

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

No. 22-CVS-011290

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

Plaintiffs,

v.

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

Defendants,

AND

NORTH CAROLINA ALLIANCE FOR
RETIRED AMERICANS,

Intervenor-Defendant.

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**ORDER GRANTING INJUNCTIVE
RELIEF IN PART**

THIS CAUSE heard before the undersigned Judge of Superior Court presiding at the
October 10, 2022 Civil Session of Wake County Superior Court on Thursday, October 13, 2022,
upon Plaintiffs' Motion for a Preliminary Injunction under the North Carolina and federal

Constitutions and North Carolina's Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 *et seq*; and Attorneys Phillip J. Strach, John E. Branch, III and Cassie A. Holt, appearing on behalf of all Plaintiffs; Special Deputy Attorneys General Terence Steed and Mary Carla Babb, appearing on behalf of Defendants; and Narendra K. Ghosh and Christopher D. Dodge, appearing on behalf of Intervenor-Defendant North Carolina Alliance for Retired Americans. After considering the submissions of the parties, including the briefs and affidavits submitted to the Court, and after hearing arguments of counsel, the Court determines the following for the purpose of deciding Plaintiffs' Motion for Preliminary Injunction:

FINDINGS OF FACT

1. The General Assembly has tasked the NCSBE with providing "general supervision over the primaries and elections in the State[.]" N.C. Gen. Stat. § 163-22(a).
2. Pursuant to this express grant of power, the NCSBE has "authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable, so long as they do not conflict with any provision of [Chapter 163 of the North Carolina General Statutes]." *Id.*
3. Chapter 163 also establishes certain rights and duties for the political parties in election administration.
4. The Parties disagree as to the proper statutory interpretation of N.C. Gen. Stat. § 163-45 and N.C. Gen. Stat. § 163-231.
5. The Parties agree that § 163-45 permits the political parties to appoint at-large observers who may (1) enter and exit the same voting location during the four-hour time limitation so long as they are not being disruptive, and (2) visit multiple voting locations during a four-hour period.

Based upon the foregoing findings, the Court makes the following:

CONCLUSIONS OF LAW

1. For the purpose of determining Plaintiffs' Motion for Preliminary Injunction, the Court concludes that Plaintiffs have alleged standing and a violation of a constitutional right and, therefore, this Court has jurisdiction to entertain this motion and grant injunctive relief.

2. Because constitutional claims have been alleged, Plaintiffs need not exhaust their administrative remedies challenging statutes or regulations. *See Shell Island Homeowners' Ass'n, Inc. v. Tomlinson*, 134 N.C. App. 217, 222-25, 517 S.E.2d 406, 411-13 (1999).

3. Plaintiffs failed to demonstrate a likelihood of success on the merits or that the balance of harms tipped in their favor with respect to their claims under N.C. Gen. Stat. § 163-231(b)(2)(b) that the absentee receipt deadline is being improperly interpreted and applied by Defendants.

4. Plaintiffs failed to demonstrate a likelihood of success on the merits or an irreparable harm with respect to their claims under N.C. Gen. Stat. § 163-45 that the limit of one at-large observer per voting site is being improperly interpreted and applied by Defendants.

5. Plaintiffs showed that they are likely to succeed on the merits of their statutory claims regarding the Defendants' application of the four-hour limitation against at-large observers.

6. For the purpose of determining Plaintiffs' Motion for Preliminary Injunction, the Court concludes N.C. Gen. Stat. § 163-45 provides that only voting place-specific observers are subject to a four-hour limitation.

7. For the purposes of determining Plaintiffs' Motion for Preliminary Injunction, the Court concludes N.C. Gen. Stat. § 163-45 provides that at-large observers are not subject to any time limitations and an at-large observer may be replaced by another at-large observer at any time

so long as they are not disruptive, they have been properly designated as an at-large observer under § 163-45, and there is no more than one at-large observer within the voting enclosure at the same time.

8. For the purpose of determining Plaintiffs' Motion for Preliminary Injunction, the Court concludes that 08 N.C. Admin. Code 20.0101's application of the four-hour limitation to at-large observers is likely in excess of the NCSBE's statutory authority and is therefore unlawful to the extent it imposes a four-hour limitation on at-large observers.

9. For the purpose of determining Plaintiffs' Motion for Preliminary Injunction, the Court concludes that any other written guidance or directives by Defendants seeking to enforce a four-hour limitation against at-large observers found in 08 N.C. Admin. Code 20.0101 is likely in excess of the NCSBE's statutory authority and is therefore unlawful to the extent it imposes a four-hour limitation on at-large observers.

10. The Court concludes that Plaintiffs have shown that they will suffer irreparable harm if the four-hour rule is allowed to be applied against at-large observers in the 2022 election.

11. The balance of the equities favor enjoining Defendants' enforcement of a four-hour limitation against at-large observers in the 2022 election.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiffs' Motion for Preliminary Injunction is GRANTED in part and DENIED in part;
 2. The implementation and enforcement of any four-hour limitation on at-large observers is PRELIMINARILY ENJOINED; to the extent not granted herein, the Motion for Preliminary Injunction is denied;
 3. This Order of Preliminary Injunction shall remain in effect until further Order of this Court;
- and

4. Payment of a bond is not required.

SO ORDERED this the 26th day of October, 2022.

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The Honorable Vince M. Rozier, Jr.
Superior Court Judge Presiding

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