

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 22-CVS-11290

BARBARA DEAS; *et al.*,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS; *et al.*,

Defendants.

PROPOSED INTERVENOR NORTH CAROLINA ALLIANCE FOR RETIRED  
AMERICANS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION

## **TABLE OF CONTENTS**

INTRODUCTION .....	1
BACKGROUND .....	3
I.    The challenged election rules.....	3
II.   Plaintiffs’ lawsuit and the Alliance’s pending motions to intervene and to dismiss the complaint.....	4
LEGAL STANDARD.....	5
ARGUMENT.....	5
I.    Plaintiffs have failed to show a likelihood of success on the merits. ....	5
A.    Plaintiffs are unlikely to prevail on their challenge to the Board’s Absentee Ballot Return Deadline Guidance. ....	5
1.    Plaintiffs lack standing to challenge the Board’s guidance. ....	6
2.    The Board correctly recognized that N.C. Gen. Stat. § 103-5(a) extends the absentee ballot receipt deadline to the next day county boards of election are open after Veterans Day. ....	8
B.    Plaintiffs also fail to show that the Board’s longstanding Four-Hour Rule is contrary to law.....	11
II.   Plaintiffs have failed to make any showing of irreparable harm. ....	15
A.    Plaintiffs are not harmed by having lawful, timely-cast ballots counted..	15
B.    Plaintiffs have failed to show they are irreparably harmed by the Four- Hour Rule, which they have unreasonably delayed challenging. ....	17
III.  The Alliance, its members, and the public will be harmed by the extraordinary relief the Plaintiffs demand. ....	22
CONCLUSION.....	25

## **INTRODUCTION**

With the November 2022 midterm elections now less than a month away, the North Carolina Republican Party, the Republican National Committee, and the Chairwoman of the Clay County Republican Committee (“Plaintiffs”) bring this belated action seeking to upend two rules meant, respectively, to ensure that lawfully cast absentee ballots are counted and that good order is maintained at polling locations. But they fall well short of justifying such extraordinary relief so close to an election, failing to satisfy any of the requirements for a preliminary injunction as to either provision.

First, Plaintiffs challenge the State Board of Elections’ (“Board”) interpretation of state law governing the deadline for receipt of absentee ballots returned by mail to county boards of election, but Plaintiffs misread the law. N.C. Gen. Stat. § 163-231(b)(2) provides that mailed absentee ballots shall be counted provided they are postmarked on or before election day and arrive at the appropriate county board of elections office by 5:00 p.m. on the third day after the election. While the third day after the election this year is Veterans Day—a federal and state holiday during which county boards will be closed and mail will not be delivered—state law accounts for this problem: a separate statute provides that when the last day for performing *any act* falls on a legal holiday when a public office is closed, the act may be performed on the next day the public office is open for business. *See id.* § 103-05(a). Plaintiffs insist this separate statute should not apply but offer no persuasive reason why. Beyond their bare disagreement with the Board’s reading of the law, Plaintiffs also fail to explain how permitting an extra business day for timely-cast ballots to arrive harms them. Because they raise only a generalized grievance about the meaning of the law, Plaintiffs have failed to establish standing, never mind the irreparable harm required for preliminary relief.

Second, Plaintiffs seek emergency relief to enjoin the Board's six-year-old interpretation of N.C. Gen. Stat. § 163-45(a), which governs partisan poll observers. The Board has long held that, under the statute, poll observers may be relieved only after serving no less than four hours, regardless of whether that individual is assigned to a specific precinct or designated an "at large" observer.<sup>1</sup> The Board formalized this interpretation in an October 2018 administrative rule that was promptly approved by the Rules Review Commission. Plaintiffs now seek to enjoin the Board's interpretation and rule mere weeks before election day—and only days before early voting starts on October 20. No less than *twenty* state elections have been held since the Board first issued guidance on the subject and Plaintiffs fail to explain why they did not bring this litigation sooner. Moreover, they offer little reason why the Board is wrong, pointing only to extraneous statutory text and ignoring the legislative purpose behind the law—to provide sensible limitations on how frequently observers may cycle in and out of polling sites. Even setting aside their *multi-year delay* in seeking relief, Plaintiffs offer only vague and speculative theories of irreparable harm. Indeed, the only actual enforcement of the four-hour limitation they cite involved its *misapplication* by a county official, but that singular error cannot provide a sufficient basis to enjoin the rule as actually adopted by the Board.

In contrast to Plaintiffs' meager showing on both the merits and irreparable harm, proposed intervenor the North Carolina Alliance for Retired Americans ("Alliance") has explained how the requested relief will harm the Alliance, its members, and the public at large. It therefore moved swiftly to intervene in this matter to protect the rights of its members and to ensure that the upcoming election is not disrupted by last minute gamesmanship. For the reasons set forth in the

---

<sup>1</sup> Observers may still "leave the voting place without having served for four hours, but . . . cannot be replaced by a new observer until at least four hours have passed since the first observer began serving." 8 N.C. Admin. Code 20.0101(c).

Alliance’s motion, it should be permitted to intervene and, for the reasons below, Plaintiffs’ motion should be denied.

## **BACKGROUND**

### **I. The challenged election rules.**

Plaintiffs’ complaint challenges two unrelated election rules. First, they challenge the State Board’s guidance to county officials about the absentee ballot return deadline for the November 2022 election. *See* Compl., Ex. B (Numbered Memo 2022-09) (“Absentee Ballot Return Date Guidance”). Under North Carolina law, an absentee ballot postmarked by election day will be counted if it is received not later than three days after the election. *See* N.C. Gen. Stat. § 163-231(b)(2). This year, that day falls on Veterans Day, a state and federal holiday during which public offices in North Carolina are closed and no mail will be delivered. *See* Compl. ¶ 78; N.C. Gen. Stat. § 103-4 (defining Veterans Day as a state holiday). State law anticipates this scenario and provides that when “any act required or permitted by law to be performed in a public office” falls on a “Saturday, Sunday, or legal holiday when the public office . . . is closed for transactions, the act may be performed on the next day that the public office” is open. N.C. Gen. Stat. § 103-5(a). Accordingly, the Board has advised county officials that, under state law, absentee ballots postmarked by election day must still be counted if received by Monday, November 14—the next day that county boards are open and that mail is delivered. *See* Absentee Ballot Return Date Guidance. Plaintiffs seek to enjoin this guidance, despite admitting that absentee ballots cannot be delivered, and that county board offices will be closed, on the third day after the election due to Veterans Day. *See id.* ¶¶ 20, 78; *id.*, Prayer for Relief ¶ 9.

Plaintiffs also challenge the Board’s longstanding rules governing the presence of partisan poll observers at voting sites. North Carolina permits the chair of each county political party to designate two precinct-specific poll observers for each polling site, along with ten additional “at

large” observers. *See generally* N.C. Gen. Stat. § 163-45(a). The state chair of each political party may also appoint an additional one hundred observers. *Id.* In 2018, the Board adopted a rule that “[a]ll observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours.” 8 N.C. Admin. Code 20.0101(c) (the “Four-Hour Rule”). The State Board Chairman recently explained that the Four-Hour Rule promotes “good order” and avoids “circulating people in and out” of polling sites which puts a “burden on [] precinct officials to keep track of who is observing.” Ex. A (“State Board August 16, 2022 Meeting Minutes”) at 6. As the complaint acknowledges, the Four-Hour Rule was first issued as guidance in 2016 when the Board published Numbered Memo 2016-21. *See* Compl. ¶ 46. The Board reissued guidance about the Four-Hour Rule in 2018, 2020, 2021, and 2022. *See generally id.* ¶¶ 49-62. Despite the longstanding nature of the Four-Hour Rule, under which at least *twenty* elections have been held, Plaintiffs now seek to enjoin the rule just weeks before an upcoming election. *Id.*, Prayer for Relief ¶ 8.

## **II. Plaintiffs’ lawsuit and the Alliance’s pending motions to intervene and to dismiss the complaint.**

Plaintiffs filed this lawsuit on September 9, 2022—less than two months before election day and barely 40 days before early voting was scheduled to begin. Although the complaint purports to bring three claims against both challenged provisions—and a fourth claim under the North Carolina Administrative Procedures Act against the Absentee Ballot Return Deadline Guidance—each claim boils down to the assertion that the Board has misinterpreted the relevant statutory law.

Plaintiffs then waited another week before filing a motion for a preliminary injunction on September 16, which is calendared for a hearing on October 13. That motion seeks to preliminarily enjoin the Board from enforcing its interpretation of both challenged provisions.

The Alliance moved to intervene on September 19, ten days after Plaintiffs filed suit and on the next business day after Plaintiffs filed their motion for a preliminary injunction. The Alliance's motion to intervene explains the direct and immediate interest that the organization and its members have in the challenged provisions at issue here. The Alliance's motion is also calendared to be heard on October 13.

### **LEGAL STANDARD**

A preliminary injunction is an “extraordinary measure” only to be issued “(1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation.” *Cabrera v. Harvest St. Holdings, Inc.*, 876 S.E.2d 593, 599 (N.C. App. 2022) (citing *Ridge Cmty. Investors, Inc. v. Berry*, 239 S.E.2d 566, 574 (N.C. 1977)). “Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *A.E.P. Indus., Inc. v. McClure*, 302 S.E.2d 754, 759 (N.C. 1983) (quotation omitted). “The burden is on the plaintiffs to establish their right to a preliminary injunction.” *Pruitt v. Williams*, 218 S.E.2d 348, 351 (N.C. 1975).

### **ARGUMENT**

#### **I. Plaintiffs have failed to show a likelihood of success on the merits.**

##### **A. Plaintiffs are unlikely to prevail on their challenge to the Board's Absentee Ballot Return Deadline Guidance.**

Plaintiffs have not shown any likelihood that the Board erred by issuing Numbered Memo 2022-09, which merely recognized that an existing statute—N.C. Gen. Stat. § 103-5(a)—extends the deadline for county boards to receive timely-cast ballots to the next business day after Veterans Day. *See* Compl., Ex. B (N.M. 2020-09). As an initial matter, Plaintiffs lack standing to challenge

the Board's guidance and, further still, none of their claims are likely to succeed because the Board's guidance is consistent with—indeed, required by—North Carolina law.<sup>2</sup>

**1. Plaintiffs lack standing to challenge the Board's guidance.**

The North Carolina Supreme Court “require[s] a plaintiff to allege ‘direct injury’ to invoke the judicial power to pass on the constitutionality of a legislative or executive act.” *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 853 S.E.2d 698, 728 (N.C. 2021). “Only one who is in immediate danger of sustaining a direct injury from” government action “may assail the validity of such action.” *Charles Stores Co. v. Tucker*, 140 S.E.2d 370, 375 (N.C. 1965). “It is not sufficient that he has merely a general interest common to all members of the public.” *Id.*

Plaintiffs' complaint fails to explain how they are harmed by permitting lawful North Carolina voters to have their timely-cast ballots counted. *See, e.g.*, Compl. ¶¶ 19-23, 74-85. Plaintiffs “have alleged no injury” from the Absentee Ballot Return Date Guidance “beyond their concern that the [Board] ha[s] not followed the law.” *McCracken & Amick, Inc. v. Perdue*, 721 S.E.2d 765, 2012 WL 379373 (N.C. App. 2012) (affirming dismissal for lack of standing); *see also Allen v. Wright*, 468 U.S. 737, 754 (1984) (finding no standing where Plaintiffs allege nothing more than a “right to have the Government act in accordance with law”). That “‘is precisely the kind of undifferentiated, generalized grievance about the conduct of government’ that does not support a finding of standing.” *Perdue*, 2012 WL 379373, at \*6 (quoting *Lance v. Coffman*, 549 U.S. 437, 442 (2007)); *see also Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 482-83 (1982) (“This Court repeatedly has rejected claims of

---

<sup>2</sup> The complaint alleges this guidance (1) violates Chapter 163; (2) deprives Plaintiff Barbara Deas of due process; (3) is contrary to the Elections Clause of the federal Constitution; and (4) failed to comply with requirements of the North Carolina Administrative Procedures Act (“NCAPA”). *See* Compl. ¶¶ 86-121.



standing predicated on the right, possessed by every citizen, to require that the Government be administered according to the law.” (collecting cases and cleaned up)).

Plaintiffs passingly suggest in the third count of their complaint that accepting the valid and timely-cast absentee ballots at issue “violates a fundamental right of Plaintiff Deas, i.e., her right to vote and have her vote counted equally and accordingly.” Compl. ¶ 99. But Ms. Deas’s own right to vote is plainly not imperiled by the guidance, and the complaint otherwise fails to explain how she is harmed by granting other lawful voters an additional business day for their absentee mail bails to arrive. Indeed, “the notion that a *single person’s* vote will be less valuable as a result of [allegedly] unlawful or invalid ballots being cast is not a concrete and particularized injury.” *Moore v. Circosta*, 494 F. Supp. 3d 289, 313 (M.D.N.C. 2020); *see also Wood v. Raffensperger*, 981 F.3d 1307, 1314-15 (11th Cir. 2020) (“[N]o single voter is specifically disadvantaged if a vote is counted improperly, even if the error might have a mathematical impact on the final tally and thus on the proportional effect of every vote. Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing.” (cleaned up)); *Wood v. Raffensperger*, No. 1:20-CV-5155-TCB, 2020 WL 7706833, at \*3 (N.D. Ga. Dec. 28, 2020) (“Courts have consistently found that a plaintiff lacks standing where he claims that his vote will be diluted by unlawful or invalid ballots.” (collecting cases)), *aff’d*, No. 20-14813, 2021 WL 3440690 (11th Cir. Aug. 6, 2021), *cert. denied*, 142 S. Ct. 1211 (2022).<sup>3</sup> Simply put, Plaintiffs lack

---

<sup>3</sup> As one federal court recently explained, a “veritable tsunami of decisions” hold that a plaintiff lacks standing to challenge election rules based on the theory that their individual vote is diluted by allowing more people to vote. *O’Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL 1662742, at \*9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff’d*, No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022); *see also Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 999-1000 (D. Nev. 2020) (“As with other generally available grievances about the government, plaintiffs seek relief on behalf of their member voters that no more directly and tangibly benefits them than it does the public at large.” (quotations and alterations omitted));

standing to challenge the Board’s interpretation of § 103-5(a) and § 163-231 solely on the basis that they wish to see North Carolina law correctly applied, a “general interest common to all members of the public.” *Tucker*, 140 S.E.2d at 375.

**2. The Board correctly recognized that N.C. Gen. Stat. § 103-5(a) extends the absentee ballot receipt deadline to the next day county boards of election are open after Veterans Day.**

Putting aside the absence of any cognizable injury, Plaintiffs offer no reason to believe the Board’s interpretation is unlawful. North Carolina law states that absentee ballots are counted provided they are “postmarked and that postmark is dated on or before the day of the statewide . . . general election . . . and are received by the county board of elections not later than three days after the election by 5:00 p.m.” N.C. Gen. Stat. § 163-231(b)(2). However, this year, three days after the November general election is Veterans Day, a state and federal holiday during which public offices in North Carolina will be closed and no mail delivered. *See* Compl. ¶ 78; N.C. Gen. Stat. § 103-4 (defining Veterans Day as a state holiday). Longstanding North Carolina law accounts for this circumstance, providing that when “any act required or permitted by law to be performed in a public office” falls on a “Saturday, Sunday, or legal holiday when the public office . . . is closed for transactions, the act may be performed on the next day that the public office” is open. N.C. Gen. Stat. § 103-5(a). Veterans Day this year happens to be “the last day for doing [an] act required . . . by law” for the county boards—receiving timely-postmarked absentee ballots. *See*

---

*Martel v. Condos*, 487 F. Supp. 3d 247, 252 (D. Vt. 2020) (“If every voter suffers the same incremental dilution of the franchise caused by some third-party’s fraudulent vote, then these voters have experienced a generalized injury.”); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926-27 (D. Nev. 2020) (“Plaintiffs’ purported injury of having their votes diluted due to ostensible election fraud may be conceivably raised by any Nevada voter.”); *see also Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (“[T]he risk of vote dilution [is] speculative and, as such [is] more akin to a generalized grievance about the government than an injury in fact.”); *Feehan v. Wis. Elections Comm’n*, 506 F. Supp. 3d 596, 608 (E.D. Wis. 2020) (explaining this “vote dilution argument fell into the ‘generalized grievance’ category”).

N.C. Gen. Stat. §§ 163-231(b)(2), 103-5(a). The Board’s guidance does nothing more than recognize that § 103-5(a) operates to extend the absentee ballot return deadline to November 14—“the next day that the [county boards] [are] open for transactions.” Absentee Ballot Return Deadline Guidance at 1 & n.3 (citing § 103-5(a)).

Plaintiffs nonetheless insist that, just because election day happens to fall on November 8 this year, absentee voters should only get two days after the election for their timely-cast ballots to arrive at county boards, and that voters whose ballots would have arrived on the third day after the election—but cannot this year due to Veterans Day—are simply out of luck. *See* PI Mot. ¶ 12; Compl. ¶¶ 74-85. They offer only a cursory explanation as to why § 103-5(a) should not apply in that case. They contend that “N.C. Gen. Stat. § 163-231 does not cite to N.C. Gen. Stat. § 103-5 as authority for changing the deadline by which county boards of election must receive civilian absentee-by-mail ballots in order for them to be accepted.” Compl. ¶ 84. But that inverts the statutory text—§ 103-5(a) applies as a default rule whenever “the day or the last day for doing *any act* required or permitted by law . . . falls on a . . . legal holiday when the public office . . . is closed for transactions.” N.C. Gen. Stat. § 103-5(a) (emphasis added). It applies as a presumptive matter “[e]xcept as otherwise provided by law.” *Id.* Section 163-231(b) is *silent* as to what happens when the third day after an election falls on a legal holiday and nothing in the statute exempts application of the default, catch-all rule governing statutory deadlines that fall on a holiday.

That conclusion is reinforced by the fact that § 103-5(a) long predates the three-day grace period supplied by § 163-231, which was enacted only in 2009. *See* S.L. 2009-537, §§ 6, 8(a), eff. Jan. 1, 2010; *see also Hardbarger v. Deal*, 127 S.E.2d 771, 773 (N.C. 1962) (citing earlier version of § 103-5(a)). “It is always presumed that the Legislature acted with full knowledge of prior and existing law.” *Dickson v. Rucho*, 737 S.E.2d 362, 369 (2013) (quoting *Ridge Cmty. Investors, Inc.*,

239 S.E.2d at 570). If the legislature—when amending § 163-231—intended to displace the preexisting and default rule for public deadlines falling on legal holidays, “it would have plainly said so.” *State v. Poole*, 289 S.E.2d 335, 346 (N.C. 1982). That is particularly so given that the amendment to § 163-231 was intended to provide voters mailing absentee ballots three additional days for their ballots to arrive at a county office. There is no dispute that mail is not delivered on Veterans Day, Compl. ¶ 78, and as a result Plaintiffs’ reading would arbitrarily reduce this post-election grace period to *two* mail days, rather than three, but only in years when an election happens to fall on November 8. Default rules for calculating time, like § 103-5(a), exist precisely to avoid such arbitrary outcomes, absent clear legislative intent to the contrary. *Cf. United States v. Wilson*, 503 U.S. 329, 334 (1992) (disfavoring “interpretation of [a] statute” that would have “arbitrary” outcome, “a result not to be presumed lightly”).

Because Plaintiffs offer no persuasive reason to believe that § 103-5(a) does not apply to the deadline for county boards to receive absentee ballots, each of their claims is unlikely to succeed on the merits. They are unlikely to obtain a declaratory judgment that the Board violated Chapter 163, or acted beyond its enumerated powers in N.C. Gen. Stat. § 163-22(a), because the Board has correctly interpreted North Carolina law. For the same reason, they are unlikely to show a violation of due process, or that the Board has violated the federal Elections Clause; nor can Plaintiffs prevail on their final claim, that Numbered Memo 2022-09 violated NCAPA. The Board simply exercised its express authority in applying *existing* law and did not need to engage in rulemaking proceedings before issuing Numbered Memo 2020-09. N.C. Gen. Stat. Ann. § 150B-2(8a)(c) (explaining interpretive statements that “merely define, interpret, [and] explain the meaning of a statute or rule” are not rules subject to rulemaking); *see also Okale v. N.C. Dep’t. of Health & Hum. Servs.*, 570 S.E.2d 741, 743 (N.C. App. 2002) (explaining that statement from an

agency that “interprets and explains [] statutes” does not require rulemaking); *Comm’r of Lab. of State of N.C. v. Weekley Homes, L.P.*, 609 S.E.2d 407, 417 (N.C. App. 2005) (similar).

**B. Plaintiffs also fail to show that the Board’s longstanding Four-Hour Rule is contrary to law.**

Plaintiffs are also unlikely to show that the Board’s interpretation of N.C. Gen. Stat. § 163-45(a), as reflected in the Four-Hour Rule, is contrary to law. That statute provides that each county chair “shall have the right to designate two observers to attend each voting place” during an election and clarifies that observers may “be relieved during the day of the primary or election after serving no less than four hours.” N.C. Gen. Stat. § 163-45(a). The provision further allows each chair to “designate 10 additional at-large observers” who are not precinct-specific and may “attend any voting place in that county.” *Id.* The state party chair then may also “designate up to 100 additional at-large observers” who likewise are not bound to a specific voting location. *Id.* Nothing in the statute exempts at-large observers from the four hours of service required before they may be replaced at a given polling site.

With little explanation, Plaintiffs insist that the four-hour limitation in § 163-45(a) is best read as applying only to precinct-specific observers, with no statutory limit at all on at-large observers. *See* Compl. ¶¶ 43-44, 53, 63. For textual support, they point chiefly to the provision’s explanation that at-large observers “may attend any voting place” within the county for which they are appointed. *Id.* ¶ 12. But nothing in the statute grants at-large observers the right to attend multiple voting *places*, nor does it allow them to cycle in and out of polling sites at any interval.<sup>4</sup>

---

<sup>4</sup> Plaintiffs also suggest the Four-Hour Rule bars Republican observers “from observing the election process as ‘[they] may desire.’” Compl. ¶ 69 (quoting N.C. Gen. Stat. § 163-45). But the statutory language they quote comes from a *different* subsection of § 163-45—subsection (c)—which states that observers (at-large or otherwise) “shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, . . . [may] make such observation and

Several other reasons support rejecting the challengers' reading. First, "[t]he principal goal of statutory construction is to accomplish the legislative intent." *DTH Media Corp. v. Folt*, 841 S.E.2d 251, 257 (N.C. 2020) (quotation omitted); *see also id.* ("The cardinal principle of statutory construction is that the intent of the legislature is controlling." (quoting *State ex rel. Util. Comm'n v. Public Staff*, 306 S.E.2d 435, 443-44 (N.C. 1983))). It is implausible that the legislature intended for there to be a four-hour limitation on *some* observers, only to then defeat that limitation by placing *no restrictions at all* on other observers. As Chairman Circosta explained at the Board's August 16 meeting, the purpose of the statute is to maintain "good order" and to avoid "circulating people in and out and putting that burden on [] precinct officials to keep track of who is observing and who is official." State Board August 16, 2022 Meeting Minutes at 6. The Board's Associate General Counsel further explained that "not having any limit on time . . . could open the doors to people coming and going every five minutes." *Id.* The purpose of the statute, he explained, was "to ensure that you did not have constant comings and goings and the poll workers having to keep track of a different observer every half hour or whatever." *Id.* For that reason, the Board has long understood the legislature's intent to be that the four-hour requirement applies to all observers. *Id.*; *see also Folt*, 841 S.E.2d at 257 ("In ascertaining the legislative intent courts should consider the language of the statute, the spirit of the statute, and what it seeks to accomplish." (quoting *Public Staff*, 306 S.E.2d at 443-44)).

Plaintiffs respond that the "at-large observer role was created to help fill the gaps in coverage created by a lack of site-specific observers." Compl. ¶ 69. Even so, the Four-Hour Rule is not inconsistent with that purpose. At-large observers are well-positioned to serve that gap-

---

take such notes as the observer may desire." N.C. Gen. Stat. § 163-45(c). That subsection—which indisputably also governs precinct-specific observers—does not allow observers free reign to disregard reasonable regulations that maintain polling place order.

filling role because they may attend any “voting place” within their county (or within the state), rather than being tethered to a specific precinct. *See* N.C. Gen. Stat. § 163-45(a). Contrary to Plaintiffs’ suggestions, Compl. ¶¶ 69, 71; PI Mot. ¶¶ 11, 17; *id.*, Ex. B (“Deas Aff.”) ¶¶ 24-27, the Four-Hour Rule does not eliminate the utility of at-large observers, nor does it preclude at-large observers from visiting multiple sites (provided they are not relieving another at-large observer within that observer’s four-hour window) or from returning to a site they previously visited, so long the chief judge finds their return non-disruptive. The rule itself makes this clear:

All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours; . . . *An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer’s return would cause a disruption in the voting enclosure.*

Four-Hour Rule (emphases added).

Plaintiffs exaggerate the limitations the Four-Hour Rule places on their at-large observers and implausibly suggest the legislature desired no time limitations *at all*,<sup>5</sup> but the legislative history of N.C. Gen. Stat. § 163-45(a) refutes this theory. Prior to 2014, North Carolina law permitted only two precinct-specific observers per polling site, subject to the four-hour limitation. *See* 2007 North Carolina Laws S.L. 2007-391 (H.B. 1743). As Plaintiffs note, Compl. ¶ 42, in 2013 the legislature provided for county-wide and state-wide at-large observers and added a third slot for

---

<sup>5</sup> For example, Plaintiffs suggest that an “at-large observer could alleviate a site-specific observer who may need to leave a voting place early or needs to arrive late.” Compl. ¶ 69. But both N.C. Gen. Stat. § 163-45(a) and the Four-Hour Rule permit each party to have *three* observers at each polling site—two precinct-specific and one at-large. If a precinct-specific observer needed to temporarily leave a polling site—and an at-large observer was not already at the site and able to cover for him—nothing in the Four-Hour Rule precludes an at-large observer from coming to fill a vacant third at-large slot. Plaintiffs also do not—and could not—suggest that they are irreparably harmed by not being able to have *multiple* poll observers at any given polling site.

such observers at each polling site. *See* 2013 North Carolina Laws S.L. 2013-381 (H.B. 589). If the legislature intended the existing four-hour limitation *not* to apply to these new observers it, again, “would have plainly said so.” *Poole*, 289 S.E.2d at 346; *see also* *Dickson*, 737 S.E.2d at 369 (quoting *Ridge Cmty. Investors, Inc.*, 239 S.E.2d at 570). But the legislature did not, nor do Plaintiffs show that it has made any effort to do so since 2016 when the Board first adopted the present interpretation. “When the legislature chooses not to amend a statutory provision that has received a specific interpretation, [courts] assume lawmakers are satisfied with that interpretation.” *Myers v. Myers*, 837 S.E.2d 443, 453 (N.C. App. 2020). This further supports the Board’s interpretation, as courts find such “legislative acquiescence . . . especially persuasive on issues of statutory interpretation.” *Id.*

Finally, while “not binding,” the “interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference by [] courts.” *Total Renal Care of N.C., LLC v. N.C. Dep’t of Health & Hum. Servs.*, 615 S.E.2d 81, 85 (N.C. App. 2005); *see also* *Total Renal Care of N.C., LLC v. N.C. Dep’t of Health & Hum. Servs.*, 776 S.E.2d 322, 326 (N.C. App. 2015). To the extent a statute is “silent or ambiguous on an issue, this Court must defer to the agency’s interpretation ‘as long as the agency’s interpretation is reasonable and based on a permissible construction of the statute.’” *Total Renal Care of N.C.*, 776 S.E.2d at 326 (quoting *AH N.C. Owner LLC v. N.C. Dep’t of Health & Hum. Servs.*, 771 S.E.2d 537, 543 (N.C. App. 2015)). The Board’s interpretation—which has been in place for six years and has been affirmed by the Rules Review Commission—is not unreasonable; it permissibly construes the statute and is consistent with the legislature’s purpose in enacting the law. For these reasons, Plaintiffs cannot demonstrate that the Four-Hour Rule is inconsistent with N.C. Gen. Stat. § 163-45(a).



## **II. Plaintiffs have failed to make any showing of irreparable harm.**

### **A. Plaintiffs are not harmed by having lawful, timely-cast ballots counted.**

Beginning with the Board's Absentee Ballot Return Date Guidance, Plaintiffs' motion offers little theory of harm at all, asserting only that, absent injunctive relief, "County Boards of Election will receive and tabulate ballots in the 2022 general election that were received after the deadline set forth in N.C. Gen. Stat. § 163-231." PI Mot. ¶ 12. That ignores the operation of § 103-5(a), *see supra* at 8-11, but just as importantly it also does not identify any irreparable harm *to the Plaintiffs*. Merely asserting (wrongly) that the government is violating one of its own statutes does not demonstrate that Plaintiffs themselves "ha[ve] or [are] likely to sustain irreparable injury." *A.E.P. Indus., Inc. v. McClure*, 302 S.E.2d 754, 762 (N.C. 1983). Indeed, Plaintiffs' meager claims of harm fall short of providing them standing, *see supra* at 6-8, never mind the sort of irreparable harm that would warrant extraordinary injunctive relief just before an election. They "have alleged no injury" from the Absentee Ballot Return Date Guidance "beyond their concern that the [Board] ha[s] not followed the law." *Perdue*, 721 S.E.2d at 765; *see also Allen*, 468 U.S. at 754; *Tucker*, 140 S.E.2d at 375; *Valley Forge Christian Coll.*, 454 U.S. at 482-83. Nothing in the Plaintiffs' motion for preliminary injunction remedies their failure to plead any harm from the Absentee Ballot Return Date Guidance in the complaint.

Plaintiffs' own affidavits further confirm that they face no irreparable harm from counting lawful and timely-cast absentee ballots received the next business day after Veterans Day. Their first affiant—the Executive Director of the North Carolina Republican Party—does not even *mention* the guidance in his affidavit. *See generally* PI Mot., Ex. A ("Simmons Aff."). Their second affiant—Ms. Deas, the Chairwoman of the Clay County Republican Party—only passingly refers to the absentee ballot receipt deadline, contending it will "dilute [her] lawful vote." Deas Aff. ¶ 37. But she nowhere disputes that the Board's interpretation of N.C. Gen. Stat. § 103-5(a) benefits

only other eligible voters who postmark their absentee ballots by election day; she fails to explain how it harms her to have these lawful, timely-cast ballots counted. Her displeasure that § 103-5(a) “allows more people to vote” does not harm her or her own ability to vote. *Green Party of Tenn. v. Hargett*, 194 F. Supp. 3d 691, 697 (M.D. Tenn. 2016) (finding no standing). And as explained, “the notion that a *single person’s* vote will be less valuable as a result of unlawful or invalid ballots being cast is not a concrete and particularized injury,” and thus also fails to show irreparable harm. *Moore*, 494 F. Supp. 3d at 313; *see also supra* at 7-8 & n.3 (collecting cases).

Perhaps recognizing the perversity of arguing that she is irreparably harmed by allowing lawful voters to have their timely-cast ballots counted, Ms. Deas adds that counting these ballots “*could* change the outcome of the election, meaning that a candidate [she] vote[s] for *could* win the election if only the votes [received before Veterans day] are counted, but *could* lose the election if” votes received by the first business day after the holiday are counted. Deas Aff. ¶ 38 (emphases added). That claim piles speculation on top of speculation. Ms. Deas fails to explain why these ballots are likely to favor one candidate over another, never mind that they will disfavor *her* preferred candidates. Such idle “speculation,” provides “too slender a reed upon which to rest a finding of prejudice or irreparable harm.” *130 of Chatham, LLC v. Rutherford Elec. Membership Corp.*, No. 14 CVS 711, 2014 WL 3809066, at \*4 (N.C. Super. July 31, 2014) (concluding movant failed to show irreparable harm); *see also Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002) (preliminary injunctive relief requires a “clear showing of irreparable harm . . . , and the required irreparable harm must be neither remote nor speculative, but actual and imminent” (quotation omitted)).

**B. Plaintiffs have failed to show they are irreparably harmed by the Four-Hour Rule, which they have unreasonably delayed challenging.**

Plaintiffs suggest they will “sustain irreparable harm” if they are subject to the Four-Hour Rule “for even [a] minimal period[] of time.” PI Mot. ¶ 10 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). But that claim is undermined by their own admission that they have long operated under the rule without seeking any judicial remedy. As their complaint concedes, the Board first issued guidance on the Four-Hour Rule in *six years ago*—in October 2016. *See* Compl. ¶ 46 (citing N.M. 2016-21). In October 2018, the Board issued a formal rule that “[a]ll observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours.” *Id.* ¶ 48 (quoting the Four-Hour Rule). That rule was approved by the Rules Review Commission the same month. *Id.* ¶ 49. The Board reissued guidance on the Four-Hour Rule *again* in October 2020, citing its then-two-year-old rule on the subject. *Id.* ¶ 51 (citing N.M. 2020-30). Approximately nine months later, in June 2021, the Board amended 08 N.C. Admin. Code § 20.0101 but left the Four-Hour Rule undisturbed. *Id.* ¶ 56. At least *twenty elections* have been held in North Carolina since the Board first issued its guidance on this topic, including the 2016 general election; the 2018 primary and general elections; and the 2020 primary and general elections.<sup>6</sup> It is well-established that “[o]ne significant measure of the need for immediate and irreparable harm is the haste with which the moving party seeks injunctive relief.” *Glob. Textile All., Inc. v. TDI Worldwide, LLC*, No. 17 CVS 7304, 2017 WL 5641185, at \*11 (N.C. Super. Nov. 21, 2017) (collecting cases). Plaintiffs here have moved with no haste at all.

Plaintiffs’ explanation for this six-year delay is to suggest, “upon information and belief,” that the Board did not strictly enforce the Four-Hour Rule historically but intends to do so this

---

<sup>6</sup> *See generally* NCSBE, Historical Election Results Data, <https://www.ncsbe.gov/results-data/election-results/historical-election-results-data> (last visited Oct. 11, 2022).

year. *See* Compl. ¶¶ 16, 45, 47, 50, 52. The only evidence they cite for this claim is a tip sheet published by the Board that does nothing more than recite the text of the longstanding Four-Hour Rule. *See id.* ¶ 17; *id.*, Ex. A (“Tips for Monitoring or Observing the Election at Polling Sites”). The tip sheet says *nothing* about the Board’s enforcement plans, and Plaintiffs’ own affidavits make clear that it is the county election officials—not the State Board—that enforce the Rule. *See, e.g.*, Deas Aff. ¶¶ 24-26 (explaining it was the Clay County Elections Director, not the Board, that enforced the rule). The Board’s tip sheet itself is unremarkable—Plaintiffs’ complaint acknowledges that the Board issued similar guidance reciting the same rule in 2016, 2018, and 2020. *See* Compl. ¶ 45 (citing N.M. 2016-21); ¶ 49 (citing N.M. 2018-14); ¶ 51 (citing N.M. 2020-30). Plaintiffs point to nothing at all suggesting the Board’s enforcement (or non-enforcement) of the rule will be any different in 2022 than in prior election cycles.

Simply put, Plaintiffs have failed to justify their lengthy delay in challenging the Four Hour Rule—their own complaint makes clear that they have known about the rule *for six years*, including at least *four years* during which the Four-Hour Rule existed as a formally promulgated regulation. *See id.* ¶ 46. During that time, Plaintiffs’ preferred candidates have competed (and prevailed) in numerous elections, and Plaintiffs point to no harm the Four-Hour Rule has caused them in that span. The Court should not rush to grant such extraordinary relief at the eleventh hour before an election, when Plaintiffs themselves displayed no sense of urgency while the challenged Rule was enforced over the past several election cycles. *See N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 674 S.E.2d 436, 443 (N.C. App. 2009) (affirming trial court’s finding of no irreparable harm where “some two months elapsed without any contention by plaintiffs of an urgent threat of irreparable harm”); *Am. Air Filter Co. v. Price*, No. 16 CVS 13610, 2017 WL 485517, at \*5 (N.C. Super. Ct. Feb. 3, 2017) (“Plaintiff’s lack of urgency in seeking injunctive

relief counsels against the idea that it is likely to suffer irreparable harm.”); *Southtech Orthopedics, Inc. v. Dingus*, 428 F. Supp. 2d 410, 420 (E.D.N.C. 2006) (finding six to nine week delay “weighs against [preliminary] injunctive relief”); *John Lemmon Films, Inc. v. Atl. Releasing Corp.*, 617 F. Supp. 992, 996 (W.D.N.C. 1985) (“Perhaps even more telling of the absence of convincing proof that the Plaintiff would suffer irreparable harm is the Plaintiff’s delay in seeking an injunction.”).

Setting aside their unjustified delay, Plaintiffs still fail to make any meaningful showing of irreparable harm. They point to only a single past instance of the Four-Hour Rule being applied against their observers, but that scenario involved a *misapplication* of the Four-Hour Rule by a local official. Ms. Deas explains that her one at-large observer during the 2022 primary election was told by the Elections Director for Clay County that he could not enter a new polling site “or any other voting place,” within the four-hour period after he began observing. Deas Aff. ¶¶ 24-26. But that is *not* what the Four-Hour Rule prohibits. *See supra* at 12-14. It states that observers, including at-large observers, “may leave the voting place without having served for four hours, but the observer cannot be *replaced* by a *new* observer until at least four hours have passed.” Compl., Ex. A (quoting 8 N.C. Admin. Code 20.0101) (emphases added). Ms. Deas simply misreads the Four-Hour Rule in suggesting an at-large observer “would not be able to return to the first voting place” they visit in a day “for approximately four hours” after leaving it to visit a second site. *Id.* ¶ 33. That observer is only barred from being replaced by a “*new* observer,” and is expressly permitted to return provided they can do so in a non-disruptive manner. Compl., Ex. A (quoting 08 N.C. Admin. Code. § 20.0101). To the extent a local official told Ms. Deas otherwise, her quarrel is with that official, and not the Four-Hour Rule as written.

Similarly, nothing in the rule precludes that at-large observer from entering a *new* polling site in the same four-hour period, provided they are not replacing another recently departed at-

large observer. Because the Clay County Republican Party only had one at-large observer during the 2022 primary, that observer could not have been replacing a different observer and should have been permitted entry into the new site. *See* Deas Aff. ¶¶ 16, 24. Ms. Deas’s own affidavit makes clear her grievance is not with the Four-Hour Rule or the Board, but with “[t]he [Clay County] Elections Director’s restrictions on [the Clay County Republican Party’s] only at-large observer.” *Id.* ¶ 26; *see also id.* ¶¶ 24-25 (noting restriction was imposed by county Elections Director, not the Board). Indeed, in explaining the need for prospective relief, she expresses concern that “the Elections Director for Clay County could, again, forbid the at-large observer from entering any voting place until 4 hours had passed since the at-large observer entered the last voting place.” *Id.* ¶ 34. But her remedy for that concern, if any, rests with the Clay County Elections Director—that individual’s alleged misapplication of the rule does not justify enjoining the rule as written.

Beyond this single misapplication of the rule, Plaintiffs offer nothing but speculation about how the Four-Hour rule harms them, none of which is tied to the upcoming election. They complain that imposing the Four-Hour Rule on at-large observers hinders their ability to observe every polling place in the state. But North Carolina law permits each political party to designate *two* precinct-specific observers for every polling site, notwithstanding the presence of at-large observers. *See* N.C. Gen. Stat. § 163-45(a); *see also* Compl., Ex. B (Deas Aff.) ¶ 12. And state law further permits them to send a third, at-large observer to each site, with the sole limitation that they may not be replaced by a *new* at-large observer within four hours. The law therefore affords Plaintiffs ample opportunity to observe each site.

Plaintiffs respond that they sometimes are not able to recruit enough precinct-specific observers, and that at-large observers must fill that gap. *See* PI Mot. ¶ 11; Simmons Aff. ¶¶ 14-18. Their only support for this claim, however, is to point to *primary* elections, when voter turnout

and partisan engagement is typically lower. *See, e.g.*, Simmons Aff. ¶¶ 17, 23; Deas Aff. ¶¶ 21-27. As the Alliance explained in its motion to intervene, far-right organizations have recruited large numbers of citizens to serve as observers during the general election, *see* Mot. to Intervene at 6, and “election officials fear that a surge of conspiracy believers are signing up for [poll observer] positions [in North Carolina] this year.”<sup>7</sup> Plaintiffs fail to point to any shortage of observers from any of the *three* prior statewide general elections held under the Four-Hour rule. And they offer no evidence they face any shortage of observers for the upcoming November 8 general election, undercutting their need for immediate relief.

Further still, Plaintiffs do not explain how the Four-Hour Rule prevents their at-large observers from serving a gap-filling role. Mr. Simmons notes that during the 2022 primary election, Lee County had only ten Republican precinct-specific observers for the county’s ten precincts. *See* Simmons Aff. ¶ 17. He explains that “[a]s a result, NCGOP uses at-large observers to observe at voting places where there may not be a voting place-specific observer or where other scheduling issues may have arisen.” *Id.* Fair enough—but Mr. Simmons nowhere explains how the Four-Hour Rule itself precluded any at-large observers in Lee County from filling in at specific precincts. Similarly, Ms. Deas notes she was only able to designate eight precinct-specific observers for Clay County’s nine voting sites during the 2022 primary election, two of whom could not ultimately volunteer. *See* Deas Aff. ¶¶ 21-22. But she was also only able to designate one at-large observer meaning, in any event, that multiple Clay County polling sites lacked coverage at any given time, regardless of the Four-Hour Rule. *Id.* ¶¶ 16, 24. The lack of any concrete evidence of harm traceable to the Four-Hour Rule weighs strongly against preliminary relief.

---

<sup>7</sup> Hannah Schoenbaum, *Election Officials Brace for Confrontational Poll Watchers*, Associated Press (Oct. 2, 2022), <https://apnews.com/article/2022-midterm-elections-politics-voting-presidential-biden-cabinet-c3d31b3b3c8957a51a2cc32e009d59be>.

**III. The Alliance, its members, and the public will be harmed by the extraordinary relief the Plaintiffs demand.**

In contrast to the lack of any harm Plaintiffs will face, granting the extraordinary relief they seek will irreparably harm the Alliance, its members, and North Carolina voters. This harm to the Alliance and the public interest cuts against granting Plaintiffs' relief.

Enjoining the Four-Hour Rule will harm Alliance members by limiting the Board's ability to ensure "good order" at polling sites. While many Alliance members choose to vote absentee, others continue to vote in person at their local polling site. *See* Ex. B. ("Dworkin Aff.") ¶ 4. Alliance members who choose to vote in person face additional age- and health-related hurdles that make it more difficult to cast a ballot and sometimes discourage individuals from voting at all. These include obstacles like long lines at in-person polling sites; intimidation from partisan election observers; difficulty navigating disruptive and unorganized polling places; and still lingering risks from COVID-19. *Id.* Without any limit on how often at-large observers may be relieved, partisan observers will be allowed to cycle through voting sites at leisure. Not only is that likely to burden and disrupt election officials, but it will also harm the Alliance by discouraging its members from attending polling places where they may face longer wait times and potentially intimidating interactions with unrestrained poll observers. *See* Mot. to Intervene at 8-10.

These are not idle concerns. During the May 2022 primary elections, county election officials reported "tales of verbal abuse from observers and instances of observers demanding access to voting machines, filming poll workers, blocking voters from tabulators and following precinct officials in their cars."<sup>8</sup> Conspiracy groups within North Carolina are now training poll observers for the November 2022 election. One group within the state that "promote[s]

---

<sup>8</sup> Paul Specht & Laura Leslie, *NC Elections Board OKs Stricter Rules for Observers*, WRAL (Aug. 16, 2022), <https://www.wral.com/nc-elections-board-oks-stricter-rules-for-observer-s/20420022/>.



misinformation and espouse[s] wild theories about the 2020 election, including the fiction that President Biden’s victory could still be decertified and Mr. Trump reinstated,” has already recruited over 1,000 volunteers to serve as poll observers in North Carolina in November.<sup>9</sup> The prospect of hyper-partisan observers disrupting election proceedings has even caused “some poll workers [to] express[] safety concerns to election officials,” resulting in some poll workers choosing not to work.<sup>10</sup> Upsetting the Board’s longstanding Four-Hour Rule therefore invites the risk of avoidable chaos at polling places and greater disruption to orderly election administration. The Alliance’s members are particularly likely to be discouraged—or simply prevented—from voting if election officials cannot maintain good order at polling sites. *See* Dworkin Aff. ¶¶ 4, 6.

The Alliance will also be harmed by enjoining the Board’s Absentee Ballot Return Date Guidance. Because Alliance members are particularly likely to rely upon absentee voting to make their voices heard, granting the Plaintiffs’ requested relief would put Alliance members at a heightened risk of having their ballots rejected. *See* Dworkin Aff. ¶ 5. It would also mean that many North Carolina voters who postmark their absentee ballots by election day will nonetheless have their ballots spoiled because they do not arrive in time, even though North Carolina law specifically grants time after election day for those ballots to arrive (and extends that time when it ends on a holiday). That harm will fall heavily on Alliance members who rely on absentee ballots to exercise their right to vote. Dworkin Aff. ¶¶ 3, 5.

---

<sup>9</sup> Will Doran, *Republicans Fight New NC Election Results, Led By Trump Lawyer Central to 2020 Conspiracy Theories*, The News & Observer (Aug. 27, 2022), <https://www.newsobserver.com/news/politics-government/election/article264905839.html>.

<sup>10</sup> *See, e.g.*, Maydha Devarajan, *N.C. Group Connected to Election Deniers Trains Poll Observers Ahead of Midterms*, Chatham News & Record (Aug. 31, 2022), <https://www.chathamnewsrecord.com/stories/nc-group-connected-to-election-deniers,14234>.

Reversing either the Board’s Absentee Ballot Return Date guidance or its longstanding Four-Hour Rule for poll observers also harms the Alliance in an additional way: an injunction would require the Alliance to divert limited resources from other policy objectives to educate its members about any new requirements for voting absentee, and what to expect at in-person polling sites across the state. Dworkin Aff. ¶ 7.

While these concerns acutely affect the Alliance and its members, they also apply to the public at large. Granting Plaintiffs their requested preliminary injunction means that some number of North Carolinians, unrepresented here, will have their timely-cast ballots tossed out simply because the postal service is closed on Veterans Day. That risk is substantial—numerous North Carolina communities have experience mail delay problems in the past year alone.<sup>11</sup> Likewise, limiting the ability of election officials to regulate observers means that all North Carolina voters heading to the polls on November 8 will face a greater likelihood of disruption at their polling site. Disruptive behavior at polling sites increases waiting time for voters, which will discourage some people from voting. *See, e.g., Mich. State A. Philip Randolph Inst. v. Johnson*, No. 16-CV-11844, 2018 WL 4024895, at \*7 (E.D. Mich. Aug. 23, 2018) (describing how “longer lines” “deter a

---

<sup>11</sup> *See, e.g.,* Gilbert Baez, *Residences Concerned After a Week Without Mail Delivery To Their Fayetteville Neighborhood*, WRAL (July 22, 2022), <https://www.wral.com/residents-concerned-after-a-week-without-mail-delivery-to-their-fayetteville-neighborhood/20386061/> (describing week-long mail delivery delays in Fayetteville); Alliyah Sims, *Guilford County Neighbors Frustrated with USPS Mail Delays*, MyFox8 (Jan. 25, 2022), <https://myfox8.com/news/north-carolina/piedmont-triad/guilford-county-neighbors-frustrated-with-usps-mail-delays/> (describing week-long mail delays in Guilford County in January); Mary Ramsey, *Why Is The Mail Running Slow? This Is What’s Behind Charlotte Delivery Delays*, The Charlotte Observer (Jan. 12, 2022), <https://www.charlotteobserver.com/news/local/article257228497.html> (describing similar delays in Charlotte); Keenan Willard, *Rocky Mount Neighborhood Sees Delay in Mail Deliveries as USPS Faces Issues with Holidays Looming*, WRAL (Oct. 19, 2021), <https://www.wral.com/rocky-mount-neighborhood-sees-delay-in-mail-deliveries-as-usps-faces-issues-with-holidays-looming/19933933/> (describing week-long delays in mail delivery in Rocky Mount in October 2021).

substantial number of people from voting by discouraging them from attending the polls,” which is itself “irreparable harm”).

Beyond irreparable harm to other North Carolina voters, granting Plaintiffs relief will irreparably harm election officials tasked with managing polling sites. As Board Chairman Circosta explained, the Four-Hour Rule is meant “to ensure that you d[o] not have constant comings and goings” in polling places, and to avoid making “poll workers . . . keep track of a different observer every half hour or whatever.” State Board August 16, 2022 Meeting Minutes at 6. Enjoining the six-year-old Rule just weeks before an election will impose an unwarranted last-minute burden on county election officials, further tilting the public interest here against preliminary relief. *See Pender Cnty. v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007) (explaining courts must “minimize disruption to the ongoing election cycle”), *aff’d sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).

### **CONCLUSION**

For the reasons above, the Court should deny Plaintiffs’ motion for a preliminary injunction.

Dated: October 11, 2022

Respectfully submitted,

By: 

Narendra K. Ghosh, NC Bar No. 37649  
PATTERSON HARKAVY LLP  
100 Europa Drive, Suite 420  
Chapel Hill, NC 27517  
Telephone: 919-942-5200  
nghosh@pathlaw.com

Uzoma N. Nkwonta\*  
Christopher D. Dodge\*  
Melinda K. Johnson\*  
ELIAS LAW GROUP LLP  
10 G Street NE, Suite 600  
Washington, D.C. 20002  
Telephone: (202) 968-4490  
Facsimile: (202) 968-4498  
unkwonta@elias.law  
cdodge@elias.law  
mjohnson@elias.law

*Attorneys for Proposed Intervenor  
North Carolina Alliance for Retired Americans*

*\* Pro hac vice application pending*

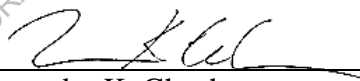
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the counsel  
for Plaintiffs and Defendants by email as follows:

Phillip J. Strach  
phillip.strach@nelsonmullins.com  
John E. Branch, III  
john.branch@nelsonmullins.com  
Cassie A. Holt  
cassie.holt@nelsonmullins.com  
NELSON MULLINS RILEY & SCARBOROUGH LLP

Mary Carla Babb  
Terence Steed  
North Carolina Department of Justice  
mcbabb@ncdoj.gov  
tsteed@ncdoj.gov

Respectfully submitted this 11th day of October, 2022.

  
\_\_\_\_\_  
Narendra K. Ghosh  
NC State Bar No. 37649  
PATTERSON HARKAVY LLP  
100 Europa Dr., Suite 420  
Chapel Hill, North Carolina 27517  
(919) 942-5200  
nghosh@pathlaw.com

# Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

North Carolina State Board of Elections  
Minutes of Meeting

The State Board of Elections held a video conference remote meeting via WebEx on August 16, 2022.

**Members Present and Participating Via Video Conferencing:**

Damon Circosta, Chair  
Stella Anderson, Secretary  
Stacy "Four" Eggers, Member  
Jeff Carmon, III, Member  
Tommy Tucker, Member

**Call to Order (0:02 – 0:21)**

The meeting was called to order at 11:02 a.m. and a rollcall was taken. A quorum of State Board members was present, and the meeting, having been duly convened, was ready to proceed with the agenda items.

Statement Regarding Ethics and Conflict of Interest was read by the Board Chair. No known conflicts of interest or appearance of a conflict were noted by the members for participation in this meeting. (0:24 – 0:41)

**Approval of Prior Meeting Minutes (0:42 – 1:10)**

Dr. Anderson moved that the State Board approve the State Board's meeting minutes from August 1, 2022. Second by Member Carmon. Roll Call Vote was taken with all members voting Aye. Motion carried unanimously.

**Appointments to Vacancies on County Boards of Elections (1:40 – 4:10)**

Chair Circosta provided a summary of the State Democratic Party Chair nominations for the Guilford County Board of Elections vacancy, providing 1<sup>st</sup> and 2<sup>nd</sup> choice for each County Board of Elections as follows:

**Guilford County**

1. Felita Regina Donnell
2. Monica Felecia Walker

Member Carmon made the motion that the State Board appoint Felita Regina Donnell to the Guilford County Board of Elections. Second by Dr. Anderson. Roll Call Vote was taken with all members voting Aye. The Motion carried unanimously.

Chair Circosta provided a summary of the State Republican Party Chair nominations for the Haywood County Board of Elections vacancy, providing 1<sup>st</sup> and 2<sup>nd</sup> choice for each County Board of Elections. It was noted by The Chair that their 1<sup>st</sup> choice Trudy Jane Schmidt is currently a party officer, but she would resign if appointed to the county board of elections:

**Haywood County**

1. Trudy Jane Schmidt
2. Barry Wesley Peppers

Member Eggers made the motion that the State Board appoint Trudy Jane Schmidt to the Haywood County Board of Elections. Second by Member Carmon. Roll Call Vote was taken with all members voting Aye. The Motion carried unanimously.

Member Eggers provided a summary of the State Republican Party Chair nominations for the Perquimans County Board of Elections vacancy, providing 1<sup>st</sup> and 2<sup>nd</sup> choice for each County Board of Elections as follows:

Perquimans County

1. Kevin Scott Jones
2. John Robert Treiber

Member Eggers made the motion that the State Board appoint Kevin Scott Jones to the Perquimans County Board of Elections. Second by Senator Tucker. Roll Call Vote was taken with all members voting Aye. The Motion carried unanimously.

#### **Canvass of July 26, 2022 Municipal Election (4:17 – 16:08)**

Executive Director Brinson Bell was recognized to provide a summary of this agenda item. Utilizing a PowerPoint presentation, she stated that today, the State Board will canvass and certify the July 26<sup>th</sup> elections which were held in 15 counties. There were six municipal elections held in Charlotte, Fayetteville, Greensboro, Hickory, Mooresville, and Sanford for mayor and/or city or town council. Six run-off elections were held in Cary, New Bern, Rocky Mount and Statesville for municipal contests and Franklin County Board of Education and Jackson County Board of Education. Two second primaries were held - Graham County for a Republican sheriff race and Wake County for a Democratic sheriff race.

We will canvass the cross-county contests and authenticate the vote in all contests. Provided that the Board approves the canvass, we will issue certificates of election within six days, pursuant to the general statute, for the prevailing candidates in multi-county contests. The counties have issued their certificates or will issue their certificates of nomination or election if they are inclusive to the county.

Executive Director Brinson Bell reviewed the statutes governing canvassing votes and certification, adding that the term “canvass” means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. She explained that as with any election, the post-election processes and audits have been conducted. The counties have done their part with conducting sample hand to eye audits from the random selection that was conducted the day after the election, completed their reconciliation and confirmed that all eligible ballots have been counted. For the State Board audits, we have taken the information from the counties and looked at a voter history audit, looked at results of a sample audit and conducted a close contest audit which does include a look at the provisional ballots and the reconciliation that occurred at the county level. She reviewed the findings from each of the audits performed by State staff.

Canvass at the State Board level is a certification of sub-certifications performed by the county boards, relying on audits conducted by State board staff. Following approval of canvass and certification, the agency will submit a composite abstract showing the vote totals in all contests to the Secretary of State. In closing, Executive Director Brinson Bell provided a proposed motion for the Board’s consideration.



In discussion, Senator Tucker asked for a walk through in the deeper audit the margin of victory as compared to the sum of the total variances. What is that math? Executive Director Brinson Bell responded that she could bring on one of our data specialists to explain it further but the gist of it is that we looked to see if a contest is so close that the variance in the voter history or the provisionals that were not approved, if there is any variance that would affect the closeness of that contest. We did not have that in these cases except for the one mentioned in the City of Fayetteville. Since they conducted their full recount and had completed all of their other audits and reconciliation, and there was no change in outcome race. Although it was a close contest, we feel that we can authenticate that race and they have certified. Senator Tucker next asked about the margin of closeness, was it 10 percent, 5 or 20? Executive Director Brinson Bell answered that calculation depends on the votes cast.

Senator Tucker made the motion that the State Board canvass the votes cast in all ballot items within the jurisdiction of the State Board and authenticate the count in every ballot item in the counties for the July 26, 2022 election. He FURTHER moved that State Board staff be authorized to affix electronic signatures for the board members on the compost abstract of the election results to be provided to the Secretary of State. Second by Member Carmon. Roll Call Vote was taken with all members voting Aye. Motion carried unanimously.

The Chair thanked state staff and county staff for wonderful work on this election. It is always a pleasure to perform the canvass vote.

**Reconsideration of 2020 Third Quarter Report Waiver Request from the Brunswick County Republican Women (16:14 – 19:04)**

Associate General Counsel Lindsey Wakely was recognized to provide a summary of this agenda item. She stated that at the May meeting the State Board considered a waiver request from the Brunswick County Republican Women for the 2020 3<sup>rd</sup> Quarter Report. The staff recommendation based on the waiver request that was submitted was to deny the waiver request at that time. The State Board agreed with the recommendation and on May 20, 2022, we provided notice of the denial to the committee. In June, they filed a contested case at the Office of Administrative Hearings (OAH) challenging the denial of that waiver request. Associated with that filing, there was a petition and some additional documents that were submitted to OAH. In reviewing that packet of information, staff made the determination to go back and conduct some additional research on the email address that was actually used to attempt to file the 2020 3<sup>rd</sup> Quarter Report. Our research did determine that the email address used, we expected that it resulted in a consistent notification delivery failure. It turns out that was not in fact what occurred – sometimes the emails were received and sometimes they may not be. Also, an eDiscovery search was done to look at any past instances of use of that email address by the Brunswick County Republican Women. We did find multiple instances in past years where that email address was used by the former treasurer to actually submit reports to the correct mailbox. No evidence was found about correction in using of that email address.

AGC Wakely stated that based on this additional research, determination was made to submit the waiver request for reconsideration to the State Board and at this time, based on that additional information and our additional research, staff is recommending that the State Board grant the waiver request for the 2020 3<sup>rd</sup> Quarter report – that is a waiver request for a \$500 penalty assessment.

Having reconsidered the written request of the Brunswick County Republican Women's Club, Member Eggers made the motion that the State Board find good cause to grant the waiver request for the 2020

Third Quarter Report and provide notice to the committee that the penalty has been waived. Second by Member Carmon. Roll Call Vote was taken with all members voting Aye. Motion carried unanimously.

**Adoption of Temporary Election Rules (19:09 – 49:55)**

Associate General Counsel Paul Cox was recognized to provide a background summary and update on the proposed temporary election rules. He stated that the two temporary rule amendments were proposed by staff following a public comment period. The rules being proposed to be temporarily amended are 08 NCAC 10B .0101 and 08 NCAC 20 .0101, pertaining to precinct officials and party appointed election observers.

The Board voted on July 14<sup>th</sup> to put these temporary rules out for public comment. Two public comment hearings were held – one on July 28<sup>th</sup> and one on August 11<sup>th</sup>. Participation from the public was substantial and substantive. The Board received 150 emails, 2 letters in the mail, and over 1000 comments submitted through the agency web portal. The public comments have been shared with the Board and posted on the webpage for this meeting. He stated that staff is recommending a few minor revisions to the rule amendments based on these comments. Those changes are reflected in the copies of the rules that have been circulated to the Board and they are on the webpage. The revisions post comments are reflected in highlighting on the posted documents.

The item before the Board today is whether to adopt these proposed temporary rule amendments as revised. The draft rules are based on recent input from county directors of elections who have been experiencing new issues at voting places with parties and election observers and county appointed precinct officials. Many of the directors want to ensure that there are clearly defined rules governing both of these participants in our electoral process.

He added that staff has suggested temporary rule making here, because it would not have been possible to have these new rules in place before the start of in person voting on October 20, 2022, for the general election in November. Some commenters have suggested otherwise, but that is incorrect. According to the Office of Administrative Hearings' rulemaking calendar, a permanent rule would have to have been drafted, voted on, and noticed to the public by May 24, 2022, at the latest, for the rule to possibly go into effect before in-person voting in the general election. That, of course, would not have been possible, since county canvass of the primary was not yet complete by May 24<sup>th</sup>. Given the demands on county and State Board staff's time, it would not have been possible to generate the requisite feedback on these issues immediately after primary election day. That is why staff recommended the temporary rule making process.

AGC Cox reviewed the basis behind each proposed rule amendment and the staff's proposed post-comment nonsubstantial changes to the election observer and precinct official rules indicating that the revisions are highlighted on the documents posted on the State Board website.

The Chair opened the matter for questions. In discussion, Member Eggers inquired about the rules being presented as temporary rules and that they would go before the Rules Review Commission. AGC Cox confirmed that if adopted, then they would be presented to the Rules Review Commission and reviewed by the Commission as they have a specific standard for reviewing proposed temporary rules. If it meets that standard, which we believe it does, then the temporary rules would go into effect in the administrative code for 270 days. Member Eggers stated that he understood staff's purpose of the request by some of our county directors to have these rules in place for the November election. It is in about 4 months, and he would assume that if these rule changes work well, that we may see them again

as a permanent rulemaking arrangement. And if there are problems or hiccups, then we could tweak those when permanent rules are presented to the Board. AGC Cox confirmed it would be prudent for the Board, after these rules go into effect, to take stock of how the rules worked and to take that into account in the permanent rulemaking process following the general election.

Chair Circosta inquired of staff if we are to adopt these rules today, we would go ahead and already start planning for a post November review with a similar sort of survey sent out to our county directors and contact the political parties about how they think the observer process was. He felt that it would be a good practice to have before the rules come back before the Board as permanent rules. AGC Cox stated that staff would be happy to plan for that.

Senator Tucker stated that having previously served on the Rules Review Commission, whether they be temporary or permanent rules, that we are going through the standard process was good. He inquired about the proposed rules designating a specific door to people go in and out of. AGC Cox responded that that amendment to the rules came from comments from county directors on complaints from observers that they could not use doors in a polling place that were designated specifically for staff which was utilized to go to the curb side voting enclosure outside and then come back in. He explained the safety concerns and security concerns when such doorways are near tabulators and the need to ensure that equipment is not tampered with. Senator Tucker suggested that it might be better to place signage on those doors stating authorized personnel only to stop this as best as they can and not have this blanket stipulation for the entire state. There are different setups in every precinct and it's hard to understand the thought process of trying to make it a blanket policy for the whole state. Chair Circosta stated that he believes that Member Eggers was working on a possible slight amendment to that rule. He stated that Senator Tucker's point was well taken and that we don't want to overly try to administer particular setups for particular precincts, but we also want to make sure that we ensure that we are adhering to both the statute and the idea behind the statute where observers should observe. The Chair stated that one of the issues with the door is for our at large observers. What we want to do with these rules is make sure that if our at large observers show up at a precinct, they don't need to wait in line with all of the other voters in order to get to their observing place and in that regard Member Eggers has been working on a possible slight amendment to the proposed rule. He asked Member Eggers to explain his proposed amendment.

Member Eggers stated that he had a couple of proposed changes to the temporary rules as they relate to observers. He stated that we are dealing with two different issues for these rules. The first is the tasks and duties of the precinct officials. He stated that those proposed changes very much mirror what we find in state law and other requirements and also for our precinct judges. Those are well founded and in good order and it should make for a nice orderly administration of elections. The election observer issue does deal with the tension between the orderly administration by our directors and their staff and also those who wish to make sure everything is being done properly and to observe. Member Eggers would have two proposed changes to the observer rule. Chair Circosta asked for any additional substantive questions for staff and then Member Eggers could make his motion.

Member Eggers directed his inquiry to staff as it relates to the election observer rule, stating there is a four-hour limit on when an at large observer may be replaced. He asked staff to address why there is a four-hour limit in our rulemaking. He believed that related to a state statute and upon the explanation from staff, he would have a motion with some amendments that we might wish to entertain. AGC Cox responded that the G.S. §163-45 states that the chair of each political party shall have the right to designate two observers to attend each voting place and they may be relieved during the day of the

primary election after serving no less than four hours. That is where the four-hour requirement comes from, and the limit has been in the observer rule as we see it today in its unamended form. Member Eggers asked if staff would be comfortable with a precinct specific observer may leave the voting place without serving the four hours, but the observer could not be replaced with a new observer until those four hours had passed from when the first observer began observing? AGC Cox sought clarification that the idea would be to apply the four-hour limit to precinct specific observers but not to at large observers? Member Eggers confirmed that was what he was asking. While AGC Cox was reviewing the statute, The Chair stated that one of the reasons for the four hours in the statute was to get that good order and what you don't want is circulating people in and out and putting that burden on our precinct officials to keep track of who is observing who and who is official. He stated that to the extent that we can maintain that notion, he would be supportive, and the statute seems to already read not less than four hours. He gave an example of observing in the morning and your kid gets sick and you have to leave. The idea is that there would be a period of time that that observer slot is not filled but someone could come in after the lapse of the four hours. Is that what the rule gets at AGC Cox? AGC Cox confirmed that The Chair was correct. He stated that it is a statutory requirement and does not come from our rule. He was trying to determine if we can differentiate between the type of observer that is subject to the four-hour change requirement. Part of it was to ensure that you did not have constant comings and goings and the poll workers having to keep track of a different observer every half hour or whatever. Member Eggers asked The Chair as to his hypothetical, he felt it would also be why the statute allows the at large observer for the lack of a better term to fill in for the precinct specific observer who has that family emergency, pick up a kid from school, whatever they need to go and do. The Chair responded and confirmed that Member Eggers was trying to square the circle of the at larger observer coming in relief of a precinct official. The Chair stated that was a good question, but he did not know if we could get it done in this proposed rulemaking. It is an interesting thought. He liked the concept of having continuous observers there while still maintaining within the bounds of the statutes what we are permitted to do. He stated that he did not know if staff would be able to come up to an answer if we could do that today. If we cannot come up with the answer today, it is definitely something that we should be thinking about moving forward. He asked AGC Cox to provide clarity on that. AGC Cox stated that as statute reads, it has been interpreted that it applied to all observers. He stated that we need to be cognizant of not having any limit on time because that could open the doors to people coming and going every five minutes. There is an independent basis for a chief judge to avoid disruptions if something like that happens. But of course, we have not had enough time to decide if we would be able to parse out the four-hour requirement for the type of observer. The Chair inquired of Member Eggers if he would be agreeable to having that item on for a possible permanent rulemaking item or was this something that we need to address today? Member Eggers responded that it would be nice for those who are interested in election observers to be able to have someone who can fill that slot if a vacancy occurs. He hates to put staff on the spot for this, but he felt that it would be a useful point and as to that he would certainly like this to be included when we readdress this for permanent rulemaking and consideration. Member Eggers stated he is not sure how the rest of his colleagues feel about making this change. AGC Cox made one clarification about the at large observers being able to fill in. The at large observers are permitted to be the third observer. The statute and rules permit two site specific observers to be there at the same time. No more than two at the same time from the same party that are site specific. In addition to that an at large observer can also be there. Unless you have the situation where you have appointed only one site specific observer, you should have the two site specific observers and should not be left with no representation if you have the four-hour requirement or if someone has to leave for example. Member Eggers responded to The Chair that that point was well taken for our temporary rulemaking. It is something that he would like to see as we visit on it in

permanent rulemaking but for this purpose it would be a reasonable explanation of how that vacancy could be filled.

With no further questions for staff, Chair Circosta called for Member Egger's motion.

Member Eggers made the motion that the State Board adopt the temporary rule amendments as revised, to 08 NCAC 10B .0101 being task and duties of precinct officials in voting places as submitted. He moved that the State Board adopt 08 NCAC 20 .0101 as to election observers as presented with the following two changes:

1. A change to page 1, lines 16-19, that would replace language to say: "The county director of elections, on behalf of the county party chair, shall provide the list to the chief judge of each precinct on or before Election Day; and
2. The next change to (d)(9), with proposed language that reads "Using door designated for precinct officials or one-stop workers, unless authorized by the chief judge at the voting place. Observers need not wait in the voting line to enter the voting enclosure."

Member Eggers stated as to those he would ask that we would specifically find adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest, due to the need to have these adoptions made prior to the November 2022 election and the temporary rulemaking procedures and the notice and comment period provided for in the rules process for these rule amendments are necessary, because these rule amendments need to become effective before that general election in order to preserve the integrity of upcoming elections and the elections process. Member Eggers further moved that staff be permitted to make any technical changes to these rules to conform to the Rule Review Commission's format and style requirements. Second by Senator Tucker.

The Chair stated that the motion has been moved and seconded and opened the floor for discussion.

Senator Tucker stated that on behalf of Dr. Anderson and himself, we are normal people. We are not attorneys. This happened a lot in the legislature. As normal folks, they understand the technicalities of being litigious here. She and I are on the outside looking in and I suppose that you guys are doing the right thing. The Chair responded that he would never make a blanket statement that all lawyers do the right things, but he appreciates the sentiment.

The Chair made a quick comment to Member Eggers motion stating that his idea behind giving the chief judge the ability to supersede the staff door question makes a lot of sense. Generally speaking, we will put that as a prohibition in the rules but if the chief judge feels otherwise, then he can go ahead and make that happen. He would hope that would help those matters and we will have to wait and see how that plays out here shortly.

With no further discussion and the motion being moved and seconded, Roll Call Vote was taken on the motion with all member voting Aye. Motion carried unanimously.

**Closed Session (49:59 – 1:02:18)**

Chair Circosta made the motion that the State Board go into closed session pursuant to G.S. 163-278.22(7) and G.S. 143-318.11(a)(1) to discuss confidential campaign finance investigations. Second by Member Carmon. Roll Call Vote was taken with all member voting Aye. Motion carried unanimously.

Entered closed session at 11:53 a.m. and ended at 12:03 p.m.

**Adjournment (1:02:20 – 1:15:49)**

Prior to adjournment, Member Carmon stated that he would like to make a statement. The Chair noted that the Board has returned to open session, and he confirmed that all members were present. Member Carmon was recognized to proceed with his comments.

Member Carmon stated that he would like to thank his fellow board members. Today was one of our better board meetings. He read through the comments that were received regarding the temporary rule. And of course, we had over 1000 comments of which 700 were saying the same thing, just from different sides. But he came across one that really resonated with what he thinks that we should all remember. He did not call her name but stated that she said "United we stand, divided we fall. You are not appointed to one of two teams to play against each other. Your position there is to work together for the good of the people of North Carolina. Stop pecking away at rules and regulations to work for a team benefit and start setting in place rules and regulations that the majority of the total of you agree upon and not the majority of a party. You are bad. I am good. I am right. You are wrong. I hate this divide. Grow up and show us that your board is better than the mindless playing a game of team sports." Member Carmon stated that he hated that that has become the view of what we do, that we are playing a team sport, that we are mindlessly moving through what he considers some of the most important work in this State. He is glad and proud to say that today he is hoping that she saw a board of grown-ups that was working together for the betterment of our state and not the betterment of a particular party. Thank you.

The Chair stated that those were words that we could all adhere to. He asked for a motion to adjourn. Senator Tucker was given a point of personal privilege to ask a couple of questions. He concurred with what Member Carmon said.

Senator Tucker inquired of the Executive Director of some comments that were made of the ebb and flow in the one-way street of the association with allowing information from voter rolls to go to the group that we have not joined – ERIC. He asked her to give him the back and forth of the flow of information. The questions were that some political parties could use that as a voter roll or lack of voting to promote one party over another. Rather than being a team sport here, we are trying to find out what is the situation and could she share that with us. Director Brinson Bell responded that he is referencing the ERIC program which a non-profit organization that has been formed by member states. It began with seven states about 12 years ago. Today it has 32 members and soon North Carolina will be a member as well. This organization serves to only be an exchange of data across the states to clean up our list maintenance or voter rolls. Using the comparison of data across state lines because we do not have a national database that indicates moves and voter registration for citizens. This will allow us to better work with other states to clean up our rolls and to make sure that someone is not registered in more than one state, at least amongst the 32 states that are current members and our state. It is also a method that allows us to check death rolls. The death database through Social Security is shared through this organization. It helps us when a particular citizen might go into another state for hospital

purposes and pass away and we may not get that information as quickly through our state's vital records. That is the data that this organization provides. It goes through a series of security checks to make sure that it is a secure exchange of information. The only people that are allowed access to that data are the member states and the chief election official and the agency that they represent. This is not a party avenue. It is not data that political parties will have access to or any third parties. It is simply available through the membership organization. Additionally, there is the ability to reach citizens who are eligible to register and vote and that data is also maintained within organization and through the mailings that are conducted. Senator Tucker thanked her for that explanation. He stated that he asked for the explanation simply because we had calls about us joining ERIC and it would be a better way for us to maintain our voter rolls.

Next, Senator Tucker inquired for an explanation from the director about an event that happened this week that was on national news. There was a story on Fox News about the North Carolina State Board of Elections not doing its jobs to remove people from the voter rolls that were either not legal citizens or should not be there. It cited the US Attorney from the Eastern District of NC. It portrayed the story as something happening now. Senator Tucker asked for an explanation so that the public would know what the news report was, how it was incorrect and incorrectly portrayed based on information she had shared with him. Executive Director Brinson Bell stated that just as there is misinformation about the ERIC program, this was a blatant example of mis or disinformation depending on what the gentleman had access to. We were not aware that this would be reported on Fox News, and it is completely inaccurate. This situation occurred in the previous administration. Information based on our own audit working with NCDMV was turned over to the US Attorney's Office for the Eastern District. Over a course of five years, we did not hear anything further from them until Executive Director Brinson Bell was State Director. It was last year that they provided us with a letter that was not factual. We responded immediately within three days to the Interim US Attorney and in his letter, he had indicated that he had information on individual who should be removed and never provided us with that information even when requested. The gentleman that spoke on Fox News was affiliated or indicated that he got his information from an organization that did make a public records request for both the letter from the Interim US Attorney and our response last year. At no point in time had he indicated that he had knowledge of this. So, we do not know if it was mis or disinformation, but either way, he is putting fuel on a fire that is not the case in North Carolina. We have very strong, secure, and accurate rolls. We are going to further that by being a part of the ERIC organization. We need folks like him to stop what they are doing. Spreading lies is not helping anyone and it certainly does not help the voters.

Senator Tucker asked if she was telling him that this is five years old and has the US Attorney closed this particular situation out? Executive Brinson Bell responded that the audit that we conducted was six years ago and this incident of exchange of letters between us and the Interim US Attorney occurred last year. There is now a new US Attorney serving the Eastern District. We do not know if they have individuals who they believe should be removed but if they do, then we will certainly go through that process that we do. There is obviously ongoing exchanges of information of individuals who are convicted of felonies at the federal level. We go through that process, just as we do with our North Department of Public Safety. Senator Tucker thanked her for her clarification.

Senator Tucker thanked the staff and the county boards for what they did as far as verifying the petition for the Green Party. He was probably and he did jump the gun on calling for a vote and making the board vote on that before the investigation was concluded. That was a mistake on his part. He wanted to say to the public that we have our differences on this board along the lines of what Member Carmon and the lady stated in her email – we all share the same opportunities to have everyone who is legally within the statutes, to have their particular political party represented. And this board, the chairman

and all members make that effort to make sure that if the Green Party's petition was verified by the county – petition signatures. Which it was and they got on the ballot and will be on the ballot in November. Collectively, the MO of this board is to have everybody have the opportunity to vote.

With no further discussion or comments from the State Board members, Senator Tucker made the motion that the State Board adjourn. Second by Member Carmon. Roll Call Vote was taken with all members voting Aye. The meeting is adjourned.

RETRIEVED FROM DEMOCRACYDOCKET.COM



# Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 22-CV-011290

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, *et al.*,

*Defendants.*

**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 ("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, 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 than the population at large in casting a ballot and having their votes counted, making it more difficult for the Alliance and its members to associate and to effectively further their shared political purposes. Because of the obstacles associated with voting in person, many of the Alliance's members regularly 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.<sup>1</sup>

4. At the same time, many Alliance members continue to vote in person at their local polling place, despite the obstacles this can present. For example, Alliance members sometimes must confront long lines at polling places, or other increasingly frequent disturbances, such as intimidating or disruptive behavior by partisan observers. While any in-person voter might encounter these difficulties, the Alliance's members, given age and health-related issues, are particularly likely to be discouraged from voting due to disruptions at polling sites. Similarly, Alliance members remain at risk from the ongoing effects of COVID-19, making it critical that polling sites are efficiently managed to avoid lengthy lines, overcrowding, or confusion. Ensuring access to in-person voting sites is therefore also a critical component of the Alliance's mission, and it has therefore also previously filed litigation intended to ensure that it is safe and convenient for its members to vote in person.<sup>2</sup>

---

<sup>1</sup> 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); *In re Appeal of Declaratory Ruling from the State Board of Elections*, Case No. 22-CVS-10520 (N.C. Super. Ct. Aug. 26, 2022) (pending motion to intervene filed by Alliance concerning challenge to North Carolina absentee ballot rules).

<sup>2</sup> See, e.g., *North Carolina Alliance for Retired Americans, et al. v. North Carolina State Board of Elections, et al.*, Case No. 20-CVS-8881 (N.C. Super. Ct. .C. Super. Sept. 22, 2020); *Moore v.*

5. The challenges to North Carolina election rules raised in this lawsuit have direct and immediate importance to both the Alliance and its members. This lawsuit seeks, in effect, to shorten the number of days after the November 2022 election during which a timely postmarked absentee ballot may be received. Ensuring that Alliance members may reliably have their timely mailed absentee ballots counted is critical to ensuring their participation in North Carolina's political community. It is particularly critical that Alliance members have the option of reliably voting via absentee ballot this year given news reports that groups promoting election conspiracy theories are planning to dispatch hundreds of volunteers into North Carolina's polling sites, which risks disrupting orderly voting.

6. Striking down the State Board's rule regarding when at-large poll observers may be relieved will also harm the Alliance's members. The State Board's rule helps to maintain good order at polling sites by preventing numerous observers from rapidly cycling in and out of different precincts. It is critical for Alliance members that election officials be able to maintain good order and decorum at polling sites. It was widely reported that North Carolina's May 2022 primary elections saw widespread disturbances at polling places due to intimidating and disruptive behavior from some partisan observers. I have also seen reports that many organizations, including those promoting conspiracy theories, are successfully recruiting volunteers to serve as poll observers for the November election. This creates a serious risk of disruption at polling places. Disruptions at polling sites, such as long lines, or confrontational or intimidating partisan observers, are particularly likely to discourage older voters, such as the Alliance's members, from casting ballots.

---

*Circosta*, Nos. 1:20CV911, 1:20CV912, 2020 WL 6597291, at \*1 (M.D.N.C. Oct. 8, 2020) (intervening in federal case concerning, *inter alia*, in person voting rules).

7. Granting the petition would also harm the Alliance as an organization. Making it harder and less reliable for the Alliance's members to vote either via absentee ballot or in person will require the organization to divert resources from our other advocacy efforts to educating members about the new rules sought by the Plaintiffs in this case and assisting members with navigating those rules. Such efforts will reduce the time and resources the Alliance has to engage in advocacy 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.

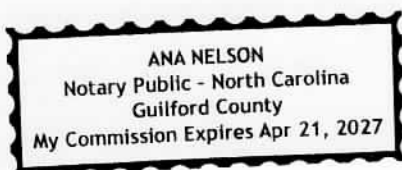
RETRIEVED FROM DEMOCRACYDOCKET.COM

# AFFIDAVIT

I, William Dworkin, declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on September 19, 2022, in Wake County, North Carolina.

William Dworkin  
William Dworkin

Sworn and subscribed before me this the 19<sup>th</sup> day of September, 2022.



Notary Public: Ana Nelson

Name: ANA NELSON

My commission expires: 4/21/2027