

22 CVS 11290

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2022 SEP 19 PM 4:22

WAKE COUNTY, C.S.C.

BARBARA DEAS; THE NORTH CAROLINA REPUBLICAN PARTY; and THE REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; STACY "FOUR" EGGERS IV, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; TOMMY TUCKER, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; and KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS,

Defendants.

[PROPOSED] ANSWER

Proposed Intervenor-Defendant North Carolina Alliance of Retired Americans ("Proposed Intervenor"), by and through its attorneys, submits the following Proposed Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief (the "Complaint"). Proposed Intervenor responds to the allegations in the Complaint as follows:

1. Paragraph 1 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 1.

2. Paragraph 2 consists of characterizations, legal contentions, and conclusions, to which no response is required.

3. Paragraph 3 consists of characterizations, legal contentions, and conclusions, to which no response is required.

4. Paragraph 4 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 4.

5. Paragraph 5 consists of characterizations to which no response is required. To the extent Paragraph 5 purports to characterize the content of the publications cited therein, those materials speak for themselves and therefore no further response is required.

6. Paragraph 6 consists of characterizations and legal contentions, to which no response is required.

7. Paragraph 7 consists of characterizations and legal contentions, to which no response is required.

8. Paragraph 8 consists of characterizations and legal contentions, to which no response is required.

9. Paragraph 9 consists of characterizations and legal contentions, to which no response is required.

10. Paragraph 10 consists of characterizations and legal contentions, to which no

response is required.

11. Paragraph 11 contains a statement from The Carter Center, which speaks for itself, as well as a characterization of that statement, to which no response is required.

12. Proposed Intervenor admits that Paragraph 12 accurately quotes a portion of N.C. Gen. Stat. § 163-45(a). The remainder of Paragraph 12 consists of characterizations, legal contentions, and conclusions, to which no response is required.

13. Paragraph 13 contains reference to legal authority, which speaks for itself, as well as a characterization of that authority, to which no response is required. The footnote in Paragraph 13 also contains legal contentions and conclusions, to which no response is required.

14. Paragraph 14 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 14.

15. Paragraph 15 consists of characterizations, legal contentions, and conclusions, to which no response is required.

16. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 16. To the extent a response is required, Intervenor denies the allegations in Paragraph 16.

17. Paragraph 17 purports to characterize the contents of Exhibit A to the Complaint. Exhibit A speaks for itself, and therefore no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in this paragraph.

18. Paragraph 18 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 18.

19. Proposed Intervenor admits that Paragraph 19 accurately quotes a portion of N.C. Gen. Stat. § 163-231. The remainder of Paragraph 19 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 19.

20. Proposed Intervenor admits that State Board Executive Director Bell issued Numbered Memo 2022-09 on August 17, 2022, which is attached to the complaint as Exhibit B. The remainder of Paragraph 20 purports to characterize Exhibit B, which speaks for itself, and no further response is required.

21. Paragraph 21 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 21.

22. Paragraph 22 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 22.

23. Proposed Intervenor admits that Plaintiffs seek the relief listed but deny that Plaintiffs are entitled to any relief. The remainder of Paragraph 23 consists of characterizations, legal contentions, and conclusions, to which no response is required.

24. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 24. To the extent a response is required, Proposed Intervenor denies the allegations

in Paragraph 24.

25. Proposed Intervenor admits that the NCGOP is a political party in the state of North Carolina. Proposed Intervenor is otherwise without sufficient information to respond to the remaining allegations in Paragraph 25.

26. The first sentence of Paragraph 26 asserts a legal conclusion to which no response is required. Proposed Intervenor is without sufficient information to respond to the remaining allegations in Paragraph 26. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 26.

27. Paragraph 27 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 27.

28. The first sentence of Paragraph 28 asserts a legal conclusion, to which no response is required. Proposed Intervenor is without sufficient information to respond to the remaining allegations in Paragraph 28.

29. Paragraph 29 asserts a legal conclusion to which no response is required.

30. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 30. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 30.

31. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 31. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 31.

32. Admit.

33. Admit.

34. Admit.

35. Admit.

36. Admit.

37. Admit.

38. Admit.

39. Paragraph 39 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 39.

40. Paragraph 40 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 40.

41. Paragraph 41 asserts a legal conclusion, to which no response is required.

42. Proposed Intervenor admits that the North Carolina General Assembly passed House Bill 589 on August 12, 2013, and that portions of it are now codified at N.C. Gen. Stat. § 163-45. The remaining allegations in Paragraph 42 assert a legal conclusion to which no response is required.

43. Proposed Intervenor admits that Paragraph 42 accurately quotes a portion of N.C. Gen. Stat. § 163-45.

44. Paragraph 44 consists of characterizations, legal contentions, and conclusions, to which no response is required. Proposed Intervenor is also without sufficient information to

respond to the Plaintiffs' allegation made upon information and belief. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 44.

45. Paragraph 45 consists of characterizations, legal contentions, and conclusions, to which no response is required. Proposed Intervenor is also without sufficient information to respond to the Plaintiffs' allegation made upon information and belief. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 45.

46. Proposed Intervenor admits that Paragraph 46 accurately quotes a portion of NCSBE Numbered Memo 2016-21. The remainder of Paragraph 46 consists of characterizations, legal contentions, and conclusions, to which no response is required. Proposed Intervenor is also without sufficient information to respond to the allegation made in the first sentence of Paragraph 46. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 46.

47. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 47. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 47.

48. Proposed Intervenor admits that Paragraph 48 accurately quotes a portion of 08 N.C. Admin. Code. § 20.0101 and that 08 N.C. Admin. Code. § 20.0101 became effective in 2018. The remainder of Paragraph 48 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 48.

49. Admit.

50. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 50. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 50.

51. Admit.

52. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 52. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 52.

53. Proposed Intervenor admit that the NCSBE considered and adopted modifications to the regulations for election observers in 2021. The remaining allegations in Paragraph 53 purport to characterize the contents of a comment submitted to the State Board by Plaintiff RNC, which is attached to the complaint as Exhibit C. Exhibit C speaks for itself and therefore no further response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 53.

54. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 54. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 54.

55. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 55. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 55.

56. Paragraph 56 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 56.

57. Proposed Intervenor admits that North Carolina's first primary election for the 2022 election cycle was conducted on May 17, 2022. The remainder of Paragraph 57 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 57.

58. Admit.

59. Paragraph 59 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 59.

60. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 60. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 60.

61. Admit.

62. Admit.

63. Proposed Intervenor admits that the RNC and NCGOP sent a letter to the State Board on August 19, 2022, and that Exhibit D purports to be that letter. To the extent Paragraph 63 purports to characterize the contents of Exhibit D, that document speaks for itself and no further response is required. Proposed Intervenor is without sufficient information to respond to the remaining allegations in Paragraph 63. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 63.

64. Paragraph 64 purports to describe the contents of Exhibit D to the Complaint, which speaks for itself, and accordingly no response is required.

65. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 65. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 65.

66. Proposed Intervenor admits that Exhibit E to the Complaint purports to be an August 24, 2022 letter sent by the RNC and NCGOP to the North Carolina Rules Review Commission. Exhibit E speaks for itself, and accordingly no further response is required.

67. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 67. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 67.

68. Paragraph 68 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 68.

69. Paragraph 69 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 69.

70. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 70. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 70.

71. Paragraph 71 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 71.

72. Paragraph 72 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 72.

73. Paragraph 73 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 73.

74. Proposed Intervenor admits that Paragraph 74 accurately quotes a portion of N.C. Gen. Stat. § 163-231. The remainder of Paragraph 74 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 74.

75. Admit.

76. Admit.

77. Paragraph 77 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 77.

78. Proposed Intervenor admits that Friday, November 11, 2022 is Veterans Day, a federal and state holiday, and that U.S. mail will not be delivered that day. Proposed Intervenor is without sufficient information to respond to the remaining allegations in Paragraph 78, and the remainder of Paragraph 78 consists of characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the remaining allegations in Paragraph 78.

79. Admit.

80. Proposed Intervenor is without sufficient information to respond to the allegations in Paragraph 80. To the extent a response is required, Intervenor denies the allegations in Paragraph 80.

81. Admit.

82. Admit.

83. Paragraph 83 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 83.

84. Paragraph 84 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 84.

85. Paragraph 85 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 85.

FIRST CLAIM FOR RELIEF

Declaratory Judgment - Violation of Chapter 163

86. Proposed Intervenor incorporates by reference all paragraphs of this Answer.

87. Proposed Intervenor admits that Plaintiffs seek declaratory relief in their complaint. Paragraph 87 otherwise consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 87.

88. Paragraph 88 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 88.

89. Paragraph 89 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Plaintiffs admit that Paragraph 89 accurately quotes a portion of N.C. Gen. Stat. § 163-22(a), but denies the remaining allegations in Paragraph 89.

90. Paragraph 90 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 90.

91. Paragraph 91 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 91.

92. Denied.

93. Proposed Intervenor admits that Paragraph 93 identifies the declaratory relief sought by the Complaint. Proposed Intervenor denies that Plaintiffs are entitled to any of the relief identified in Paragraph 93.

94. Proposed Intervenor incorporates by reference all paragraphs of this Answer.

95. Paragraph 95 consists of references to constitutional text, which speaks for itself. No response is required or provided.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Proposed Intervenor admits that Paragraph 100 identifies declaratory relief sought by Plaintiffs' complaint. Paragraph 100 otherwise consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 100.

101. Proposed Intervenor incorporates by reference all paragraphs of this Answer.

102. Paragraph 102 consists of reference to constitutional text, which speaks for itself. No response is required or provided.

103. Paragraph 103 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 103.

104. Paragraph 104 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 104.

105. Paragraph 105 consists of characterizations, legal contentions, and conclusions, to which no response is required.

106. Admit.

107. Paragraph 107 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 107.

108. Paragraph 108 consists of characterizations, legal contentions, and conclusions, to which no response is required.

109. Paragraph 109 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 109.

110. Denied.

111. Denied.

112. Paragraph 112 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 112.

113. Denied.

114. Denied.

115. Denied.

116. Proposed Intervenor incorporates by reference all paragraphs of this Answer.

117. Paragraph 117 consists of references to constitutional text, which speaks for itself. No response is required or provided.

118. Paragraph 118 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 118.

119. Paragraph 119 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 119.

120. Paragraph 120 consists of characterizations, legal contentions, and conclusions, to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations in Paragraph 120.

121. Denied.

PRAYER FOR RELIEF

1. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

2. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

3. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

4. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

5. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

6. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

7. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

8. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

9. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

10. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

11. This paragraph constitutes a prayer for relief as to which no response is required. Proposed Intervenor denies that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

Proposed Intervenor sets forth its defenses below. By setting forth these defenses, Proposed Intervenor does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Nothing stated here is intended to or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Plaintiffs' allegations. As separate and distinct defenses, Proposed Intervenor alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim

Plaintiffs' claims fail to state ultimate facts sufficient to constitute a claim upon which relief could be granted.

SECOND AFFIRMATIVE DEFENSE

Lack of Standing

Plaintiffs lack standing to bring some or all of the claims asserted in this suit.

THIRD AFFIRMATIVE DEFENSE

Failure to Establish Entitlement to Preliminary Relief

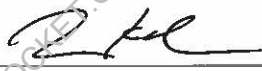
The facts and theories set out in the complaint fail to demonstrate the entitlement to the preliminary equitable relief that Plaintiffs demand.

FOURTH AFFIRMATIVE DEFENSE
Failure to Exhaust Administrative Remedies

Plaintiffs allege that Defendants have failed to comply with the requirements of the North Carolina Administrative Procedures Act but have failed to exhaust administrative remedies required by that law.

Respectfully submitted, this the 19th day of September, 2022

Respectfully submitted,

By:  _____

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* *Pro hac vice* application forthcoming