as expressed by the people in specific constitutional provisions, are violated by the current system of electing members of the General Assembly. Once that determination is made, it will be the prerogative of the courts and the legislature, or either of these branches, to fashion an appropriate remedy.

The Superior Court thus erred by characterizing Plaintiffs' complaint as resting on some explicit textual constitutional

right to public funding of campaigns and by dismissing Plaintiffs' complaint on the basis of that characterization.

II. THE SUPERIOR COURT ERRED BY DISMISSING PLAINTIFFS' CLAIM THAT THE ELECTORAL SYSTEM IMPOSES A PROPERTY QUALIFICATION THAT AFFECTS THEIR RIGHTS TO VOTE AND HOLD OFFICE.

ASSIGNMENT OF ERROR NO. 1-6 (R. pp. 51-94, 101, 104-11)

The Declaration of Rights within the North Carolina Constitution states:

> As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

N.C. Const. Art. I, § 11. (App. p. 1) The language, history, and legislative intent of the Property Qualification Clause, as well as the numerous other constitutional provisions that create the framework for democracy, explicitly establish that affluence may not influence the exercise of the right to vote or hold office. The language and structure of the Property Qualification Clause also make clear that the state has an affirmative obligation to eliminate property qualifications that do affect the right to vote or hold office *regardless of whether there is express legislation that establishes the property qualification at issue.*

The North Carolina Constitution is the ultimate source of qualifications for voting and office holding. An entire Article of the Constitution and an explicit section of the Declaration

of Rights concern these qualifications. See N.C. Const. Art. VI; Art. I, § 11. (App. p. 1) Moreover, the constitutional guarantees of "equal protection of the law," "free elections," "sovereignty of the people," "rights of conscience," "rights of assembly," and the prohibition of "exclusive or separate emoluments or privileges . . . but in consideration of public services" —— all of which ensure democratic governance —— provide the constitutional backdrop against which qualifications for voting and office-holding must be examined. See N.C. Const. Art. I, §§ 2, 10, 12, 13, 19, 32. (App. pp. 1-2) These constitutional provisions are emphatic that wealth may play no part in the right to participate in the political process.

The electoral process for selecting members of the North Carolina General Assembly imposes property qualifications that affect the right to vote and hold office. The regression analyses and historical data alleged by Plaintiffs show that a threshold level of funding and electoral spending is indispensable if a candidate wishes to mount a meaningful campaign. (R. pp. 61-66, ¶¶ 46-63) By demonstrating that having or amassing a substantial sum of money has become a *prerequisite* to any meaningful General Assembly campaign, Plaintiffs' allegations clearly establish Defendants' violation of Art. I, § 11, and the cognate provisions regarding eligibility for office.

A. The Language of the Constitution Explicitly Precludes Property Qualifications that Affect the Rights to Vote and Hold Office.

The clear terms of the Property Qualification Clause of North Carolina's Declaration of Rights prohibit the state from conducting elections in which a person's vote, or ability to stand for office, is dependent upon the size of his or her wallet. The language of Article I, § 11 is unequivocal: "[N]o property qualification shall *affect* the right to vote or hold office". (App. p. 1) See State ex rel. Martin v. Preston, 325 N.C. 438, 449, 385 S.E.2d 473, 479 (1989) ("In interpreting our Constitution . . . where the meaning is clear from the words used, we will not search for a meaning elsewhere."). The word "affect" means "to produce an effect upon" or "to produce a material influence upon or alterations in." See Merriam-Webster's Collegiate Dictionary, www.merriamwebster.com/cgi-bin/dictionary (2001). Thus, the lack of wealth may not materially influence one's right to vote, hold office, or by extension, one's right to run for office. Such a "material influence" upon these rights includes the exclusion of voters of modest means from the process of selecting candidates for office and the exclusion of potential candidates because they do not have and cannot amass substantial amounts of money.

This interpretation of the Property Qualification Clause is buttressed by the Constitution's eligibility provisions for voting and holding office, which preclude wealth as a

qualification for voting or holding office. See N.C. Const. Art II, §§ 6,7 (App. p. 2); Art. VI, §§ 1, 6 (App. p. 3); see also Lloyd v. Babb 296 N.C. 416, 441, 251 S.E.2d 843, 859 (1979) (noting denial of franchise "on the basis of wealth, property ownership, etc." would be "obviously impermissible"); Moore v. Knightdale Bd. of Elections, 331 N.C. 1, 11, 413 S.E.2d 541, 546 (1992) (striking statute that "effectively disqualifies a distinct category of potential candidates"); Baker v. Martin, 330 N.C. 331, 339, 410 S.E.2d 887, 892 (1991) ("[W]e note that N.C. Const. Art. VI, § 6 . . . expressly limit[s] disqualifications to office for those who are elected by the people to those disqualifications set out in the Constitution."); Owens v. Chaplin, 228 N.C. 705, 710, 47 S.E.2d 12, 16 (1948) ("[T]he Legislature cannot prescribe any qualifications for voters different from those found in the organic law"). The guarantees of "equal protection of the law," "free elections," "sovereignty of the people," "rights of conscience," and "rights of assembly" as well as the prohibition of "exclusive or separate emoluments or privileges . . . but in consideration of public services" similarly underscore the preclusion of wealth-based qualifications. See N.C. Const. Art. I, §§ 2, 10, 12, 13, 19, 32. (App. pp. 1-2) Moreover, the qualifications and disqualifications that apply to holding office apply to candidacy as well. See Moore, 331 N.C. at 7, 413 S.E.2d at 544

(equating qualifications for candidacy with qualifications for holding office).

Thus, the exclusion of particular voters and candidates from meaningful political participation because they lack wealth or access to wealth violates the North Carolina Constitution.

B. Both Legislative Intent and History Support A Broad Interpretation of Article I, § 11.

The intent of the adopters of the 1868 Constitution, and the history of its adoption, support a broad interpretation of Art. I, § 11. The inclusion of Article I, § 11 within the 1868 Constitution represented an unqualified repudiation of the explicit wealth barriers contained in North Carolina's prior Constitution and practices. The drafters of Art. I, § 11 included a clear statement of the breadth of their intent in the provision's first clause, which instructs that "political rights are not dependent upon and modified by property". Shortly after the adoption of the property qualifications prohibition, the North Carolina Supreme Court rejected a limited reading of the term "property" in the Declaration of Rights, noting that the term "embraces everything which a man may have exclusive dominion over" and should be interpreted in "its most general sense". Wilson v. Board of Aldermen, 74 N.C. 748, 756 (1876) (discussing predecessor to Art. I, § 11). Under its plain meaning and by reference to the adopters' intent, Art. I, § 11

prohibits *any* type of property qualification that affects the right to vote or hold office – regardless of whether it is imposed directly by statute or, as here, indirectly through the combined *de facto* realities described in the amended complaint.

A review of historical documents similarly confirms the broad intentions of the 1868 adopters with respect to the property qualifications prohibition. During the 1868 convention's debate regarding Article VI of the constitution, for example, the conservative minority report urged the retention of all property qualifications for suffrage, which position was roundly rejected by speakers from the Republican majority. Compare Minority Report of the Committee on Suffrage § 3, *reprinted in* NORTH-CAROLINA STANDARD (Raleigh), Feb. 21, 1868, with Speech of John. R. French, in NORTH-CAROLINA STANDARD (Raleigh), Feb. 19, 1868, at 2; Speech of Mr. King, in NORTH-CAROLINA STANDARD (Raleigh), Feb. 20, 1868, at 3; Speech of C.C. Pool, Esq., in NORTH-CAROLINA STANDARD (Raleigh), Feb. 21, 1868, at 2.

Numerous delegates spoke against the retention of property qualifications. See, e.g., Speech of C.C. Pool, Esq., at 2; Speech of John R. French, at 2; Remarks of Mr. Rich, in NORTH-CAROLINA STANDARD (Raleigh), Feb. 25, 1868, at 2. One speaker noted: "The best and the most honest men are too frequently totally devoid of financial ability, and often die in poverty, but the State cannot spare such men from her counsels." *See* Speech of

C.C. Pool, Esq., at 2. Another delegate stressed that the prohibition of wealth qualifications in elections was important

> [a]s a matter of safety to the State, since to exclude men permanently from political life, rights and privileges, is, and must necessarily be, to commit them to an *unprivileged* class, and separate them from the common interests, and from personal care, concern and responsibility; and tends, directly and materially, to make them uneasy, disappointed, and revolutionary. . . . [T]he instincts, the judgment, the wisdom of the whole people are far more likely to be right than the narrow prejudiced and selfish passions and opinions of the few.

Remarks of Mr. Rich, at 2. Thus, the delegates' understanding that political equality is a necessary condition of democracy necessitated the abolition of all types of property qualifications.

C. Defendants Have an Affirmative Obligation to Remedy the Effect That Property Qualifications Have On the Rights to Vote and Hold Office.

The North Carolina Constitution places an affirmative obligation on Defendants to ensure that property qualifications do not affect the right to vote or hold office. Article I, section 11 requires that "no property qualification *shall* affect the right to vote or hold office." The word "shall" is generally imperative or mandatory, State v. Johnson, 298 N.C. 355, 361, 259 S.E.2d 752, 757 (1979), and in that regard, the state Supreme Court has held that "the provisions of the [Declaration of Rights] are commands and not mere admonitions,"

North Carolina State Bar v. Dumont, 304 N.C. 627, 639, 286 S.E.2d 89, 97 (1982). Because the North Carolina Constitution prohibits any type of property qualification that affects the right to vote or hold office, the *de facto* exclusion of non-wealthy citizens from political participation is the constitutional focus, not a search for Defendants' intent or for express legislation that makes property a qualification to vote or hold office.

Moreover, the political theory expressed in section 11's prefatory clause —— that "political rights are not dependent upon or modified by property" —— and the Constitution's primary mission to establish a "government of right" founded upon sovereignty of the "whole" citizenry together place an unequivocal affirmative duty on the State to ensure that "no property qualification shall affect the right to vote or hold office." This duty exists even without affirmative state conduct creating the offending property qualification. To hold otherwise would subvert the democratic, representative government in North Carolina that is mandated not only by the Property Qualification Clause, but also by the guarantees of "equal protection of the law," "free elections," "sovereignty of the people," "rights of conscience," and "rights of assembly," and the prohibition of "exclusive or separate emoluments or privileges . . . but in consideration of public services."

Because the state has an affirmative obligation to eliminate all property qualifications that affect the right to vote or hold office, the absence of legislation mandating every aspect of the exclusionary campaign finance system poses no bar to Plaintiffs' cause of action under Art. I, § 11. Article I, § 11 does not contain the word "laws" or the phrase "by the State" like the state's equal protection clause. See N.C. Const. Art. I, § 19 ("No person shall be denied the equal protection of the *laws*; nor shall any person be subjected to discrimination *by the State* because of race, color, religion, or national origin." (emphasis added)). Had the people intended to limit the reach of Art. I, §11 with a state action requirement, they would have done so explicitly as they did in the state's equal protection clause.[2]

Because Plaintiffs have adequately pleaded that the electoral system imposes an impermissible property qualification that affects their rights to vote and hold office, the Superior Court erred by dismissing the Amended Complaint.

[2] If this court deems state action necessary for a claim for violation of the Property Qualifications Clause, Plaintiffs have properly pleaded the existence of such state action. See Argument III.A infra at 21-34.

III. THE SUPERIOR COURT ERRED BY DISMISSING PLAINTIFFS' CLAIMS THAT THEIR EXCLUSION FROM AN INTEGRAL PART OF THE ELECTORAL PROCESS VIOLATES THEIR RIGHTS AS NORTH CAROLINA CITIZENS TO EQUAL PROTECTION OF THE LAWS.

ASSIGNMENT OF ERROR NO. 1-6 (R. pp. 51-93, 101, 104-111)

In the Declaration of Rights, the North Carolina Constitution provides that "[n]o person shall be denied the equal protection of laws." N.C. Const. Art. I, § 19. (App. p. 1) In evaluating an equal protection claim, the Court employs a two-tiered scheme of analysis. The court undertakes a heightened scrutiny "[w]hen a governmental act classifies persons in terms of their ability to exercise a fundamental right . . . or when a governmental classification distinguishes between persons in term of any right, upon some 'suspect' basis." Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 11, 269 S.E.2d 142, 149 (1980); see also Northampton County Drainage Dist. No. One v. Bailey, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990). This "strict scrutiny" requires that the government demonstrate that its action is necessary to promote a compelling governmental interest. Texfi, 301 N.C. at 11, 269 S.E.2d at 149. On the other hand, when a governmental act does not implicate a fundamental right or a suspect classification, the challenged action simply must "bear some rational relationship to a conceivable legitimate governmental interest." Id. Plaintiffs more than adequately pleaded that Defendants

violated fundamental rights to political participation by sanctioning and ratifying an exclusionary election scheme for seats in the General Assembly. (See R. p. 74, ¶ 98, p. 79-80, ¶ 103, p. 84, ¶ 107)

A. The Exclusionary Effect of North Carolina's Electoral System Involves State Action.

"State action" is required to trigger the protections of Article I, § 19 —— the section that contains the equal protection clause —— of the North Carolina Constitution. Weston v. Carolina Medicorp, Inc., 102 N.C. App. 370, 376, 402 S.E.2d 653, 657 (1991) (analyzing due process clause in Art. I, § 19). Although North Carolina courts have rarely expounded on the state action doctrine, their decisions have expounded sufficiently on the topic to make it clear that the Superior Court erred in dismissing Plaintiffs' equal protection claims for lack of state action. (See R. p. 109 ("The 'wealth primary' as it is called, is a state of affairs occasioned by the increasingly expensive price of conducting legislative primary and general election campaigns, a state of affairs not imposed on the process by any statute enacted by the General Assembly."))

State action is not limited to the promulgation of laws. See, e.g., Maines v. Greensboro, 300 N.C. 126, 132, 265 S.E.2d 155, 159 (1980); S.S. Kresge Co. v. Davis, 277 N.C. 654, 660,

178 S.E.2d 382, 385 (1971). *Private actors* may engage in certain conduct that constitutes impermissible state action. See, e.g., State v. Cole, 156 N.C. 618, 72 S.E. 221 (1911) (holding private actor may be punished at common law for impermissible state action); see also Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n, 121 S. Ct. 924 (2001); Terry v. Adams, 345 U.S. 461 (1953). To distinguish between state and private action by such private actors, however, the inquiry must be whether "a sufficiently close nexus exists between the State and the challenged action . . . so that the [challenged] action may be fairly treated as that of the State itself." Weston, 102 N.C. App. at 376-377, 402 S.E.2d at 657. The Weston Court listed four factual situations, any one of which satisfies the "sufficiently close nexus" requirement:

> The required nexus may be shown where the state creates the legal framework governing the conduct, . . . if it delegates authority to the private actor, . . . or sometimes if it knowingly accepts the benefits derived from unconstitutional behavior. . . . The nexus may also be shown where the private entity has exercised powers that are traditionally the exclusive prerogative of the State.

Id. at 377, 402 S.E.2d at 657 (internal citations and quotations omitted). To the extent the exclusionary campaign finance system results from the action of private actors, it nevertheless constitutes state action because its integration

within the electoral process satisfies the "sufficiently close nexus" requirement expounded in Weston.

1. Defendants have engaged in state action by delegating authority to private actors, by allowing private entities to exercise powers that are traditionally the exclusive prerogative of the State, and by knowingly accepting the benefits derived from unconstitutional behavior.

The United States Supreme Court decision in Terry v. Adams, 345 U.S. 461 (1953), reaffirmed in Morse v. Republican Party of Va., 517 U.S. 186, 213 (1996), provides direct authority for the conclusion that the exclusionary campaign finance system fits into three of the four different categories identified in Weston.[3] In Terry, the Court held that *private* citizens could not deprive a discrete minority of the right to participate in "any 'part of the machinery for choosing officials'" despite the fact that the right of said minority to cast ballots in primary

[3] Although federal precedent is not binding on North Carolina courts in interpreting the state Constitution, the state constitution must provide at least as much protection for individual rights as does its federal counterpart. See Evans v. Cowan, 122 N.C. App. 181, 184, 468 S.E.2d 575, 577 (1996) ("Even where two provisions are identical, we have the authority to construe our own constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby afforded no lesser rights than they are guaranteed by the parallel federal provision."); see also Lowe v. Tarble, 313 N.C. 460, 462, 329 S.E.2d 648, 650 (1985). Thus, precedent from the United States Supreme Court delineates a minimum floor of protection that North Carolina must afford its own citizens.

and general elections was in no way infringed. Terry, 345 U.S. at 481 (Clark, J., concurring).

In Terry, the Jaybird Democratic Association, which was a large, private political organization open only to white Texas voters, had, for years, engaged in a racially exclusionary pre-primary nominating process for candidates to run in the Democratic Party primary. Although other candidates were free to participate in the Democratic primary and the general election, those who won the "Jaybird primary" would invariably go on to win such elections. The Court determined that the Jaybirds' conduct was unconstitutional despite the complete absence of state involvement in the private discriminatory conduct and despite the fact that the right of minorities to cast ballots in the state-run primary and general elections was in no way infringed. Two of the opinions in Terry, representing the views of seven justices, found state action by rationales that correspond to three of the four North Carolina tests for the "sufficiently close nexus" requirement.

Announcing the judgment of the Court in an opinion joined by two other justices, Justice Black's opinion concluded that it was "immaterial that the state [did] not control" the private conduct because the conduct "ha[d] become an integral part . . . of the elective process that determine[d] who shall rule and govern." Id. at 469. The Court further concluded that state

action existed because the only *effective* electoral apparatus was unconstitutionally exclusionary and also because the state-regulated electoral processes – the Democratic primary and the general election – had become "no more than the *perfunctory ratifiers* of the choice that ha[d] already been made." Id. Thus, the Court's opinion found state action because the operation of an integral part of the electoral process —— traditionally the exclusive prerogative of the state —— was not open to minorities and because the state accepted the results of this exclusionary process.

Similarly, in an opinion joined by three other justices, Justice Clark found state action present in the Jaybird primaries because "any 'part of the machinery for choosing officials' becomes subject to the Constitution's restraints," even if that machinery takes "the form of [a] 'voluntary association' of unofficial character." Id. at 481. He concluded:

> [W]hen a state structures its electoral apparatus in a form which devolves upon a political organization the uncontested choice of public officials, that organization itself, in whatever disguise, takes on those attributes of government which draw the Constitutions' safeguards in play.

Id. at 484. Thus, the Jaybird primary constituted state action because "the decisive power in the county's recognized electoral process" was exercised by the Jaybirds, id., and because such power traditionally is the exclusive prerogative of the state.

Under the rationales of the opinions of either Justice Clark or Justice Black, Plaintiffs' allegations that the exclusionary campaign finance system is an integral "part of the machinery for choosing officials" are sufficient to demonstrate state action for the purpose of Art. I, § 19. Notably, a description of the effects of the Jaybird primary struck down in Terry virtually mirrors Plaintiffs' allegations of the effects of the campaign finance system in the case at bar:

> [G]enerally the persons endorsed in the Jaybird Primary are the only persons whose names appear on the ballot at the Democratic Primaries. And such persons are almost invariably elected or nominated at such Democratic Primaries and their names appear as Democratic Nominees on the official ballot in the General Election in November. The Democratic Nominees are almost invariably elected at such General Election.

Terry v. Adams, 90 F. Supp. 595, 598 (1950), rev'd, 193 F.2d 600 (5th Cir. 1952), rev'd, 345 U.S. 461 (1953). Similarly, the instant plaintiffs have alleged that candidates with access to substantial wealth are almost invariably the only persons whose names appear on election ballots and who win in primary and general elections. (R. p. 74, ¶ 98, pp. 79-80, ¶ 103, p. 84, ¶ 107) Assuming that these facts are true, as the court must, North Carolina law and Terry instruct that the consequent

impairment of non-wealthy citizens' rights to vote and to candidacy are indeed the product of "state action."[4]

Terry's approach to state action in the electoral system was adopted by courts of North Carolina decades before Terry was decided. Repeatedly decrying the "evils" of candidate selection systems that gave certain citizens disproportionate influence, the North Carolina Supreme Court upheld against constitutional attack the primary system as a necessary "cure" and "relief" from candidate selection systems. State v. Cole, 156 N.C. 618, 619, 72 S.E. 221, 222 (1911). Notably, the Court recognized that "the primary system and its regulation by law has become an *integral part* of our political system in North Carolina,"

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[4] Certain federal decisions have misread Terry. See Georgia State Conf. of NAACP Branches v. Cox, 183 F.3d 1259 (11th Cir. 1999); NAACP v. Jones, 131 F.3d 1317 (9th Cir. 1997); Albanese v. FEC, 78 F.3d 66 (2d Cir. 1996). These decisions dismissed the plaintiffs' Fourteenth Amendment challenges because the plaintiffs were not denied the right to cast ballots. In Terry, however, no African Americans were denied the right to cast ballots in any official state primary or general election; rather, they were excluded from participation in a nominating process administered by a private organization.

Further, the decisions in NAACP v. Jones and Georgia State Conf. of NAACP Branches v. Cox incorrectly stated that Terry struck down the Jaybird primary because it was the *joint* creation of the officers of the state and the private persons who ran the Jaybird primaries. In support of this misreading of Terry, the courts cited the solo concurrence of Justice Frankfurter. The other eight justices and the lower Court of Appeals that heard the case did not agree with Justice Frankfurter's assumption that there was involvement by the state or any of its officers in the operation of the Jaybird primary. See Terry, 345 U.S. at 469, 481-82, 485-90; Adams v. Terry, 193 F.2d 600, 601, 604-06 (5th Cir. 1952).

foreshadowing the Supreme Court's approach to elections in Terry. Id. at 622, 72 S.E. at 223 (emphasis added). Noting that the "primary election was a public election, and *any conduct* which interferes with the freedom or purity of the election is punishable at common law," the Court rejected the claim that the offending conduct could not be punished because the defendant had not been charged as "a state or county officer." Id. at 623, 72 S.E. at 223 (emphasis added).

When a private actor performs a non-delegable duty for the state, that private actor is an agent of the state as a matter of law. See Medley v. North Carolina Dep't of Corr., 330 N.C. 837, 839, 412 S.E.2d 654, 656 (1992). "A nondelegable duty may arise from circumstances recognized at common law and statute, and in situations where the Law views a [state's] duty as so important and so peremptory that it will be treated as nondelegable." Id. at 841, 412 S.E.2d at 657. In Medley, for example, a prison inmate brought a medical negligence claim against the Department of Corrections, based on the alleged negligence of a physician who treated the inmate. The Court rejected the Department of Correction's contention that it could not be held liable, concluding "that regardless of whether [the physician] was an employee or independent contractor, he was as a matter of law an agent of the state," id. at 839, 412 S.E.2d at 656, because common law and statutory duties as well as state

and federal prohibitions against cruel and unusual punishment show that the state's duty to provide medical care to prisoners is so important that it cannot be delegated. According to the Court, a duty is generally nondelegable when "the responsibility is so important to the community that the [state] should not be permitted to transfer it to another." Id. at 841, 412 S.E.2d at 657.

Justice Clark implicitly applied this principle within the election law context in his opinion in Terry. By describing the Jaybirds as "the decisive power in the county's recognized electoral process," Terry, 345 U.S. at 484, Justice Clark identified the Jaybirds as the private actors who performed the state's duty. By opining that the devolution of a state's electoral apparatus upon a private entity imbues that entity's actions with the attributes of government, Justice Clark recognized that the integral aspects of elections are so important that they cannot be delegated.

Plaintiffs have alleged that Defendants have impermissibly delegated an integral aspect of elections for seats in the General Assembly to private actors. Specifically, Plaintiffs allege that Defendants have delegated to private actors the ability to establish qualifications for public office and voting. North Carolina's electoral process, including the activities of candidates and their supporters, *exclusively*

serves a unique public function, namely the just constitution of representative self-government. See Flagg Bros. v. Brooks, 436 U.S. 149, 158 (1978). North Carolina law supports the proposition that the electoral apparatus in North Carolina is no more delegable than it was in Terry, or than the provision of medical care was in Medley. The state Constitution explicitly provides for the conduct of elections, see N.C. Const. Art. II, § 8 (App. p. 2); Art. III, § 2 (App. p. 2), defendant State has enacted hundreds of laws governing the election process, see N.C. Gen. Stat. §§ 163-1 et seq., and defendant Board of Elections has the responsibility for "general supervision of primaries and elections," N.C. Gen. Stat. 163-22. (App. pp. 3-7) Candidates with access to substantial wealth, supported by voters who have access to wealth, are almost invariably the only persons whose names appear on election ballots and who win in primary and general elections. (R. p. 63, ¶ 55, pp. 65-66, ¶¶ 60-64, p. 67, ¶ 71, p. 74, ¶ 98, p. 79-80, ¶ 103, p. 84, ¶ 107, p. 92, ¶ 122) Although such voters and candidates are private actors, they have excluded those without access to wealth from the electoral process. Inasmuch as Defendants have made a *de facto* delegation of a decisive aspect of elections for seats in the General Assembly to those actors, Plaintiffs have alleged with sufficient specificity that Defendants may be held liable for the exclusionary campaign finance system.

The state also may be held liable for the wrongs that result from the ratification of impermissible conduct by seemingly private actors. Cf. Denning-Boyles v. WCES, Inc., 123 N.C. App. 409, 473 S.E.2d 38 (1996). "In order to show that the wrongful act of an [agent] has been ratified by his [principal], it must be shown that the [principal] has knowledge of all material facts and circumstances relative to the wrongful act, and that the [principal] by words or conduct, shows an intention to ratify the act." Mercier v. Daniels, 139 N.C. App. 588, 593, 533 S.E.2d 877, 881 (2000). Ratification can be shown by any course of conduct that tends to show the principal's intention to ratify the wrongful acts, including the "failure to act after being apprized of the material facts and circumstances to the wrongful conduct." Watson v. Dixon, 130 N.C. App. 47, 53-54, 502 S.E.2d 15, 20 (1998). Justice Black's opinion implicitly applied this agency principle when it referred to the Democratic primary and the general elections as the "perfunctory ratifiers" of the results of the Jaybird primary. See Terry, 345 U.S. at 469.

Plaintiffs' allegations satisfy this "ratification test." Candidates with access to substantial wealth are almost invariably the only persons whose names appear on election ballots and who win in general elections. (R. p. 74, ¶ 98, p. 79-80, ¶ 103, p. 84, ¶ 107) Defendants ratify the impermissible

exclusion of candidates and voters without access to wealth both when they certify candidates for office and when they certify the results of an election. See N.C. Gen. Stat. §§ 163-108(a) (App. p. 7), 163-182.15(b) (App. p. 7), 163-182.17(d)(9) (App. p. 8).

2. In the alternative, the wealth primary amounts to state action because Defendants created the legal framework that governs and permits this exclusionary campaign finance system.

Under Justice Frankfurter's concurrence in Terry, state action requires that "somewhere, somehow, to some extent, there must be an infusion of conduct by officials, panoplied with State power." See Terry, 345 U.S. at 463 (Frankfurter, J., concurring). State action is not limited to the promulgation of laws, but rather extends to include the administration and execution of laws by the state. S.S. Kresge Co. v. Davis, 277 N.C. at 660, 178 S.E.2d at 385; see also Maines v. Greensboro, 300 N.C. at 132, 265 S.E.2d at 155 (concluding that state's administration of law may form basis of equal protection claim). Indeed, if the state simply creates the legal framework that governs and permits the challenged action of a private actor, the final of the four ways to demonstrate the "sufficiently close nexus" requirement is satisfied. Weston, 102 N.C. App. at 377, 402 S.E.2d at 657.

Plaintiffs have alleged that Defendants created the legal framework that governs and permits the exclusionary campaign finance system. (R. pp. 68-70, ¶¶ 79-88) Collectively, Defendants control, create, devise, administer, regulate, and/or supervise virtually every aspect of North Carolina's electoral system.[5] In fact, defendant State has enacted over 350 different laws governing the electoral process, see N.C. Gen. Stat. §§ 163-1 et seq., and defendant Board of Elections has the responsibility for the "general supervision" of most of them, see N.C. Gen. Stat. § 163-22. (App. pp. 3-7) The state's laws provide public financing for certain select political parties and statewide offices, but none to fund campaigns for the General Assembly. (See R. 68, ¶ 79, p. 69, ¶¶ 81-82) Defendants regulate private donations to campaigns in such a way as to embed the funding advantage of incumbents and other

[5] The State's election laws govern all aspects of elections including *inter alia* candidacy, see N.C. Gen. Stat. § 163-104 to § 163-163-123, campaign finance and the regulation of campaigns, see N.C. Gen. Stat. § 163-271 to § 163-278.57, voting, see N.C. Gen. Stat. § 163-54 to 163-90.3; § 163-226 to § 163-257, the conduct of primaries and elections, see N.C. Gen. Stat. § 163-1 to § 163-13; § 163-128 to § 163-164, election officers, see N.C. Gen. Stat. § 163-19 to § 163-48, and the counting of ballots and certification of election results, see N.C. Gen. Stat. § 163-168 to § 163-195. Among the statutes regarding election officials is an article that creates the state Board of Elections, establishes procedures for its operation, and enumerates the powers and duties of the Board of Elections. See N.C. Gen. Stat. § 163-19 to § 163-28 (Article 3). The duties of the Board of Elections are set forth in N.C. Gen. Stat. § 163-22.

successful fundraisers, despite the fact that the funds may not reflect contemporaneous popular support. (R. pp. 69-70, ¶¶ 84-88, p. 71, ¶ 94) Moreover, North Carolina does not permit its citizens to provide, by ballot initiative, for additional public financing of General Assembly campaigns. (R. p. 68, ¶ 80) Thus, Defendants' patchwork of enactments and their administration of the resultant process create the legal framework that governs, permits, and even encourages the conduct and outcome of the exclusionary campaign finance system.

Assuming Plaintiffs allegations to be true, as the court must in reviewing a 12(b)(6) dismissal, see Leandro v. State, 122 N.C. App. 1, 6, 468 S.E.2d 543, 547 (1996), rev'd in part on other grounds, 346 N.C. 336, 488 S.E.2d 249 (1997), it is clear that Plaintiffs have pleaded that Defendants created the legal framework that governs and permits the exclusionary campaign finance system, and that Plaintiffs therefore have pleaded state action.

B. The Plaintiffs Have Adequately Pleaded Their Claim That Defendants' Exclusionary Electoral System Impermissibly Infringes the Fundamental Rights of the Plaintiffs.

Defendants' conduct in administering a wealth-based voting and election scheme clearly implicates fundamental rights of Plaintiffs. The North Carolina Supreme Court has identified the right to vote as being "at the foundation of a constitutional

republic."[6] Texfi Indus., 301 N.C. at 13, 269 S.E.2d at 150. The *equal* right to vote is a fundamental right, State ex rel. Martin, 325 N.C. at 455, 385 S.E.2d at 481; see also Northampton County Drainage Dist. No. One, 326 N.C. at 747, 392 S.E.2d at 356 ("The right to vote on equal terms is a fundamental right."), and includes the right to equal participation in all aspects of the electoral process, Texfi Industries, 301 N.C. at 13, 269 S.E.2d at 150; see also White v. Pate, 308 N.C. 759, 768, 304 S.E.2d 199, 205 (1983) ("[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."). The government's infringement of the equal right to participate in the electoral process is therefore subject to strict scrutiny analysis. See, e.g., Lloyd v. Babb, 296 N.C. 416, 440, 251 S.E.2d 843, 859 (1979) (concluding that conduct that has "the effect of denying certain classes the right to vote must have a compelling justification"); Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915, 920 (E.D.N.C. 1970)("[W]here fundamental rights and liberties are asserted under the equal

[6] In addition, Defendants' conduct implicates the constitutional guarantees of "free elections," "sovereignty of the people," "rights of conscience," "rights of assembly," and that "property qualifications shall not affect the right to vote and hold office" as well as the prohibition of "exclusive or separate emoluments or privileges . . . but in consideration of public services." N.C. Const. Art. I, §§ 2, 10, 11, 12, 13, 32. (App. pp. 1-2)

protection clause, such as the right to vote, classifications which might invade or restrain them must be closely scrutinized and carefully confined.").

Wealth requirements cannot limit the "basic right to participate in political processes as voters and candidates." M.L.B. v. S.L.J., 519 U.S. 102, 124 (1996).[7] In Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966), the U.S. Supreme Court explained that voting cannot hinge on wealth because voting is a "fundamental right . . . preservative of all rights." Id. at 667; see also M.L.B., 519 U.S. at 124 n.14 (characterizing Harper v. Virginia Bd. Of Elections). To that end, the Court invalidated an annual $1.50 poll tax imposed by the state of Virginia, which disenfranchised otherwise qualified voters who did not or could not pay the poll tax. The Court's rationale was not limited to those wealth qualifications that *prevent* a voter from casting his or her vote. Rather, the Court's rationale incorporated *all* wealth qualifications that "invade or restrain" the fundamental right to an equal vote. Harper, 383 U.S. at 670. The Court stated:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or

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[7] As noted earlier, federal precedent, while not binding, delineates a minimum floor of protection that a state must afford its own citizens. See supra note 3.

> payment of any fee an electoral standard. . . . [W]ealth or fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned.

Id. at 666-70; see also Bullock v. Carter, 405 U.S. 134, 142 (1972) (stating Harper "Court concluded that the placing of even a minimal price on the exercise of the right to vote constituted an invidious discrimination.").

Likewise, the U.S. Supreme Court held that a Texas requirement that a candidate pay a filing fee as a condition to having his or her name placed on a primary ballot was a violation of the equal protection rights of candidates and the voters who supported them. Bullock v. Carter, 405 U.S. 134 (1972). The Court applied strict scrutiny to the filing fee statute because "the rights of voters and the rights of candidates do not lend themselves to neat separation" and the "patently exclusionary" character of the filing fee negatively affected voters. Id. at 142-43. According to the Court:

> Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support. The effect of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay

> the large costs required by the Texas system. . . . [W]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status.

Id. at 143-44; see also Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975) (applying Bullock to strike down N.C. Gen. Stat. § 163-107, North Carolina's filing fee requirement).

In terms of its exclusionary character, the campaign finance system is no different than the filing fee requirements that have been deemed equal protection violations. The regression analyses and historical data confirm that electoral spending is indispensable if a candidate wishes to mount a meaningful campaign. (R. pp. 65-66, ¶¶ 60-63) Like the candidates who could not pay the filing fee, the candidate-plaintiffs here lack personal wealth and access to it and are therefore unable to afford the requisite sum to mount a meaningful campaign. (R. pp. 72-73, ¶¶ 96-97, pp. 75-79, ¶¶ 99-102, pp. 80-82, ¶ 104; see also Statement of Facts, supra pp. 5-6. Moreover, like the voters in the filing fee cases, the voter-plaintiffs here are substantially limited in their choice of candidates, because their favorite candidates are unable to pay the large costs required by North Carolina's wealth-based electoral scheme and these voters are unable to provide the candidates with the wealth necessary to allow the candidates to

compete. (R. pp. 72-90, ¶¶ 96-114. In sum, the campaign finance system imposes an empirically verifiable and well-understood barrier to Plaintiffs' rights to vote and hold office. These wealth-based requirements infringe upon Plaintiffs' fundamental rights to equal participation in the state's political processes.

Because Plaintiffs have adequately pleaded that Defendants' sanction and ratification of the exclusionary electoral system infringes Plaintiffs' fundamental rights, the Superior Court erred by dismissing the Amended Complaint.

CONCLUSION

For all the foregoing reasons, the Court of Appeals should reverse the trial court's order granting Defendants' motion to dismiss and should remand the case for further proceedings consistent with such action.

Respectfully submitted, this 25th day of January, 2002.

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This the 25th day of January, 2002.

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