

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
2022 AUG 11
WAKE COUNTY, NC
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 22-CVS-10520

BY _____

IN RE APPEAL OF DECLARATORY
RULING FROM THE STATE BOARD
OF ELECTIONS

NORTH CAROLINA ALLIANCE OF RETIRED AMERICANS'
MOTION TO INTERVENE AS RESPONDENTS AND MEMORANDUM IN SUPPORT

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INTRODUCTION

The North Carolina legislature has enacted a robust set of laws regarding how voters may request, receive, and cast an absentee ballot, as well as how county election officials review such ballots. Those comprehensive rules include numerous *express* requirements for ensuring that those who vote by absentee ballot are who they say they are. For example, requesting an absentee ballot requires the voter to supply their date of birth and a form of identification, and casting an absentee ballot requires the voter to sign their return envelope in front of a notary or two qualified witnesses. Critically, however, North Carolina's absentee voting laws do *not* authorize or require election officials to compare a voter's signature on their absentee ballot request form or their return envelope to a signature on file. The North Carolina State Board of Elections ("the Board") has therefore correctly recognized for years that such signature matching is not authorized by law and would not comport with North Carolina's absentee balloting rules.

Undeterred by the total lack of statutory authority for signature matching, the North Carolina Republican Party ("NCGOP") and several of its members (collectively, "Petitioners"), filed an administrative request with the Board asking it to graft a signature matching requirement into law. The Board agreed to hear their request, but correctly denied it in a July 22, 2022, declaratory ruling. Petitioners then brought this lawsuit under the North Carolina Administrative Procedure Act ("NCAPA"), hoping North Carolina courts will provide what the General Assembly has not—authority for county officials to engage in unreliable and arbitrary signature matching, which will disenfranchise numerous North Carolina voters who rely on absentee voting to participate in elections.

Because older voters would be significantly impacted if the Board had granted the Petitioners' request to create a signature matching requirement out of whole cloth, the North

Carolina Alliance for Retired Americans (“the Alliance”), seeks to intervene in this litigation to protect the ability of its members to safely and reliably vote by absentee ballot. The Alliance’s members are primarily older, retired Americans, whose signatures are more likely to unintentionally vary or have changed over time due to age, effects from medication, or physical and mental impairments associated with age. Because their signatures are more likely to vary, the Alliance’s members face a particularly acute threat from signature matching—if election officials determine that their signatures do not match the signatures associated with their voter registration records, their absentee ballots won’t be counted, and they will be disenfranchised. The Alliance should therefore be allowed to intervene as a matter of right under North Carolina Rule of Civil Procedure 24(a)(2) or, alternatively, permissively under Rule 24(b)(2).

BACKGROUND

On May 14, 2022, Petitioners sent a Request for Declaratory Ruling to the Board under the NCAPA, asking the agency to issue a declaratory ruling that county boards of elections are either permitted or required—the request is unclear—under North Carolina law to compare a voter’s signature on their absentee ballot request form and ballot envelope with their voter registration signature before issuing or counting an absentee ballot. *See* Pet., Ex. 6 (“Request”). On June 9, 2022, the Board granted Petitioners’ request to provide a declaratory ruling. North Carolina General Statute (“N.C.G.S.”) § 150B-4(a1)(3). To aid its subsequent decision on the merits, the Board authorized the submission of public comments between June 10 and July 5, 2022. *See* Pet., Ex. 1 (“Decl. Ruling”) at 1. It received more than 8,000 submissions from the public, *id.*, including a comment from the Alliance. *See* Exhibit 1, Aff. of William Dworkin (“Dworkin Aff.”) ¶ 4; *see also* Dworkin Aff., Ex. A (“Alliance Public Comment”).

On June 30, 2022, the Board voted 3-2 against Petitioners’ demand for signature matching,

reaffirming the Board's longstanding view that North Carolina law does not permit such a procedure. In its subsequent July 22 written Declaratory Ruling, the Board explained that North Carolina statutes do not authorize signature matching. Instead, state law requires voters requesting and casting absentee ballots to confirm their identity in other, expressly enumerated ways. Decl. Ruling. It further explained that Petitioners' arguments relied on implied, not explicit, statutory authority. *Id.*; *see also* Intervenors' Motion to Dismiss at 13, 23, 24 ("Mot. to Dismiss").¹

On August 22, 2022, the NCGOP, Cumberland County Board of Elections member James H. Baker, and Jerry "Alan" Branson, a candidate for the Guildford County Board of Commissioners, brought this suit, seeking to reverse the Board's Declaratory Ruling and to impose a non-statutory signature matching requirement on North Carolina's county boards of election. Pet. at 11–12. The Alliance filed the instant motion to intervene mere days after Petitioners brought suit.

The Alliance has a strong interest in protecting the ability of its members to have their absentee ballots counted. The Alliance is a 501(c)(4) nonprofit social welfare organization incorporated in North Carolina. It is a chartered state affiliate of the Alliance for Retired Americans, a nationwide grassroots organization with more than 4.3 million members. *See* Dworkin Aff. ¶ 1. The Alliance has approximately 65,000 members across North Carolina and seeks to ensure social and economic justice and full civil rights for retirees, with particular emphasis on safeguarding their right to vote. *Id.* ¶¶ 1, 2.

Because the Alliance's members tend to be older, retired voters, they often face greater

¹ The Alliance files this Motion to Dismiss in order to comply with Rule 24's requirement that any motion to intervene "be accompanied by a pleading setting forth the claim or defense for which intervention is sought." N.C. R. Civ. P. 24(c).

barriers than other voters casting votes and having them counted, making it more difficult for the Alliance and its members to further their shared associational and political goals. Dworkin Aff. ¶ 3. Given the obstacles associated with in-person voting, the Alliance's members are disproportionately likely to vote via absentee ballot. *Id.* The Alliance considers it imperative to ensure both that its members can vote via absentee ballot and that those ballots get counted. In furtherance of this goal, the Alliance has previously filed litigation in North Carolina courts seeking to vindicate its members' ability to vote using absentee ballots. *Id.*

If the Board were to ignore North Carolina law and implement a signature matching requirement, the Alliance's members would be injured. That is why the Alliance provided public comments in this matter prior to the Board's declaratory ruling in response to Petitioners' request. Dworkin Aff. ¶ 4; *see also* Alliance Public Comment. In its comments, the Alliance explained that signature matching (1) is contrary to North Carolina law; (2) is a flawed procedure criticized by experts and likely to disenfranchise voters, particularly older voters, which constitute the majority of the Alliance's membership; and (3) in tandem with North Carolina's other requirements, would result in a high rate of rejection of lawful absentee ballots. Dworkin Aff. ¶ 5; *see generally* Alliance Public Comment. Granting Petitioners' request would also directly harm the Alliance because the organization would be forced to divert resources from other efforts to educate its members about the state's signature matching requirements and to assist its members in complying with the requirement to ensure their vote is counted. Dworkin Aff. ¶ 7. The Alliance should be permitted to intervene to represent the interests of its members and the organization as a whole.

ARGUMENT

I. The Alliance is entitled to intervene as of right under Rule 24(a).

Rule 24(a) permits intervention as of right on two grounds: “(1) [w]hen a statute confers an unconditional right to intervene; or (2) [w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” N.C.G.S. § 1A-1, Rule 24(a). The Alliance may intervene as of right on either basis because the NCAPA grants it a statutory right of intervention, and because it otherwise meets the requirements of Rule 24(a)(2).

A. The Alliance has a statutory right to intervene under N.C. Gen. Stat. § 150B-46 because the Board’s declaratory ruling substantially affects its rights.

Plaintiffs filed their Petition under the NCAPA, “[p]ursuant to N.C.G.S. § 150B-43,” which permits aggrieved persons to seek judicial review of an agency’s declaratory ruling. Pet. at 1. The NCAPA, in turn, provides that “[a]ny person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.” N.C.G.S. § 150B-46. Thus, a “person aggrieved” under the NCAPA “has an absolute right to intervene pursuant to Rule 24(a)(1) of the North Carolina Rules of Civil Procedure on the grounds that N.C.G.S. 150(b)-46 states that any person agrieved [sic] may petition to become a party to a petition seeking judicial review.” *Gummels v. N.C. Dep’t of Hum. Res.*, 97 N.C. App. 245, 388 S.E.2d 223, 225 (1990) (quoting and affirming superior court decision); *see also N.C. State Bd. of Educ. v. N.C. Learns, Inc.*, 231 N.C. App. 270, 280-81, 751 S.E.2d 625, 632 (2013) (affirming superior court decision to permit intervention by “aggrieved party” under Rule 24).

Although the Alliance agrees with the Board’s conclusion that North Carolina law does not

permit the signature matching demanded by Petitioners, it is nonetheless a “person aggrieved” as that term is defined in the NCAPA. That law defines a “person aggrieved” as “[a]ny person or group of persons of common interest directly or indirectly *affected substantially* in his, her, or its person, property, or employment by an administrative decision.” N.C.G.S. § 150B-2(6) (emphasis added).² This definition has traditionally been given an “expansive interpretation.” *Empire Power Co. v. N.C. Dep’t of Env’t, Health & Nat. Res.*, 337 N.C. 569, 588, 447 S.E. 2d 768, 779 (1994); *see also Monarch Tax Credits, LLC v. N.C. Dep’t of Revenue*, No. 19 CVS 12647, 2021 WL 245437, at *6 (N.C. Super. Jan. 25, 2021) (noting term is “defined broadly” and “liberally construed”).

The Alliance’s interests, and the interests of its members, are “affected substantially” by the Board’s declaratory ruling and would likewise be substantially affected by this Court’s decision. As explained in the supporting declaration of William Dworkin, the Alliance’s President, signature matching requirements uniquely burden older voters, voters with a physical disability, and voters who take medication, because such voters are more likely to have unintentional variations in their handwritten signatures. Dworkin Aff. ¶ 6. Courts have found that laypersons, including election officials tasked with reviewing signatures, are likely to misinterpret these ordinary variations due to age or disability as evidence that the wrong person signed an absentee ballot request or envelope, thereby disenfranchising the voter. *Id.*; *see also Frederick v. Lawson*, 481 F. Supp. 3d 774, 785 (S.D. Ind. 2020); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 205 (D.N.H.

² Although the Alliance is not itself a natural person, the NCAPA defines the term as including “any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society that may sue or be sued under a common name.” N.C.G.S. § 150B-2(7). And the Alliance is also a “group of persons” under § 150B-2(6) because it is a membership organization. *See Dworkin Aff.* ¶ 1.

2018). Moreover, the Alliance itself will have to divert significant resources to educate and assist its members if they are required to comply with the signature matching requirements demanded by Petitioners, draining it of resources to address other Alliance priorities. *Dworkin Aff.* ¶ 7. Because the Board’s declaratory ruling, and Petitioner’s request for relief, substantially affect the Alliance and its members, it is permitted to intervene as of right under N.C.G.S. § 150B-46.

The Alliance further qualifies as a “person aggrieved” entitled by statute to intervene because, while it agrees with the Board that North Carolina does not permit signature matching, it disagrees with the Board’s conclusion that Petitioners were entitled to a declaratory ruling in the first place. *See Mot. to Dismiss* at 16–20 (arguing Petitioners lacked standing to obtain a declaratory ruling). Indeed, the Board itself acknowledged that Petitioners likely are not entitled to a declaratory ruling under the NCAPA, but nonetheless proceeded to offer an advisory opinion on their challenge. *Decl. Ruling* at 17–18. If permitted to intervene, the Alliance intends to argue that the Board erred in that specific decision.

B. The Alliance may also intervene as of right because disposition of the Petition threatens to impair its significant interest in protecting the ability to vote by absentee ballot

Even if the Alliance did not have a statutory right to intervene, it still meets the requirements of Rule 24(a)(2) for intervention as of right. Upon a timely motion, that rule permits intervention “where (1) the movant has an interest relating to the property or transaction; (2) denying intervention would result in a practical impairment of the protection of that interest; and (3) there is inadequate representation of that interest by existing parties.” *Alford v. Davis*, 131 N.C. App. 213, 505 S.E.2d 917, 920 (1998). The Alliance satisfies each factor here.

1. The motion to intervene is timely.

There can be no serious dispute that the Alliance's motion is timely, as it was filed just five days after Petitioners filed suit and before any responsive pleadings or substantive motions have been filed. No prejudice will accrue to Petitioners or the Board if the Alliance is permitted to join at this stage. Because there has been no delay at all, the Alliance has clearly met the timeliness requirement. *See State Employees' Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 330 S.E.2d 645, 648 (1985) (noting "motions to intervene made prior to trial are seldom denied" due to lack of timeliness); *see also Moore v. Circosta*, Nos. 1:20CV911, 1:20CV912, 2020 WL 6597291, at *1 (M.D.N.C. Oct. 8, 2020) (finding the Alliance's motion timely when filed "between four and six days after Plaintiffs filed their Complaints"); *Carcano v. McCrory*, 315 F.R.D. 176, 178 (M.D.N.C. 2016) (finding motion timely when made "just nine days after Plaintiffs" filed preliminary injunction motion and "before any of the original Defendants made any filings").³

2. The Alliance has an interest in the Board's declaratory ruling and North Carolina's rules for voting absentee.

To intervene as of right, an intervenor must have an interest of "such direct and immediate character that he will either gain or lose by the direct operation and effect of the judgment." *Virmani v. Presbyterian Health Serv. Corp.*, 350 N.C. 449, 459, 515 S.E.2d 675, 682–83 (1999) (quoting *Strickland v. Hughes*, 160 S.E.2d 313, 316 (1968)).

The Alliance and its members have such "direct and immediate" interests in preserving the

³ While these federal court decisions do not control proceedings here, it is well-established that North Carolina's Rule 24 "is virtually identical to Rule 24 of the Federal Rules of Civil Procedure," and that North Carolina courts "look to the federal court decisions for guidance." *Nicholson v. F. Hoffmann Laroche, Ltd.*, 576 S.E.2d 363, 365 (N.C. Ct. App. 2003) (quotations omitted). These decisions therefore offer persuasive authority under North Carolina Rule 24.

Board's declaratory ruling that North Carolina law does not permit signature matching with respect to absentee ballot request forms, absentee ballots, and absentee container-return envelopes. The Alliance's members are older citizens who often face greater obstacles in casting a ballot and having their voices heard. *See* Dworkin Aff. ¶ 3. Many Alliance members choose to vote via absentee ballot to avoid obstacles and inconveniences associated with voting in person. *Id.* Preserving the ability of its members to vote via absentee ballot is a fundamental aspect of the Alliance's mission as an organization. *Id.*

The signature matching regime demanded by Petitioners, if implemented by this Court, would directly and immediately harm Alliance members. That is because older voters—along with voters who take medication or who have mental or physical impairments—are significantly more likely to have their valid absentee ballots wrongfully rejected by election officials due to errant signature matching determinations. *See* Dworkin Aff. ¶ 6. As the Alliance explained in its public comment to the Board, signature matching is not reliable when performed by untrained election officials, particularly when they use only a single handwriting exemplar. *See* Alliance Public Comment at 5-6. Experts prefer to review “at least 20 past signature examples” when verifying a handwriting sample, *id.* at 5, but North Carolina officials would only have one exemplar available to them. Decl. Ruling at 14-15.

The concern is even more acute for older voters, whose signatures often vary due to age-related factors. *Id.* Permitting County boards to create their own *ad hoc* signature matching procedures for untrained officials “would create a significant risk of error and uncertainty in the review of request forms and ballots, particularly for the elderly, the disabled, and voters who primarily write in a different language.” *Id.* at 6.

Many courts, relying upon expert testimony, have reached the same conclusion. For

example, a federal district court in New Hampshire explained how “people who are elderly, disabled, or who speak English as a second language” are more likely to have unintentional variations in their signatures, resulting in the disenfranchisement of hundreds of voters in that state. *See Saucedo*, 335 F. Supp. 3d at 206. Another court explained how election officials are rarely trained to “properly account for signature variability” attributable to “age, health, native language, and writing conditions,” meaning they are likely to make “erroneous authenticity determinations, which are particularly pronounced in populations with greater variability, such as elderly, disabled, ill, and non-native English signatories.” *Frederick*, 481 F. Supp. 3d at 785-86. Permitting signature matching here will likely result in a “high rate of error among laypersons” that will disproportionately impact Alliance members due to “incorrect determination[s] that ‘variations’ between one individual’s signatures are instead ‘differences’ between multiple individual’s signatures.” *Id.* at 785; *see also Lewis v. Hughs*, 475 F. Supp. 3d 597, 604 (W.D. Tex. 2020)⁴ (explaining that “elderly and disabled voters are more likely to have varying signatures” and concluding Texas’s signature matching requirement “discriminates on the basis of age and disability”), *rev’d on other grounds*, 28 F.4th 659 (5th Cir. 2022).⁵

In other words, the Alliance’s membership constitutes the precise group most likely to be harmed by the signature matching requirement Petitioners seek to impose on North Carolina

⁴ The Texas Alliance for Retired Americans (“TARA”), one of the Alliance’s affiliates, was a plaintiff in this action.

⁵ Tellingly for purposes of the merits, these cases addressing signature matching each concerned constitutional challenges to *express* statutory commands that election officials compare signatures. *See, e.g., Lewis*, 475 F. Supp. 3d at 603 (citing Tex. Elec. Code § 87.027); *Saucedo*, 335 F. Supp. 3d at 206 (citing RSA 659:50); *Frederick*, 481 F. Supp. 3d at 779 (citing Ind. Code §§ 3-11-10-4, 3-11.5-4-4, and 3-11.5-4-13(a)(2)). As explained in the Alliance’s attached motion to dismiss, North Carolina lacks any similar statute, and Petitioners’ demand that this Court impose such a requirement is therefore baseless. Mot. to Dismiss at 16-20.

voters. The Alliance’s members have much to “gain or lose” based on the outcome of these proceedings, which will have a direct and immediate impact on their ability to reliably vote via absentee ballot. *Virmani*, 515 S.E.2d at 683 (quotation omitted); *Dworkin Aff.* ¶ 6. The Alliance, as an organization, likewise stands to gain or lose from the judgment here—modification or reversal of the Board’s declaratory ruling will require the Alliance to divert limited resources from other policy objectives to educate its members about any new requirements for voting absentee. *Dworkin Aff.* ¶ 7. The Alliance therefore must be permitted to intervene as of right to protect its members’ strong interest in preserving their ability to vote via absentee ballot. *Cf. Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (“The Democratic Party [] has standing to assert the rights of those of its members who will be prevented from voting by the new law.”); *Ohio Org. Collaborative v. Husted*, 189 F. Supp. 3d 708, 726 (S.D. Ohio 2016) (political party “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).

3. Denying the Alliance intervention will impair its ability to protect its interests in this litigation.

The Alliance meets the third requirement under Rule 24(a)(2) because “a favorable decision for [Petitioners] could impede or impair the intervenors’ protectable interests.” *N. Carolina Green Party v. N.C. State Bd. of Elections*, No. 5:22-CV-276-D, 2022 WL 3142606, at *10 (E.D.N.C. Aug. 5, 2022) (granting intervention). While NCSBE has taken the view that North Carolina law does not permit signature matching for absentee ballot requests and envelopes since at least 2020, this Petition presents the first time a North Carolina court will address that issue, likely resolving whether signature matching is required for the forthcoming November 2022

election. If the Alliance is not permitted to intervene in this litigation, it will lose the opportunity to advocate on behalf of its membership ahead of the forthcoming election and, potentially, subsequent elections. And it will further lose the opportunity to guard against a signature matching requirement that, if imposed, will require the Alliance to spend its limited resources to educate and protect its members. Dworkin Aff. ¶ 7. That, “as a practical matter,” impairs the Alliance’s “ability to protect” its interest and its members’ interests in the declaratory ruling and North Carolina’s rules for absentee voting. *Wichnoski v. Piedmont Fire Prot. Sys., LLC*, 251 N.C. App. 385, 397, 796 S.E.2d 29, 38 (2016); *see also Thomas v. Andino*, 335 F.R.D. 364, 370 (D.S.C. 2020) (finding political party would be impaired in defending statute absent intervention).

4. The Board does not adequately represent the Alliance’s interests.

The Alliance’s interests are not adequately represented by the Board, the named respondent in the Petition. Simply stated, as a public body, the Board’s “sole litigation interests are to protect the public welfare and the interests of [the] general citizenry.” *Letendre v. Currituck Cty.*, 261 N.C. App. 537, 817 S.E.2d 920 (Table), 2018 WL 4440587, *4 (2018) (unpublished). Accordingly, “there are many decisions it might make which would not be aligned with the interests” of the Alliance, whose interest is to further its mission and protect the rights of its members. *Id.* (concluding county did “not have the same interests” as private parties); *see also* Dworkin Aff. ¶ 8.

The U.S. Supreme Court’s recent decision in *Berger v. North Carolina. State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022), confirms the point. That case, like this one, involved NCSBE as a defendant. *Id.* at 2198. Several civil rights groups sued NCSBE to challenge a voter-identification law adopted by the legislature and adopted over the Governor’s veto. *Id.* Although NCSBE was represented by the Attorney General, several state legislators sought to intervene

alongside the NCSBE to defend the law. *Id.* The Fourth Circuit concluded *en banc* that the legislators could not intervene because their interests were adequately represented by NCSBE. *Id.* at 2200.

The Supreme Court reversed. It explained at the outset that this requirement “presents proposed intervenors with only a minimal challenge.” *Id.* at 2195; *see also Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (explaining the Supreme Court has held that “the burden on the applicant of demonstrating a lack of adequate representation ‘should be treated as minimal.’”) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The Supreme Court explained that while state agents may pursue “related” interests to political actors, those interests are not “identical.” *Berger*, 142 S. Ct. at 2204 (quoting *Trbovich*, 404 U.S. at 538). In particular, the Court noted that state agencies like NCSBE must “bear in mind broader public-policy implications” than those with more partisan or private interests. *Id.*

The same is true here. While NCSBE and the Alliance both believe North Carolina law does not permit the signature matching requested by Plaintiffs, their interests are not “identical.” *Id.* The Board’s “position is defined by the public interest.” *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986); *accord Letendre*, 817 S.E.2d at *4. But the Alliance’s interests are defined by its mission and the interests of its members alone and in promoting their ability to vote absentee to the greatest extent possible. *Dworkin Aff.* ¶¶ 2, 3, 8. These divergent interests have at times resulted in litigation between the Board and the Alliance, *see N.C. All. for Retired Am. v. N.C. State Bd. of Elections*, No. 20-CVS-8881, 2020 WL 10758667 (N.C. Super. Ct. Oct. 2, 2020) (unpublished), illustrating their distinct interests. *Cf. Maxum Indem. Co. v. Biddle L. 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).

Moreover, the Alliance is likely to take divergent positions from the Board in *this* litigation. The Alliance argues in its motion to dismiss that the Board should never have granted Petitioners a declaratory ruling to begin with because they are not “persons aggrieved” under the NCAPA. Mot. to Dismiss at 19. The Board apparently agreed, expressing significant doubt that Petitioners were entitled to a ruling, but proceeded to issue a declaratory ruling anyway. Decl. Ruling at 17–18. The “divergent arguments” the Alliance presents further show why the Board does not adequately represent its interests. *Paher v. Cegavske*, No. 3:20-CV-00243-MMD-WGC, 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020) (concluding that the proposed intervenors demonstrated entitlement to intervention as a matter of right because the parties’ briefs presented divergent arguments). The Board’s interests, at bottom, concern their “responsibility to properly administer election laws,” whereas the Alliance is “concerned with ensuring their [] members . . . have the opportunity to vote in the upcoming federal [and state] election.” *Issa v. Newsom*, No. 2:20-CV-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention, and further noting intervenors’ distinct interest in “allocating their limited resources to inform voters about the election procedure”).

Accordingly, NCSBE does not adequately represent the Alliance’s significant interests at stake in this litigation and the Alliance must be permitted to intervene to ensure its interests are protected. *See Texas v. United States*, 805 F.3d 653, 662 (5th Cir. 2015) (discussing why an intervenor’s interests may not be protected by a “governmental party”); *N.C. Green Party*, 2022 WL 3142606, at *10 (granting intervention as defendant alongside NCSBE because even where public body and private party “shared a closely aligned interest,” such parties “did not share identical interests”); *cf. Democratic Party of Va. v. Brink*, No. 3:21-cv-756-HEH, 2022 WL

330183, at *2 (E.D. Va. Feb. 3, 2022) (“[The State’s] interests are to defend [the State’s] voting laws no matter the political repercussions while [the state political party’s] interest is to defend the voting laws when doing so would benefit its candidates and voters.”).

II. In the alternative, the Alliance is entitled to permissive intervention under Rule 24(b).

Even if the Court finds that the Alliance is not entitled to intervention as of right, the Alliance still satisfies the requirements for permissive intervention under Rule 24(b). “Upon timely application anyone may be permitted to intervene in an action . . . [w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” N.C.G.S. § 1A–1, Rule 24(b)(2); *Koenig v. Town of Kure Beach*, 178 N.C. App. 500, 506, 631 S.E.2d 884, 889 (2006). “Permissive intervention under the rule ‘rests within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.’” *Alford*, 505 S.E.2d at 921 (quoting *State ex rel. Long v. Interstate Cas. Ins. Co.*, 106 N.C. App. 470, 474, 417 S.E.2d 296, 299 (1992)). When employing that discretion, the court must “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” N.C. Gen. Stat. § 1A–1, Rule 24(b)(2) (cl. 3). Under the related Federal Rule 24(b), permissive intervention is liberally construed in favor of intervention. *Thomas*, 335 F.R.D. at 369.

As explained above, this motion is timely and will not unduly delay or prejudice the adjudication of the rights of the original parties. The Alliance has moved expeditiously to intervene before any schedule has been set or substantive motions filed. Further, because this case will likely be resolved upon the administrative record, permitting the Alliance to intervene will not likely result in additional or burdensome discovery proceedings for the Court or the other parties. The Alliance also agrees to abide by any schedule the Court sets.

The Alliance's position—that the Board correctly applied North Carolina law in its declaratory ruling, and that reversing the declaratory ruling would disproportionately harm the Alliance's members—also raises common questions of law and fact with the issues presented in the Petition. The disposition of the Petition will—one way or another—significantly impact the Alliance's political activities, as well as how its members are able to vote in an upcoming statewide election. The Alliance's interests are also constitutional in nature and extend to one of the most fundamental rights protected by the North Carolina Constitution—the right to vote, the right to free elections, and the right to equal protection under the law. Dworkin Aff. ¶¶ 2, 3, 8. The Alliance's participation in this suit will ensure the full development of the important factual and legal issues in this suit and will aid the Court in adjudicating this matter.

CONCLUSION

For the reasons stated above, the Alliance respectfully requests that this Court grant its motion to intervene as a matter of right under North Carolina Rule of Civil Procedure 24(a)(2) or, alternatively, permissively grant its intervention under Rule 24(b)(2).

Dated: August 26, 2022

Respectfully submitted,

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* *Pro hac vice* application forthcoming

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
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IN RE APPEAL OF DECLARATORY
RULING FROM THE STATE BOARD
OF ELECTIONS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the MOTION TO INTERVENE in the above captioned matter (filed August 26, 2022) on counsel for Petitioners and the North Carolina State Board of Elections by mail at:

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RESPECTFULLY SUBMITTED, the 26th day of August, 2022.



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EX-107

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WARE COUNTY, G.S.C.

EX-107

EXHIBIT 1

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 22-CV-10520

IN RE APPEAL OF DECLARATORY
RULING FROM THE STATE OF
ELECTOINS.

AFFIDAVIT OF WILLIAM DWORKIN

I, William Dworkin, make the following sworn affidavit in accordance with North Carolina law. I understand that my affidavit may be introduced into the record of the above captioned action, or any other grievance, administrative proceeding, or suit pending in a court of law in the State of North Carolina.

1. I am the President of the North Carolina Alliance for Retired Americans (“the Alliance”), a 501(c)(4) nonprofit, social welfare organization incorporated in North Carolina. The Alliance has approximately 65,000 members across all of North Carolina’s 100 counties. The Alliance is a chartered state affiliate of the Alliance for Retired Americans (“ARA”), a nationwide grassroots organization with more than 4.3 million members.

2. The Alliance’s mission is to ensure social and economic justice and full civil rights for retirees. In particular, the Alliance works to protect the rights of its members to vote and to have their votes counted.

3. Because the Alliance’s members tend to be older, they often face greater obstacles casting a ballot and having their votes counted, making it more difficult for the Alliance and its members to associate to effectively further their shared political purposes. Because of the obstacles associated with voting in person, the Alliance’s members are disproportionately likely to vote via

absentee ballot. Ensuring that Alliance members can vote via absentee ballot and have their votes counted is of paramount importance to the Alliance's mission. The Alliance has previously filed litigation in North Carolina's courts seeking to vindicate the ability of its members to vote via absentee ballot.¹

4. For these reasons, the Alliance provided public comments in this matter ahead of the North Carolina State Board of Elections' ("NCSBE") declaratory ruling, explaining how the unlawful signature matching requirement requested by the Petitioners would harm the Alliance and its members. *See* Exhibit A (July 5, 2022 Public Comment).

5. In addition to explaining why such signature matching is contrary to North Carolina law, *see id.* at 2-5, we also explained why signature matching is a flawed procedure likely to disenfranchise voters, particularly older voters, *id.* at 5-6. Simply put, asking untrained county officials to compare one signature to another is not a reliable way to confirm a voter's identity. Experts in the field have stated that they prefer reviewing "at least 20 past signature examples" before attempting to match signatures,² but Plaintiffs here request that county officials be required to do so with only one exemplar. Such a requirement, particularly in tandem with North Carolina's already burdensome witness requirements, is likely to result in a high rate of rejection for lawful absentee voters.³

¹ *See N.C. Alliance of Retired Americans, et al. v. North Carolina State Board of Elections, et al.*, Case No. 20-CVS-881 (N.C. Super. Sept. 22, 2020)

² Lau, Maya, Nelson, Laura, 'Ripe for error': Ballot signature verification is flawed — and a big factor in the election, L.A. TIMES (Oct. 28, 2020), <https://www.latimes.com/california/story/2020-10-28/2020-election-voter-signature-verification>.

³ Declan Chin, "A Deep Dive into Absentee Ballot Rejection in the 2020 General Election," Elections Performance Index (Dec. 16, 2021) <https://elections-blog.mit.edu/articles/deep-dive-absentee-ballot-rejection-2020-general-election>.

6. This burden is likely to be particularly severe on the Alliance’s members, who tend to be older and more likely to take medication and have physical disabilities attributable to age. Courts have recognized that a person’s signature may unintentionally vary due to “age, physical and mental condition, disability, medication, stress, accidents, and inherent differences in a person’s neuromuscular coordination and stance.”⁴ Accordingly, variations in signatures “are more prevalent in people who are elderly, disabled, or who speak English as a second language.”⁵ Courts have similarly recognized these variations in signature due to age may result in a “high rate of error among laypersons” reviewing such signatures due to “an incorrect determination that ‘variations’ between one individual’s signatures are instead ‘differences’ between multiple individual’s signatures.”⁶ That is because lay election officials are not trained to “properly account for signature variability” attributable to “age, health, native language, and writing conditions,” leading to “erroneous inauthenticity determinations, which are particularly pronounced in populations with greater variability, such as elderly, disabled, ill, and non-native English signers.”⁷ In sum, “elderly and disabled voters are more likely to have varying signatures, and thus the requirement” requested by the petitioners here “discriminates on the basis of age and disability.”⁸ The relief requested by the petitioners therefore directly burdens and imperils the ability of the Alliance’s members to reliability vote via absentee ballot in North Carolina, and thus to participate in the state’s civic life.

⁴ *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 205 (D.N.H. 2018).

⁵ *Id.*

⁶ *Frederick v. Lawson*, 481 F. Supp. 3d 774, 785 (S.D. Ind. 2020).

⁷ *Id.* at 785-86.

⁸ *Lewis v. Hughs*, 475 F. Supp. 3d 597, 604 (W.D. Tex. 2020) (denying motion to dismiss), *rev’d on other grounds*, 28 F.4th 659 (5th Cir. 2022).

7. Granting the petition would also directly harm the Alliance. Making it harder and less reliable for the Alliance's members to vote via absentee ballot will require the organization to divert resources from other efforts to educate its members about any signature matching requirement imposed by the Court and to assist members in complying with that requirement so that their votes are counted. Such efforts will reduce the time and resources the Alliance has to educate its members and legislators on other public policy issues critical to the Alliance's members, including issues like the pricing of prescription drugs and protecting Social Security, Medicare, and Medicaid benefits.

8. The Alliance's interest in ensuring that its members may vote via absentee ballot is not adequately protected by NCSBE alone. That agency has a general interest in serving the public at large and in neutrally administering North Carolina's election laws as a matter of public policy. The Alliance's interests, on the other hand, are focused specifically on advancing and securing the rights of its members, including protecting their ability to reliably vote via absentee ballot and have their ballots counted. In the past, the Alliance has brought suit against NCSBE to maximize the ability of its members to vote via absentee.⁹ Barring the Alliance from participating in this litigation will impair its ability to protect its members' vital interest in being able to reliably vote via absentee ballot.

⁹ See Press Release, *North Carolina Alliance for Retired Americans Sues State of North Carolina to Remove Barriers to Absentee Voting in Light of COVID-19 Pandemic* (August 10, 2022), <https://retiredamericans.org/north-carolina-alliance-for-retired-americans-sues-state-of-north-carolina-to-remove-barriers-to-absentee-voting-in-light-of-covid-19-pandemic/>.

AFFIDAVIT

I, William Dworkin, declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on August 26, 2022, in Wake County, North Carolina.

William Dworkin
William Dworkin

Sworn and subscribed before me this the 26th day of August, 2022.



Notary Public: Jason Allen

Name: Jason Allen

My commission expires: 12/06/2025

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**G.S. § 10B-41 NOTARIAL CERTIFICATE FOR
ACKNOWLEDGMENT**

RANDOLPH County, North Carolina

I certify that the following person(s) personally appeared before me this day, each
acknowledging to me that he or she signed the foregoing document:

WILLIAM DWORIN

Name(s) of principal(s)

Date: 8/26/2022

(Official Seal)



Jason Allen

Official Signature of Notary

JASON ALLEN

Notary's printed or typed name, Notary Public

My commission expires: 12/06/2025

OPTIONAL

This certificate is attached to a WILLIAM AFFIDAVIT OF DWORIN signed by WILLIAM DWORIN
Title/Type of Document *Name of Principal Signer(s)*

on 8/26/2022, and includes 5 pages.
Date *# of pages*