CASE NO. 20-2063

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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PATSY J. WISE, *et al.*,
Plaintiffs – Appellees,

—v.—

DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina Board of Elections, *et al.*,
Defendants – Appellants.

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On Appeal from the United States District Court for the Middle District of North Carolina

Case No. 1:20-cv-00912-WO-JLW

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EMERGENCY MOTION FOR INTERVENTION BY NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS, BARKER FOWLER, BECKY JOHNSON, JADE JUREK, ROSALYN KOCIEMBA, TOM KOCIEMBA, SANDRA MALONE, AND CAREN RABINOWITZ

MARC E. ELIAS
UZOMA N. NKWONTA
LALITHA D. MADDURI
JOHN M. GEISE
JYOTI JASRASARIA
ARIEL B. GLICKMAN
Perkins Coie LLP
700 13th Street, NW, Suite 800
Washington, DC 20005-3960
Telephone: (202) 654-6200

BURTON CRAIGE
NARENDRA K. GHOSH
PAUL E. SMITH
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
Telephone: (919) 942-5200

MOLLY MITCHELL
Perkins Coie LLP
1111 West Jefferson Street, Suite 500
Boise, Idaho 83702
Telephone: (208) 343-3434

Attorneys for Proposed Intervenor-Appellants North Carolina Alliance for Retired Americans, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, and Caren Rabinowitz

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, the North Carolina Alliance for Retired Americans certifies that it is not publicly traded and have no parent corporations and that no publicly held corporation owns more than 10% of their stock. No other publicly held corporation has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement.

LOCAL RULE 27(a) STATEMENT

Pursuant to Local Rule 27(a), Counsel for Proposed Intervenors informed the parties of their intent to file this motion. Counsel for Appellants consents to the granting of this motion. Counsel for Appellees did not indicate their consent or opposition prior to filing.

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendants North Carolina Alliance for Retired Americans, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, and Caren Rabinowitz (collectively, "the "Alliance Parties") move to intervene as defendants.

This case presents the exceptional circumstance in which intervention in an appeal is justified. The Alliance Parties have indisputable interests at stake: the federal court order that is the subject of this appeal impermissibly stayed a North Carolina State Court judgment approving a consent decree in a case in which the Alliance Parties were the plaintiffs. That Consent Judgment ordered relief from the North Carolina State Board of Elections ("State Board") to safeguard the Alliance Parties' rights, including rights guaranteed to them by the North Carolina Constitution, in the upcoming general election.

Many of the Appellees in this federal case were granted intervention in the Alliance Parties' State Court action, but rather than litigate these issues there (as was proper), they brought this collateral attack in federal court. They did so, moreover, before the State Court had even held its hearing to consider objections to the proposed Consent Judgment. The federal court stayed its hand only long enough for that hearing to take place. Within hours of the State Court's approval of the Consent Judgment, the federal district court held a hearing on the Appellees' motion and the

following day issued its Temporary Restraining Order suspending the State Court's judgment (the "TRO"). The Alliance Parties had previously moved to intervene in that federal case, but the district court did not act on that motion before granting the TRO, and that motion remains pending even following the transfer of the case. The result is that the Alliance Parties have been barred from addressing the merits in the district court action below which has suspended the enforcement of their State Court Consent Judgment through the TRO, and—unless intervention is granted now—are also severely limited in their ability to appeal the federal district court's erroneous ruling (despite its immediate and irreparable harm to the Alliance Parties' rights).

This is an extraordinary set of facts that would seem to imply that the State Court must have clearly and grievously overstepped its bounds as to justify such swift and imperious federal court intervention. But, in fact, the opposite is true. The State Court's judgment was well considered and well founded. It followed considerable briefing supported by extensive evidence that would have supported the State Court's entry of equitable relief that would have gone further than that the parties agreed to in the Consent Judgment. The State Court held a six-hour hearing to consider the fairness of a proposed Consent Judgment, in which it considered and rejected the same arguments that Appellees then made to the federal court that would shortly thereafter grant them their TRO. The State Court explained why Appellees' equal protection and vote dilution arguments are baseless in its findings of fact and

conclusions of law regarding the Consent Judgment, which it considered in substantially more depth than the federal district court. As noted above, many of those same Appellees are parties in the State Court action and have a right to appeal the State Court's judgment in the North Carolina state courts. *That* is the correct forum for litigating these issues, not federal court.

But because of Appellees' collateral attack, this case is now before this Federal Circuit, and the Alliance Parties should be granted leave to intervene to protect themselves against the irreparable injury that will result if the impermissible federal TRO remains in place. As noted above, the Alliance Parties sought intervention in the federal district court below, but the district court has not yet acted on that motion. The lower court usurped its authority in issuing a TRO to enjoin the enforcement of the State Court judgment, and its failure to grant intervention to the Alliance Parties prior to doing so compounds their injury because it strips them of any forum to appeal that erroneous decision absent a grant of intervention here. These unique circumstances provide more than appropriate justification for this Court to permit the Alliance Parties intervention on appeal.

The Alliance Parties also meet the requirements for intervention as a matter of right under Rule 24(a)(2) and permissive intervention pursuant to Rule 24(b). In

accordance with Rule 24(c), an emergency motion to stay the lower court's temporary restraining order is attached hereto as Exhibit 1.[1]

II. BACKGROUND

On August 10, 2020, the Alliance Parties filed a complaint, which they amended on August 18, in the General Court of Justice, Superior Court Division, Wake County, challenging certain election laws and procedures that impose undue burdens on in-person and absentee voting for the November election, in light of the COVID-19 pandemic, under the Free Elections Clause, art. I, § 10, and the Equal Protection Clause, art. I, § 19, of the North Carolina Constitution. *See* IAA343-47. The State Court Lawsuit names the State Board as defendants. The President Pro Tempore of the North Carolina Senate and the Speaker of the North Carolina House of Representatives successfully intervened in that lawsuit, as did the Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Donald J. Trump for President, Inc, and the North Carolina Republican Party (collectively, the "Republican Committees").

The Alliance Parties moved for a preliminary injunction on August 18, seeking an order that would protect voting rights of them, their members, and

[1] Pursuant to Local Rule 8, Alliance Parties note that they have not first moved for a stay in the district court because the district court has not acted on their motion for intervention.

countless other North Carolinians in the present pandemic. Specifically, the Alliance Parties sought to enjoin the enforcement of:

- the absentee ballot receipt deadline set forth in N.C.G.S. § 163-231(b)(1), (2), as applied to ballots submitted through the United States Postal Service (USPS) for the November general election, and ordering the State Board to count as otherwise eligible ballots postmarked by Election Day and received by county boards up to nine days afterward;

- the witness requirements for absentee ballots set forth in N.C.G.S. § 163-231(a), as applied to voters residing in single person or single-adult households;

- N.C.G.S. § 163-231(b)(1) to the extent that it requires voters to pay for postage to mail their ballots, and ordering the State Board to provide postage for ballots submitted by mail in the November election;

- N.C.G.S. §§ 162-226.3(a)(5), 163-230.2(c) and (e), 163-231(b)(1), and any other laws that prohibit individuals or organizations from assisting voters to submit absentee ballots or to fill out and submit absentee ballot request forms; and

- N.C.G.S. § 163-227.2(b) and any other laws that prevent county election officials from providing additional one-stop ("early") voting days and ordering the State Board to allow county election officials to expand early voting by up to an additional 21 days for the November election.

In support of their motion, the Alliance Parties filed detailed briefing supported by over 500 pages of evidence in the form of expert reports, voter and other witness affidavits, and official documents.

On September 21, the State Court announced that a hearing on the preliminary injunction would occur on October 2. Before the preliminary injunction hearing, the Alliance Parties and the State Board reached an agreement to resolve the Alliance

Parties' claims and filed a Joint Motion for Entry of a Consent Judgment, along with the proposed Consent Judgment and three exhibits thereto (Numbered Memos 2020-19, 2020-22, and 2020-23). The express objective of the Consent Judgment was:

> to avoid any continued uncertainty and distraction from the uniform administration of the 2020 elections, protect the limited resources of the Consent Parties, ensure that North Carolina voters can safely and constitutionally exercise the franchise in the 2020 elections, and ensure that election officials have sufficient time to implement any changes for the 2020 elections and educate voters about these changes.

IAA041. On September 23, the Court announced that the preliminary injunction hearing on October 2 would be converted into a hearing to evaluate the Consent Judgement.

Pursuant to the Consent Judgment, the State Board agreed to: (1) count ballots postmarked by Election Day, if they are otherwise eligible and received up to nine days after Election Day (the same deadline imposed for military and overseas voters under North Carolina law), *see* N.C.G.S. §§ 163-258.10, 163-258.12(a), 163-182.5(b); (2) maintain a cure process for certain deficiencies with absentee ballots, including missing voter, witness, or assistant signatures and addresses; (3) instruct county boards to designate separate, *manned* absentee ballot drop-off stations at all one-stop early voting locations and county board offices, at which voters and authorized persons may return absentee ballots in person; and (4) take reasonable steps to inform the public of these changes. IAA041-043. The Alliance Parties

agreed to withdraw their preliminary injunction motion, and to dismiss all of their remaining claims upon entry of the Consent Judgment. *Id.*

Four days after the Alliance Parties and the State Board filed the Joint Motion for Entry of a Consent Judgment, but *before* the state court's scheduled October 2nd hearing on that motion, Appellees filed their complaint in federal district court. The Alliance Parties sought to intervene shortly thereafter. The State Court then proceeded with its hearing to consider the proposed Consent Judgment on October 2nd. The State Court asked extensive questions of all parties concerning the hundreds of pages of briefing and supporting evidence in the record before it, carefully evaluating the proposed Consent Judgment's fairness. The State Court heard not just the original parties to the action, but also from counsel for the Appellees in this case, who extensively briefed all of the same arguments they raised in the district court in previous briefing before the State Court and raised them during that hearing. At the end of that *six-hour* hearing, the State Court entered its order finding that (1) the State Board had legal authority to settle the case with the Alliance Parties, and the North Carolina courts have a strong preference for settlement; (2) the terms of the Consent Judgment are "fair, adequate, and reasonable" and not illegal or a product of collusion; and (3) the settlement is consistent with state and federal constitutional requirements, and in the public interest. IAA453. The State Court's findings of fact and conclusions of law explicitly held that Alliance Parties

had a likelihood of success on the merits, and rejected the very arguments Appellees seek to raise here. *See* IAA453, IAA456.

Less than two hours after the State Court's hearing on the Consent Judgment, the district court in this case held a short hearing on Appellees' TRO, did not consider the evidence the State Court spent six hours reviewing, and did not permit the Alliance Parties the opportunity to be heard as a party. *See* IAA482. The Court also did not rule on the Alliance Parties' pending motion to intervene. Saturday morning, the district court granted Appellees' TRO despite any authority to do so and in contravention of basic principles of federalism. *See* IAA483-502. It did not rule on the Alliance Parties' pending motion to intervene, and instead transferred all further proceedings to the Middle District of North Carolina. On the afternoon of October 5, the district court in the Middle District of North Carolina held a short scheduling conference in which it kept the TRO in place and did not rule on the pending motions to intervene. This emergency appeal from the State Board followed shortly after.

III. ARGUMENT

A. Legal Standard

The Supreme Court has held that parties may intervene in appellate proceedings. *See Automobile Workers v. Scofield*, 382 U.S. 205, 211 (1965). This Court has indicated that such intervention is appropriate in exceptional

circumstances. *See Spring Const. Co. v. Harris*, 614 F.2d 374, 377 n.1 (4th Cir. 1980). There is no generally applicable Rule of Federal Appellate Procedure governing motions to intervene. As a result, courts that have considered such motions have generally looked to the Federal Rules of Civil Procedure for guidance. Under those Rules, 24(a)(2) provides that "the court must permit anyone to intervene" as of right who:

> claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). In the alternative, on timely motion, permissive intervention may be granted to anyone who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In applying these rules, this Court has endorsed a policy of "liberal intervention," which "is desirable to dispose of as much of a controversy 'involving as many apparently concerned persons as is compatible with efficiency and due process.'" *Feller v.*

Brock, 802 F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)).

B. The unique circumstances here justify intervention at the appellate level.

While intervention at the appellate level is admittedly not a frequent occurrence, this action provides a situation in which it is justified for at least two reasons.

First, multiple sister Circuits have held that permitting intervention on appeal is appropriate where the district court erred in denying or never ruling on intervention under Rule 24. *See Smartt v. Coca Cola Bottling Corp.*, 337 F.2d 950, 951 (6th Cir. 1964); *Park & Tilford, Inc. v. Schulte*, 160 F.2d 984, 988-89 (2d Cir. 1947). By granting the TRO while failing to rule on the Alliance Parties' motion for intervention, the district court effectuated the same result. The Alliance Parties are parties to a jointly agreed state court Consent Judgment with the Appellants in this action. The federal district court's disregard of federalism principles in granting the TRO below constrains their ability to enforce the terms of that Consent Judgment, while the district court's failure to grant their intervention motion denies them the right to have a higher court consider (and reverse) the district court's erroneous ruling. In the meantime, the Alliance Parties are suffering irreparable harm. In such a situation intervention on appeal is justified, as the Alliance Parties are left with

little recourse if it is not granted and the district court erred by not granting it prior to entry of the TRO.

This Court has used the phrase "exceptional circumstance" to describe when intervention on appeal should lie, and a federal court violating bedrock principles of federalism to interject confusion into an election while denying the Alliance Parties a forum for relief is just such a situation. To reiterate, the district court inserted itself into a State Court proceeding that had been pending for nearly two months a little over a week ago, reviewed none of the evidence before the State Court, held a cursory hearing two hours after a six-hour hearing at which the State Court granted a Consent Judgment, only briefly allowed the Alliance Parties (who are parties to that Consent Judgment) to state their interest at that cursory hearing, and then issued a TRO the next morning without addressing the Alliance Parties' pending motion to intervene. In so doing, it threw North Carolina's election system into disarray, the avoidance of which was one of the principle reasons why the Alliance Parties and the State Board entered into a Consent Judgment in the first place. None of these are common occurrences, and the variety of glaring mistakes made by the district court confronts the Alliance Parties with the prospect of a TRO from which they cannot appeal that has the potential to restrain enforcement of their Consent Judgment and impose irreparable harm on their fundamental rights over the next several weeks.

This would have the practical result of voiding much of the relief the Consent Judgment was meant to provide. Such a situation is an "exceptional circumstance."

C. The Alliance Parties satisfy Rule 24(a)(2)'s requirements for intervention as of right.

The Alliance Parties also easily satisfy the requirements to intervene in this action as of right as set forth under Federal Rule of Civil Procedure 24(a)(2). Specifically, (1) the motion is timely; (2) the Alliance Parties have substantial interests in the subject matter of the action; (3) denial of their motion would impair or impede their ability to protect their interests; and (4) their interests are not adequately represented by the existing parties to the litigation. Fed. R. Civ. P. 24(a)(2); *Teague v. Bakker*, 931 F.2d 259, 260–61 (4th Cir. 1991).

1. The motion to intervene is timely.

Filed shortly after the appeal in this action, the Alliance Parties' Motion is unquestionably timely. For this threshold requirement, courts must consider "first, how far the underlying suit has progressed; second, the prejudice any resulting delay might cause the other parties; and third, why the movant was tardy in filing its motion." *Alt v. U.S. EPA*, 758 F.3d 588, 591 (4th Cir. 2014). Here, the Alliance Parties sought to intervene below at the earliest possible stage of the lawsuit, when no responsive pleadings had been filed by the Appellants in response to the Complaint; no further action had been taken on the merits of Appellees' claims; and there was no scheduling order. That motion to intervene has not been acted upon by

the district court, but the issuance of the TRO threatens their rights both in the State Court Litigation that gave rise to the federal collateral attack, as well as the fundamental rights that the Alliance Parties sought to protect in bringing the State Court case to begin with. Absent intervention in this appeal, the Alliance Parties will have no ability to protect those rights from the irreparable harm that the TRO will cause them. Their motion to intervene in this appeal comes shortly after the appeal was filed. Because there has been no delay at all, the Alliance Parties' motion to intervene is clearly timely.

2. The Alliance Parties have significant, legally cognizable interests in the substance of this litigation, the disposition of which may impair their ability to protect these interests.

The Alliance Parties also meet the second and third factors for intervention as of right because the disposition of Appellees' collateral attack against the Consent Judgment in the pending State Court action directly threaten the Alliance Parties' interests in the State Action as well as the constitutional rights that the Consent Judgment was entered to protect. *Virginia v. Westinghouse Elec. Corp*, 542 F.2d 214, 216 (4th Cir. 1976); *see* Fed. R. Civ. P. 24(a)(2); *Teague*, 931 F.2d at 260–61 ("This court has interpreted Rule 24(a)(2) to entitle an applicant to intervention of right if the applicant can demonstrate . . . that the protection of this interest would be impaired because of the action."); *see also id*. at 261 (explaining a party has "a significantly protectable interest" in the outcome of the lawsuit when the applicant

"stand[s] to gain or lose" from the "legal operation" of the judgment of that action) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). This Court has specifically found that litigants that obtained a judgment in a prior action are entitled to intervene as of right in a later action that threatens the relief awarded under the prior judgment. *See id.* (finding intervenors' "ability to protect their interest would be impaired or impeded" by a judgment that would put the intervenors' ability to satisfy a prior judgment at risk).

Because Appellees' lawsuit effectively seeks to—and the TRO as entered, effectively does—block the Consent Judgment that the State Court granted in an ongoing action in which the Alliance Parties, the State Board, and the Republican Committees are parties, the TRO indisputably impedes the ability of the Alliance Parties to enforce their constitutional rights through the Consent Judgment. *See Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081–82 (8th Cir. 1999) (finding interest requirement "easily satisfie[d]" where "[t]he disposition of the lawsuit . . . may require resolution of legal and factual issues bearing on the validity of [] agreements" in which proposed intervenor had interests).

Beyond the Alliance Parties' interests in enforcing the proposed Consent Judgment, they also risk infringement of their constitutional right to vote as a result of the TRO. As the Alliance Parties argued in the state court action, the absentee ballot receipt deadline (which was addressed as part of the relief provided by the

Consent Judgment) imposes a severe burden on voters in the November election who will encounter extended mail delivery timelines which are incompatible with the State's deadlines for the receipt of absentee ballots postmarked by Election Day, all during a global pandemic that imposes health risks on those who seek to vote in person.

The Alliance Parties—which include both individual voters who risk disenfranchisement and the North Carolina Alliance for Retired Americans, an organization dedicated to promoting the franchise and ensuring the full constitutional rights of its members—have a cognizable interest in protecting the constitutional rights that form the basis of their State Court Lawsuit and the rights of their members who might lose the ability to have their votes counted. *See, e.g.*, *Ohio Org. Collaborative v. Husted*, 189 F. Supp. 3d 708, 726 (S.D. Ohio 2016) (finding organization "established an injury in fact" where "the challenged provisions will make it more difficult for its members and constituents to vote"), *rev'd on other grounds sub nom. Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Cir. 2016). Moreover, the disruptive and disenfranchising effects of Appellees' lawsuit and the TRO specifically require the Alliance to divert resources to protect the rights of their members. Intervenors therefore satisfy the second and third requirements of Rule 24(a)(2).

3. The Alliance Parties' interests are not adequately represented by the Appellants.

The last factor that courts look to in determining whether a movant is entitled to intervene as of right also is satisfied here. The Appellants in this case consist of the same parties who are adverse to the Alliance Parties in the State Court Lawsuit. Under these circumstances, the Alliance Parties clearly satisfy the "minimal" burden of "demonstrating lack of adequate representation." *Teague*, 931 at 262. That the State Board is adverse to the Alliance Parties in ongoing, related litigation is sufficient by itself to demonstrate a lack of adequate representation. *See*, *e.g.*, *Maxum Indem. Co. v. Biddle Law Firm, PA*, 329 F.R.D. 550, 556 (D.S.C. 2019) (finding intervenors interests were not adequately represented where parties seeking intervention were adverse to defendants in a related state-court action brought by the intervenors); *Hartford Acc. & Indem. Co. v. Crider*, 58 F.R.D. 15, 18 (N.D. Ill. 1973) (same).

Although the Alliance Parties and the State Board were ultimately able to reach an agreement in state court, the Alliance Parties have specific interests implicated by the litigation which they cannot rely on the State Board to adequately protect. Not only were the Alliance Parties *forced to sue* the State Board to obtain any relief, the Consent Judgment was the product of negotiation and compromise, requiring the Alliance Parties to forego several of their claims. Accordingly, "there is no assurance that the state will continue to support all the positions taken" by the

Alliance Parties. To the contrary, "what the state perceives as being in its interest may diverge substantially from" the interests of the Alliance Parties. *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1001 (8th Cir. 1993).

As one court recently explained while granting intervention under similar circumstances,

> Although Defendants and the Proposed Intervenors fall on the same side of the dispute, Defendants' interests in the implementation of the [challenged law] differ from those of the Proposed Intervenors. While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election . . . and allocating their limited resources to inform voters about the election procedures. As a result, the parties' interests are neither "identical" nor "the same."

Issa v. Newsom, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (citation omitted).

Here, too, the State Board has an undeniable interest in defending both its plans for the November election and its inherent powers as a state agency. The Alliance Parties have different interests: ensuring that they and their members will have meaningful and safe opportunities to cast ballots and ensuring that their limited resources are not diverted. *See Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020) (concluding "Proposed Intervenors . . . have demonstrated entitlement to intervene as a matter of right" where they "may present arguments about the need to safeguard [the] right to vote that are distinct

from Defendants' arguments"). Because the Alliance Parties cannot rely on the State Board (or anyone in this litigation) to protect their distinct interests, they have satisfied the fourth requirement and are entitled to intervention as of right under Rule 24(a)(2). *See id.*; *Issa*, 2020 WL 3074351, at *4.

D. In the alternative, the Alliance Parties have satisfied Rule 24(b)'s requirements for permissive intervention.

"On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). In applying Rule 24(b)(1), federal district courts consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), as well as other factors, including "the nature and extent of the intervener's interest, the intervener's standing to raise relevant legal issues, the legal position the intervener seeks to advance, and its probable relation to the merits of the case." *L.S. ex rel. Ron S. v. Cansler*, No. 5:11-CV-354-FL, 2011 WL 6030075, at *2 (E.D.N.C. Dec. 5, 2011) (citing *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). They may also consider "whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly

contribute to full development of the underlying factual issues in the suit." *Id.* (citing *Spangler*, 552 F.2d at 1329).

For the reasons set forth above, the motion is timely, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties, and the Alliance Parties are not adequately represented by the existing appellants. The Alliance Parties will undoubtedly raise common questions of law and fact in defending this lawsuit and the Consent Judgment, including the district court's authority to enjoin the Consent Judgment. Beyond that, the interests of the Alliance Parties are constitutional in nature and extend to some of the most fundamental rights protected by the North Carolina Constitution: the right to free elections and to equal protection under the law. Their participation in this action will contribute to the full development of the factual and legal issues in this action and will aid the Court in the adjudication of this matter.

IV. CONCLUSION

For the reasons stated above, Alliance Parties respectfully request that the Court grant their motion to intervene in this appeal.

DATED: October 6, 2020

PERKINS COIE LLP

By: s/ Marc E. Elias

Marc E. Elias
MElias@perkinscoie.com
Uzoma N. Nkwonta
UNkwonta@perkinscoie.com
Lalitha D. Madduri
LMadduri@perkinscoie.com
John M. Geise
JGeise@perkinscoie.com
Jyoti Jasrasaria
JJasrasaria@perkinscoie.com
Ariel Glickman
AGlickman@perkinscoie.com

Perkins Coie LLP
700 13th St. N.W., Suite 800
Washington, D.C. 20005-3960
Phone: (202) 654-6200
Fax: (202) 654-6211

Molly Mitchell
MMitchell@perkinscoie.com

Perkins Coie LLP
1111 W. Jefferson St., Suite 500
Boise, ID 83702
Telephone: 208.343.3434
Facsimile: 208.343.3232

Burton Craige
BCraige@pathlaw.com
Narendra K. Ghosh
NGhosh@pathlaw.com
Paul E. Smith
PSmith@pathlaw.com

Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
Telephone: (919) 942-5200

Attorneys for Proposed Intervenor-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A), 32(a)(5), and 32(g)(1), I certify that this motion has 4,579 words and was prepared using Times New Roman, 14-point font.

s/ Marc E. Elias

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 6th day of October, 2020, I caused this *Emergency Motion for Intervention* to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to counsel of record.

I also hereby certify that on this 6th day of October, 2020, I caused this *Emergency Motion for Intervention* to be emailed to counsel for appellants and appellees, addressed as follows:

Alexander McC. Peters
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
Attorney for Defendants

R. Scott Tobin
TAYLOR ENGLISH DUMA LLP
4208 Six Forks Road. Suite 1000
Raleigh, NC. 27609
stobin@taylorenglish.com

Bobby R. Burchfield
KING & SPALDING LLP
1700 Pennsylvania Ave, N.W., Suite 200
Washington. D.C. 20006-4707
BBurchfield@KSLAW.com

This the 6th day of October, 2020.

s/ Marc E. Elias
Marc E. Elias