IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRATIC NATIONAL COMMITTEE; NORTH CAROLINA DEMOCRATIC PARTY Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections; ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as Secretary of the North Carolina State Board of Elections; STACY EGGERS IV, KEVIN N. LEWIS, and SIOBHAN O'DUFFY MILLEN, in their official capacities as members of the North Carolina State Board of Elections	§	Case No. 1:23-CV-862-TDS-JEP

MOTION TO INTERVENE AS DEFENDANTS BY THE REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY; BRENDA M. ELDRIDGE; AND VIRGINIA ANN WASSERBERG

Pursuant to Federal Rule of Civil Procedure 24, the Motion to Intervene should be granted for all the reasons stated in the Memorandum in Support of the Motion to Intervene being filed contemporaneously with this Motion.

The Movants – who seek to intervene as Defendants in this action – are as follows:

1. Republican National Committee: The Republican National Committee is a national committee, as defined by 52 U.S.C. §30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform.
2. North Carolina Republican Party: The North Carolina Republican Party is a state political party that works to promote Republican values and to assist Republican candidates in running for partisan federal, state, and local offices in North Carolina, representing the interests of more than 2 million registered Republican voters in the state.
3. Brenda M. Eldridge: Ms. Eldridge is a registered North Carolina voter and is registered as a Republican. She is a past chair of the Cumberland County Republican Party. She has previously served as a poll observer in North Carolina elections and intends to do so again in the future.
4. Virginia Ann Wasserberg: Ms. Wasserberg is a registered North Carolina voter and is registered as a Republican. She currently serves as chair of the Pasquotank County Republican Party, and in that role, appoints site-specific and county at-large election observers. She has previously served as a poll observer in North Carolina elections and intends to do so again in the future.

To satisfy the pleading requirement of Fed. R. Civ. P. 24(c), attached to this motion as Exhibit 1 is a Proposed Answer to Plaintiffs' Complaint. In filing this Proposed Answer,

Movants do not waive the right to move this Court for dismissal of any of Plaintiffs' claims that fail on procedural and/or legal grounds, should intervention be granted.

Respectfully, submitted this the 26th day of October 2023.

Chalmers, Adams, Backer & Kaufman, PLLC

By:*/s/ Philip Thomas*
Philip R. Thomas
N.C. Bar No. 53751
204 N. Person St.
Raleigh, NC 27601
Telephone: 919-670-5185
Facsimile: 678-582-8910
pthomas@chalmersadams.com

Baker & Hostetler LLP

Tyler G. Doyle (*pro hac vice pending*)
Texas State Bar No. 24072075
Rachel Hooper (*pro hac vice pending*)
Texas State Bar No. 24039102
811 Main St., Suite 1100
Houston, TX 77002
Telephone: 713-751-1600
Facsimile: 713-751-1717
tgdoyle@bakerlaw.com
rhooper@bakerlaw.com

Baker & Hostetler LLP

Trevor M. Stanley (*pro hac vice pending*)
District of Columbia State Bar No. 991207
Richard Raile (*pro hac vice pending*)
District of Columbia State Bar No. 1015689
Washington Square
1050 Connecticut Ave. NW, Suite 1100
Washington, DC 20036
Telephone: 202-861-1500
Facsimile: 202-861-1783
tstanley@bakerlaw.com
rraile@bakerlaw.com

Baker & Hostetler LLP

Patrick T. Lewis (*pro hac vice pending*)
Ohio State Bar No. 0078314
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114
Telephone: 216-621-0200
Facsimile: 216-696-0740
plewis@bakerlaw.com

ATTORNEYS FOR MOVANTS

CERTIFICATE OF SERVICE

I hereby certify that I filed the forgoing document using the Court's CM/ECF System which will send notification to all counsel of record.

This 26th day of October, 2023.

Chalmers, Adams, Backer & Kaufman, PLLC

/s/ Philip Thomas
Philip R. Thomas
N.C. Bar No. 53751

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRATIC NATIONAL COMMITTEE; NORTH CAROLINA DEMOCRATIC PARTY Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections; ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as Secretary of the North Carolina State Board of Elections; STACY EGGERS IV, KEVIN N. LEWIS, and SIOBHAN O'DUFFY MILLEN, in their official capacities as members of the North Carolina State Board of Elections	§	Case No. 1:23-CV-862-TDS-JEP

PROPOSED ORIGINAL ANSWER OF PROPOSED INTERVENORS

Proposed Intervenors, the Republican National Committee, North Carolina Republican Party, Brenda Eldridge, and Virginia Wasserberg ("Proposed Intervenors") file their Original Answer to Plaintiffs' Complaint (Doc. 1) ("Complaint") filed by Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Plaintiffs"). Unless specifically admitted herein, Proposed Intervenors deny each factual allegation of the Complaint and respectfully shows the following:

INTRODUCTION[1]

1. The allegations contained in paragraph 1 of the Complaint contain quoted case law that does not require a response. However, to the extent a response is required, Proposed Intervenors deny any allegation, inference, or suggestion that the Defendants or North Carolina Senate Bill 747 ("SB 747") are attempting to undermine North Carolinians' right to vote.

2. Proposed Intervenors deny the allegations in paragraph 2 of the Complaint.

3. Proposed Intervenors admit that SB 747 speaks for itself. The remainder of the allegations in paragraph 3 of the Complaint are denied.

4. Proposed Intervenors admit that SB 747 speaks for itself. The remainder of the allegations in paragraph 4 of the Complaint are denied.

5. Proposed Intervenors admit that the North Carolina General Assembly passed SB 747. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations related Plaintiffs' awareness of voter fraud and therefore deny them. The remainder of the allegations in paragraph 5 of the Complaint are denied.

6. Proposed Intervenors admit that Governor Cooper's quotes speak for themselves. The remainder of the allegations in paragraph 6 of the Complaint are denied.

[1] Proposed Intervenors incorporate headings for the convenience of the Court. Proposed Intervenors do not admit any allegation made in, or inferences suggested by such headings, and instead, deny them.

7. Proposed Intervenors admit that Governor Cooper's veto of SB 747 speaks for itself. Proposed Intervenors further admit that SB 747 speaks for itself. The remainder of the allegations in paragraph 7 of the Complaint are denied.

8. Proposed Intervenors admit that SB 747 speaks for itself. Proposed Intervenors deny the remainder of the allegations in paragraph 8 of the Complaint.

9. Proposed Intervenors admit that SB 747 speaks for itself. Proposed Intervenors deny the remainder of the allegations in paragraph 9 of the Complaint.

10. Proposed Intervenors deny the allegations in paragraph 10 of the Complaint.

11. Proposed Intervenors deny the allegations in paragraph 11 of the Complaint.

12. Proposed Intervenors deny the allegations in paragraph 12 of the Complaint.

13. Proposed Intervenors admit that SB 747 speaks for itself. Proposed Intervenors deny the remainder of the allegations in paragraph 13 of the Complaint.

14. Proposed Intervenors deny the allegations in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint seeks relief from the Court to which no response is required. Proposed Intervenors deny the remaining allegations in paragraph 15 of the Complaint.

JURISDICTION AND VENUE

16. Proposed Intervenors admit the allegations in paragraph 16 of the Complaint. Proposed Intervenors specifically deny that Plaintiffs are entitled to any relief or that SB 747 violates any constitutional amendment tor law.

17. Proposed Intervenors deny the allegations in paragraph 17 of the Complaint.

18. Proposed Intervenors admit the allegations in paragraph 18 of the Complaint.

19. Proposed Intervenors admit the allegations in paragraph 19 of the Complaint.

20. Proposed Intervenors deny the allegations in paragraph 20 of the Complaint.

21. Proposed Intervenors admit that the cited statutes speak for themselves. Proposed Intervenors specifically deny that Plaintiffs are entitled to any relief or that SB 747 violates any constitutional amendment tor law.

PARTIES

22. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the Complaint and therefore deny them.

23. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the Complaint and therefore deny them.

24. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the Complaint and therefore deny them.

25. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint and therefore deny them.

26. Proposed Intervenors lack knowledge or information sufficient to form a belief about the number of registered members of the Democratic Party in North Carolina. The remainder of the allegations in paragraph 26 of the Complaint are denied.

27. Proposed Intervenors deny the allegations in paragraph 27 of the Complaint.

28. Proposed Intervenors admit that the cited statutes and quotes speak for themselves. The remainder of the allegations in paragraph 28 of the Complaint are denied.

29. Proposed Intervenors admit that Karen Bell is the Executive Director of the North Carolina State Board of Elections ("NCSBE"). The remainder of the allegations in paragraph 29 of the Complaint are quotes that speak for themselves.

30. Proposed Intervenors admit the allegations in paragraph 30 of the Complaint.

31. Proposed Intervenors admit the allegations in paragraph 31 of the Complaint.

32. Proposed Intervenors admit the allegations in paragraph 32 of the Complaint.

33. Proposed Intervenors admit the allegations in paragraph 33 of the Complaint.

34. Proposed Intervenors admit the allegations in paragraph 34 of the Complaint.

FACTUAL ALLEGATIONS

35. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

36. Proposed Intervenors admit that North Carolina law speaks for itself. In all other respects, denied.

37. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

38. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

39. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

40. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

41. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

42. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

43. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

44. Proposed Intervenors admit that the cited statutes speak for themselves. In all other respects, denied.

45. Proposed Intervenors deny the allegations in paragraph 45 of the Complaint.

46. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 46 are denied.

47. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 47 are denied.

48. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 48 are denied.

49. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 49 are denied.

50. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 50 are denied.

51. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 51 are denied.

CLAIMS FOR RELIEF

COUNT I

52. No response is required by Proposed Intervenors to paragraph 52 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

53. The allegations in paragraph 53 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

54. Proposed Intervenors deny the allegations in paragraph 54 of the Complaint.

55. Proposed Intervenors deny the allegation in paragraph 55 of the Complaint.

56. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 56 are denied.

57. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 57 are denied.

58. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 58 are denied.

59. Proposed Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations regarding the U.S. Postal Service's delivery

performance in paragraph 59 of the Complaint and therefore deny them. The remainder of the allegations in paragraph 59 are denied.

60. Proposed Intervenors deny the allegations in paragraph 60 of the Complaint.

61. Proposed Intervenors deny the allegations in paragraph 61 of the Complaint.

62. Proposed Intervenors deny the allegations in paragraph 62 of the Complaint.

63. Proposed Intervenors deny the allegations in paragraph 63 of the Complaint.

64. Proposed Intervenors deny the allegations in paragraph 64 of the Complaint.

COUNT II

65. No response is required by Proposed Intervenors to paragraph 65 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

66. The allegations in paragraph 66 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

67. The allegations in paragraph 67 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

68. The allegations in paragraph 68 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors

deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

69. Proposed Intervenors deny the allegations in paragraph 69 of the Complaint.

70. Proposed Intervenors admit SB 747 speaks for itself. The remainder of the allegations in paragraph 70 are denied.

71. Proposed Intervenors deny the allegations in paragraph 71 of the Complaint.

72. Proposed Intervenors deny the allegations in paragraph 72 of the Complaint.

73. The allegations in paragraph 73 of the Complaint are legal conclusions to which no response is required. The remainder of the allegations in paragraph 73 are denied.

74. Proposed Intervenors deny the allegations in paragraph 74 of the Complaint.

75. Proposed Intervenors deny the allegations in paragraph 75 of the Complaint.

76. Proposed Intervenors deny the allegations in paragraph 76 of the Complaint.

77. Proposed Intervenors deny the allegations in paragraph 77 of the Complaint.

Count III

78. No response is required by Proposed Intervenors to paragraph 78 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

79. The allegations in paragraph 79 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

80. Proposed Intervenors deny the allegations in paragraph 80 of the Complaint.

81. Proposed Intervenors deny the allegations in paragraph 81 of the Complaint.

Count IV

82. No response is required by Proposed Intervenors to paragraph 82 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the proceeding paragraphs and deny the allegations.

83. The allegations in paragraph 83 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

84. Proposed Intervenors deny the allegations in paragraph 84 of the Complaint.

85. Proposed Intervenors deny the allegations in paragraph 85 of the Complaint.

86. Proposed Intervenors deny the allegations in paragraph 86 of the Complaint.

87. Proposed Intervenors deny the allegations in paragraph 87 of the Complaint.

88. Proposed Intervenors deny the allegations in paragraph 88 of the Complaint.

Count V

89. No response is required by Proposed Intervenors to paragraph 89 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

90. The allegations in paragraph 90 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

91. Proposed Intervenors deny the allegations in paragraph 91 of the Complaint.

92. Proposed Intervenors deny the allegations in paragraph 92 of the Complaint.

Count VI

93. No response is required by Proposed Intervenors to paragraph 93 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

94. The allegations in paragraph 94 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

95. Proposed Intervenors deny the allegations in paragraph 95 of the Complaint.

96. Proposed Intervenors deny the allegations in paragraph 96 of the Complaint.

Count VII

97. No response is required by Proposed Intervenors to paragraph 97 of the Complaint. However, to the extent a response is required, Proposed Intervenors fully incorporate herein their responses to the preceding paragraphs and deny the allegations.

98. The allegations in paragraph 98 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny that SB 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

99. Proposed Intervenors deny the allegations in paragraph 99 of the Complaint.

100. Proposed Intervenors deny the allegations in paragraph 100 of the Complaint.

PRAYER FOR RELIEF

No response is required to the allegations in the Prayer for Relief. To the extent this Court requires a response, Proposed Intervenors deny the allegations in the Prayer for Relief and deny Plaintiffs are entitled to any of the relief sought in the Complaint, including those items listed in paragraphs a-e of the Prayer for Relief.

JURY-TRIAL DEMAND

No response is required to the request for a jury trial.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming the burden of proof other than as required by law, Proposed Intervenors assert the following defenses and affirmative defenses to Plaintiffs' claims. All of the following defenses are pled in the alternative, and none constitutes an admission that Defendants are liable to Plaintiffs, that Plaintiffs have or will be injured or damaged in any way, or that Plaintiffs are entitled to any relief whatsoever. Proposed Intervenors reserve the right to (i) rely upon any other defenses that may become apparent during fact or expert discovery in this matter, and (ii) to amend this Answer to assert any such defenses.

1. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that the Complaint fails to state facts sufficient to constitute a claim upon which relief may be granted.

2. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs' claims are barred or limited for lack of standing.

3. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs' claims are barred because Plaintiffs are not the real party in interest.

4. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs' claims are not ripe and/or have been mooted.

5. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs' claims are barred, in whole or in part, by the political question and separation of powers doctrine and because their claims implicate issues of statewide importance that are reserved for state regulation.

6. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs may be barred by the doctrines of estoppel, quasi-estoppel, equitable estoppel, and/or waiver from all forms of relief sought in the Complaint.

7. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Plaintiffs' claims may be barred by the doctrines of res judicata and collateral estoppel from all forms of relief sought in the Complaint.

8. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that to the extent Plaintiffs attempt to seek equitable relief, Plaintiffs are not entitled to such relief because Plaintiffs have an adequate remedy at law.

9. Proposed Intervenors further plead, if such be necessary, and pleading in the alternative, that Defendants appropriately, completely, and fully performed and discharged any and all obligations and legal duties arising out of the matters alleged in the Complaint.

10. Proposed Intervenors further plead, if such be necessary, that any state-law claims raised in the Complaint are barred to the extent they seek to enforce North Carolina law against North Carolina in contravention of the doctrine of *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

11. Proposed Intervenors further plead, if such be necessary, the Complaint merits the Court's abstention, including under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), insofar as it raises unresolved questions of North Carolina law, including as to the interpretation of SB 747, that should be resolved in the first instance by North Carolina courts.

12. Proposed Intervenors hereby give notice that they may rely upon any other applicable affirmative defense(s) of which it may become aware during discovery in this action and reserve the right to amend this answer to assert any such defenses.

WHEREFORE, Proposed Intervenors move the Court:

13. Dismiss Plaintiffs' Complaint with prejudice and that judgment be entered for the Defendants on all claims;

14. Award Defendants attorneys' fees and costs; and

15. Award Defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted, this the 26th day of October 2023.

Chalmers, Adams, Backer & Kaufman, PLLC
By:*/s/ Philip Thomas*
Philip R. Thomas
N.C. Bar No. 53751
204 N. Person St.
Raleigh, NC 27601
Telephone: 919-670-5185
Facsimile: 678-582-8910
pthomas@chalmersadams.com

Baker & Hostetler LLP

Tyler G. Doyle (*pro hac vice pending*)
Texas State Bar No. 24072075
Rachel Hooper (*pro hac vice pending*)
Texas State Bar No. 24039102
811 Main St., Suite 1100
Houston, TX 77002
Telephone: 713-751-1600
Facsimile: 713-751-1717
tgdoyle@bakerlaw.com
rhooper@bakerlaw.com

Baker & Hostetler LLP

Trevor M. Stanley (*pro hac vice pending*)
District of Columbia State Bar No. 991207
Richard Raile (*pro hac vice pending*)
District of Columbia State Bar No. 1015689
Washington Square
1050 Connecticut Ave. NW, Suite 1100
Washington, DC 20036
Telephone: 202-861-1500
Facsimile: 202-861-1783
tstanley@bakerlaw.com
rraile@bakerlaw.com

Baker & Hostetler LLP

Patrick T. Lewis (*pro hac vice pending*)
Ohio State Bar No. 0078314
Key Tower
127 Public Square, Suite 2000

Cleveland, OH 44114
Telephone: 216-621-0200
Facsimile: 216-696-0740
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ATTORNEYS FOR MOVANTS

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRATIC NATIONAL COMMITTEE; NORTH CAROLINA DEMOCRATIC PARTY Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections; ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as Secretary of the North Carolina State Board of Elections; STACY EGGERS IV, KEVIN N. LEWIS, and SIOBHAN O'DUFFY MILLEN, in their official capacities as members of the North Carolina State Board of Elections	§	Case No. 1:23-CV-862-TDS-JEP

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

The way to inspire confidence in American elections—and their outcomes—is to apply rules that are clear and fair to all eligible voters, candidates, and political groups. Toward that end, the North Carolina General Assembly recently passed S.B. 747, which revises the State's election code to provide appropriate safeguards and transparency while still offering voters ample opportunities to cast a ballot. For example, North Carolina now joins the majority of states that require absentee ballots to be received by the close of polls on election day. S.B. 747 also fortifies North Carolina's generous same-day registration

process with protections that are tailored to the unique potential for misconduct that arises where individuals can both register and vote at the same time. In addition, S.B. 747 codifies clear rules governing poll observers by specifying what they may do (such as take notes and move about the voting place) and what they may not do (such as impede or interfere with voting or look at marked ballots).

In ordinary political climates, this pedestrian "ACT TO MAKE VARIOUS CHANGES REGARDING ELECTIONS LAW," S.B. 747 (title), would be welcomed as part of the "substantial regulation of elections" that is necessary "if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (citation omitted). But as a sign of the times, S.B. 747 met immediate litigation, as eight Democratic Party-affiliated organizations and allies, represented by six law firms, filed three lawsuits in this Court, two of them the same day S.B. 747 passed.[1] Armed with hyperbole and mischaracterization, these Plaintiffs pose a long list of objections to various aspects of S.B. 747. These include far-reaching assertions, such as that an election-day ballot-receipt deadline violates the Constitution and that the Voting Rights Act forbids poll-observer participation at voting places. One set of Plaintiffs has already moved for provisional relief, and similar requests may follow from the others. *See N.C. Democratic Party v. N.C. State Bd. of Elections*, 1:23-cv-862, at D.E. 6-7.

[1] The cases are *N.C. Democratic Party v. N.C. State Bd. of Elections*, 1:23-cv-862, *Democracy N.C. v. Hirsch*, 1:23-cv-878, and *Voto Latino v. Hirsch*, 1:23-cv-861. Movants seek to intervene in all three cases.

The question before the Court today is not whether any of these challenges has merit, but whether this litigation of paramount public importance will proceed with or without the participation of one of the nation's two major political parties. Before the Court come the Republican National Committee, the North Carolina Republican Party, Brenda M. Eldridge, and Virginia Ann Wasserberg (collectively, "Movants"), seeking leave to intervene as defendants.[2] The entity Movants are political committees who support Republican candidates in North Carolina. The Republican National Committee is a national committee, as defined by 52 U.S.C. §30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The North Carolina Republican Party is a state political party that works to promote Republican values and to assist Republican candidates in running for partisan federal, state, and local offices. The individual Movants are registered voters – some of the more than 2 million registered Republicans in the state – who typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. Movant Wasserberg's role in the election process goes one step further: she is a county Republican Party chairperson who appoints site-specific and county at-large election observers.

[2] On the morning of October 20, 2023, counsel for Movants reached out to the named parties to ascertain whether they would be opposed to Movants' intervention. Both Plaintiffs and Defendants indicated that they take no position regarding Movants' intervention.

As shown below, Movants are entitled to intervene as of right, and they should in any event be permitted to intervene in this Court's discretion. There is good reason for the Court to grant this motion. The State's executive branch is unlikely to vigorously defend S.B. 747, which passed over the Governor's veto. And although the State's legislative leaders have moved to intervene (as is their right), this state of affairs will (at best) place eight entity Plaintiffs represented by six law firms against one set of institutional-capacity intervenors represented by one law firm. One need not doubt the superb skill of that latter firm to see that this case, as currently postured, lacks the parity necessary to ensure public confidence in the outcome. As the Democratic Party itself observed, "political parties usually have good cause to intervene in disputes over election rules." *Issa v. Newsom*, No. 2:20-cv-1044, D.E. 23 at 2 (E.D. Cal. June 8, 2020). That is why, in numerous cases concerning election rules, political parties are virtually always allowed to intervene.[3] If intervention is appropriate in any election case, this is it.

[3] *See, e.g.*, *Alliance for Retired Americans v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of

ARGUMENT

The Court should grant the motion. Movants are entitled to intervene as of right under Rule 24(a) and by the Court's permission under Rule 24(b). The Court should also allow Movants to appear at any hearings that may occur before the Court rules on the instant motion.

I. Movants are Entitled to Intervene as a Matter of Right.

Under Rule 24(a)(2), intervention as a matter of right is appropriate when, upon a "timely motion," a party:

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

Fed. R. Civ. P. 24(a)(2). Circuit precedent requires that an applicant timely "demonstrate: (1) that [the applicant] ha[s] an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the

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Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same); *see also Democratic Exec. Cmte. of Fla. v. Detzner*, No. 4:18-cv- 520-MW-MJF (N.D. Fla. Nov. 9, 2018) (granting intervention to the NRSC).

applicant's interest is not adequately represented by existing parties to the litigation." *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991). Movants meet these requirements.

A. The Motion is Timely.

The timeliness element is clearly met. In considering this element, courts look to three factors: (1) "how far the underlying suit has progressed"; (2) any "prejudice" that intervention would cause to the other parties; and (3) any justification for any delay in filing the motion by a proposed intervenor. *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014). Each factor favors intervention. First, these suits have not progressed, as the most recent complaint was filed seven business days ago, and no named Defendants have responded with an answer or dispositive motion. "Where a case has not progressed beyond the initial pleading stage, a motion to intervene is timely." *United States v. Commonwealth of Virginia*, 282 F.R.D. 403, 405 (E.D. Va. 2012) (citing *Scardelletti v. Debarr*, 265 F.3d 195, 203 (4th Cir. 2001)); *see also S.C. Coastal Conservation League v. Pruitt*, No. 18-CV-330-DCN, 2018 WL 2184395, at *8, (D.S.C. May 11, 2018) ("[The] motions to intervene are timely, as they were filed within twenty-two days of the initial complaint.").

Next, "[t]he most important consideration is whether the delay has prejudiced the other parties." *Spring Constr. Co, Inc. v. Harris*, 614 F.2d 374 (4th Cir. 1980). No prejudice is possible here where the motion is brought without delay. *Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E.D. Va. 1996) (little prejudice can exist when defendants have not even filed an answer). Movants will not disrupt, delay, or draw out the litigation; they will provide timely and informed presentations that will benefit the Court's consideration of the numerous legal theories at issue.

Finally, because Movants did not delay in bringing this motion, no justification is required. The timeliness element presents no contest.

B. Movants Have Significant Interests in This Litigation that Would be Impaired Without Their Intervention.

As Republican Party organizations that represent members, candidates, and voters who participate in elections in North Carolina, the entity Movants have overriding interests in this action. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) ("[A]n interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim."). Every election cycle, the entity Movants "expend significant resources" on "conduct" that S.B. 747 "unquestionably regulat[es]" and on "educating, mobilizing, assisting, training, and turning out voters, volunteers, and poll [observers]." *Id.* at 304, 306. Indeed, the North Carolina Republican Party's designated poll observers are directly regulated by a challenged provision of S.B. 747. *See* § 7.(b). Because of these substantial investments of time and resources in elections, federal courts "routinely" find that political parties have interests supporting intervention in election litigation. *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020); *see, e.g.*, *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001). An injunction on the challenged provisions of SB 747 while the 2024 election cycle is underway will require entity Movants to divert their limited resources away from other activities in order to respond to the Court's ruling. Preventing such diversion of resources is a protectable interest for purposes of Rule 24(a)(2). *E.g.*, *La Union*, 29 F.4th at 306; *Issa*, 2020 WL 3074351, at *3; *Bldg. & Realty*

Inst. of Westchester & Putnam Ctys., Inc. v. New York, 2020 WL 5658703, at *11 (S.D.N.Y. 2020).

Laws like S.B. 747 are designed to serve "the integrity of [the] election process," *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Here, Movants have direct and significant interests in election rules that are clear (so Movants can follow them), fair (so they may compete on an equal footing in honest campaigns), and transparent (so the public will have confidence in the outcomes). *See La Union*, 29 F.4th at 306 (recognizing interest in the "ability to participate in and maintain the integrity of the election process"). S.B. 747 advances these interests in logical ways, like a uniform ballot-receipt deadline, clear dictates governing what poll observers may and may not do, and safeguards for North Carolina's generous same-day registration system. These rules decrease the risk of the worst-case scenario of election fraud, which dilutes lawfully cast votes, like those of the individual Movants and members of the entity Movants. Vote dilution impairs the fundamental right to vote just as much as outright vote denial. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964). In addition, S.B. 747 secures fairness and clarity for participants who *do* follow the rules and promotes confidence on the public's part, since fairness, transparency, and integrity are the best antidotes to suspicion and conspiracy theory. Movants seek to vindicate these interests on their own behalf and on behalf of candidates, members, and allies.

"In cases challenging . . . statutory schemes as unconstitutional . . . the interests of those who are governed by those schemes are sufficient to support intervention.'" *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). Movants have a substantial interest

in any changes to S.B. 747's scheme that might result in this case, such as to same-day voting and absentee ballot rules, which would impact the "structure of th[e] competitive environment." *Shays v. F.E.C.*, 414 F.3d 76, 85 (D.C. Cir. 2005). If relief is granted in whole or in part, Movants will face "a broader range of competitive tactics than [state] law would otherwise allow," which would "fundamentally alter the environment in which [they] defend their concrete interests (e.g., […] winning reelection)." *Id.* at 86; *see also id.* at 87 (holding that political candidates have a legally cognizable interest in preventing electoral "competition [becoming] intensified by [statutorily]-banned practices"). Because Movants' preferred candidates will "actively seek [election or] reelection in contests governed by the challenged rules," and Republican voters will vote in them, Movants have a significant, protectable interest in "demand[ing] adherence" to the State's legitimate rules. *Id.* at 88.

Given their obvious and substantial interests in elections, it is typical that "[n]o one disputes" that political parties "meet the impaired interest requirement for intervention as of right." *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Col. Sept. 15, 2014). That is certainly true where, as here, any "changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the . . . Republican Party." *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005); *see id.* (under such circumstances, "there [was] no dispute that the Ohio Republican Party had an

interest in the subject matter of this case").[4] The individual Movants, likewise, have an interest in the rules that govern their participation in elections as active voters and poll observers. In that latter capacity, they are directly regulated by the provisions of S.B. 747 at issue in this case. In particular, their actions as election observers—and Movant Wasserberg's in appointing and overseeing observers—are governed by S.B 747, which among other things affords them leeway for "[m]oving about the voting place." S.B. 747 § 7.(b). The requested relief would deny them this prerogative that North Carolina now affords.

Likewise, there can be no serious question that Movants' interests will risk impairment if intervention is denied. This is true in the clearest sense as S.B. 747 deters fraud that would dilute the value of the individual Movants' votes and those of the entity Movants' members. And that is only the beginning. For rules to be fair, there must be a coherent scheme of interrelated provisions. But where one political party's interest groups can pick and choose election mechanisms to be enjoined and not enjoined, they can (if successful) rework a state's election code so that provisions they perceive as harmful to their strategic interests are eliminated and those they believe advantage them are maintained. Moreover, court intervention in elections can do more harm than good, such as by injecting confusion and uncertainty into the process. Here, where plaintiffs appear to

[4] Indeed, the Democratic Party has successfully made this same argument in other recent election cases. *See, e.g.*, *Mi Familia Vota*, 2021 WL 5217875 (Lanza, J.); *Wood v. Raffensperger*, Doc. 12 at 8-9, No. 1:20-cv-5018-ELR (N.D. Ga. Dec. 11, 2020); *Ga. Republican Party, Inc. v. Raffensperger*, Doc. 8 at 17-19, No. 1:20-cv-4651-SDG (N.D. Ga. Nov. 18, 2020).

ask the Court to take a blue pencil to the State elections code, it is very much a mystery what rules will govern poll observers, same-day registrants, and absentee ballots (among other things) if plaintiffs are successful or partially successful. If Movants are not permitted to intervene, they will lack the ability to inform the Court's consideration of these complex issues or defend *their* view of fair elections—even as the Democratic Party has *eight* entities and *six* law firms advancing *its* view on the subject.

C. Movants' Interests Not Adequately Represented by Existing Parties.

Movants' vital interests are not adequately represented by the existing parties to this action. There can be no dispute that they are not represented by Plaintiffs, who seek relief that Movants oppose.

Nor are Movants' interests adequately represented by the Defendants, all of whom are government officials unlikely to vigorously defend S.B. 747. The interests of private proposed intervenors are adequately represented by government officials only where "they share the same ultimate objective." *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013). But "where the existing party and proposed intervenor seek divergent objectives, there is less reason to presume that the party (government agency or otherwise) will adequately represent the intervenor." *Id.* The government of North Carolina is divided politically and is sharply divided over S.B. 747. The Democratic Governor vetoed S.B. 747 (which the Republican-controlled General Assembly overrode). The Democratic Attorney General whose office is responsible for representing the majority of Defendants (who are also mostly Democrats) has publicly opposed S.B. 747. *See* Exhibit A. It is unlikely that Democratic Party officials will vigorously defend laws they have publicly opposed from

challenges by eight Democratic Party-affiliated (or allied) organizations. This, then, is the case for the Fourth Circuit's ordinary rule that "the burden on the applicant of demonstrating a lack of adequate representation 'should be treated as minimal.'" *Teague*, 931 F.2d at 262 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). It is easily met on these facts. *See Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001) (explaining that "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private movant] merely because both entities occupy the same posture in the litigation.").

Further, even if Defendants were to fully defend S.B. 747, that would not be adequate to represent *Movants'* interests because of clear differences between the interests of state officials and those of political groups such as Movants. Defendants must administer the State's election laws but should be neutral and *not* represent the political interests of Movants (or Plaintiffs, for that matter). Defendants must also consider a "range of interests likely to diverge from" Movants' interests. *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993). Those interests include "the expense of defending the current [laws] out of [state] coffers," *Clark v. Putnam Cty.*, 168 F.3d 458, 461 (11th Cir. 1999); "the social and political divisiveness of the election issue," *Meek*, 985 F.2d at 1478; "their own desires to remain politically popular and effective leaders," *id.*; and even the interests of Plaintiffs, *In re Sierra Club*, 945 F.2d 776, 779-80 (4th Cir. 1991). Thus, this case is like *Trbovich*, in which the Secretary of Labor had to "serve two distinct interests," and intervenor only served one. 404 U.S. at 538. For these reasons, another court in this Circuit recently held that the interests of the Republican Party "are *not* the same as" those of officials like

Defendants, as the goal of Republican-affiliated political groups is "to elect Republican candidates in local, county, state, and federal elections [], and to represent Republican voters across the [state]." *Democratic Party of Va. v. Brink*, 2022 WL 3301183, at *2 (E.D. Va. Feb. 3, 2022) (emphasis in original). So too here.

Finally, the potential representation of Proposed Legislative Intervenors does not change this analysis. For one thing, Proposed Legislative Intervenors have not yet been granted intervention, and the standard looks to "the existing defendants" not potential intervenors (or even intervenors, generally). *See Stuart*, 706 F.3d at 349. For another thing, Proposed Legislative Intervenors are state officials, representing state interests, whose interests diverge from Movants' in the ways described above. For yet another thing, there is no reason to believe there will be a convergence of interests given the numerous provisions of S.B. 747 challenged and the types of challenges lodged. Movants' above-described interests are likely to result in more focus and development on some provisions of S.B. 747 than others, and similar choices seem likely on Proposed Legislative Intervenors' part, especially given the stark lack of parity in resources that will result if the Court denies the instant motion. There is no reason to believe Proposed Legislative Intervenors will make the same choice of defenses among challenged provisions—and no reason even to desire that result, given the difference of interests between state officials and Movants. Thus, even the defense of S.B. 747 by Proposed Legislative Intervenors is not adequate to represent Movants' unique interests. Accordingly, intervention is mandated as of right.

II. Permissive Intervention is Warranted.

In all events, the Court should grant permissive intervention. Under Rule 24(b), the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(2)(B). The applicant need only show that (1) the intervention request is timely, (2) the applicant "has a claim or defense that shares with the main action a common question of law or fact," and (3) the intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1)(B); *see also Democratic Party of Va.*, 2022 WL 331183, at * 1.

Each element is met. First, the motion is timely, for reasons explained (*supra* § I.A). Second, Movants' defense shares common questions of fact and law with the three main actions: Plaintiffs challenge S.B. 747 on numerous grounds, while Movants seek to intervene to defend S.B. 747. Finally, no undue delay or prejudice will result from allowing intervention at this early stage in litigation. *See, e.g.*, *id.* at *2 ("This litigation is still in its preliminary stages such that adding an intervenor would not be burdensome."); *Marshall,* 921 F. Supp. at 1492 (little prejudice can exist when defendants have not even filed an answer). Movants will meet whatever deadlines this Court imposes. *See e.g., Thomas*, 335 F.R.D. at 371.

There are good reasons for the Court to exercise its discretion in favor of intervention. One is to achieve parity in litigation brought by eight Democratic Party-affiliated and allied groups and six law firms. Another is to achieve parity in political interests with a voice in this case of paramount public importance. If the Democratic

National Committee and North Carolina Democratic Party are on one side of an election case, it makes sense to permit the Republican National Committee and North Carolina Republican Party to intervene on the other, because "they are uniquely qualified to represent the 'mirror-image' interests of the plaintiffs, as direct counterparts to the DNC/[NCDP]." *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020).

Another is that Movants "bring[] a unique perspective on the election laws being challenged and how those laws affect [their] candidates and voters," given their vast experience in campaigns, elections, and even election litigation. *Democratic Party of Va.*, 2022 WL 331183, at *2. Movants have retained counsel with extensive experience in election litigation. Whatever the outcome down the road, the beneficiary of Movants' participation will be the Court, which is faced with numerous, complex legal challenges to significant election legislation. More input (not less) is better in a case of such pronounced importance. Plaintiffs are entitled to try to prove that S.B. 747 "is a direct assault on the right to vote." Complaint, 1:23-cv-00862, ¶ 2. But they are not entitled to make their assertions free from challenge and scrutiny. Just as fair election procedures promote fair elections, so do fair election-litigation procedures.

CONCLUSION

The Court should grant the motion. It should also permit Movants to participate in any hearings scheduled by the Court prior to the ruling on this motion.

Respectfully submitted, this 26th day of October, 2023.

Chalmers, Adams, Backer & Kaufman, PLLC

By:*/s/ Philip Thomas*
Philip R. Thomas
N.C. Bar No. 53751
204 N. Person St.
Raleigh, NC 27601
Telephone: 919-670-5185
Facsimile: 678-582-8910
pthomas@chalmersadams.com

Baker & Hostetler LLP

Tyler G. Doyle (*pro hac vice pending*)
Texas State Bar No. 24072075
Rachel Hooper (*pro hac vice pending*)
Texas State Bar No. 24039102
811 Main St., Suite 1100
Houston, TX 77002
Telephone: 713-751-1600
Facsimile: 713-751-1717
tgdoyle@bakerlaw.com
rhooper@bakerlaw.com

Baker & Hostetler LLP

Trevor M. Stanley (*pro hac vice pending*)
District of Columbia State Bar No. 991207
Richard Raile (*pro hac vice pending*)
District of Columbia State Bar No. 1015689
Washington Square
1050 Connecticut Ave. NW, Suite 1100
Washington, DC 20036
Telephone: 202-861-1500
Facsimile: 202-861-1783
tstanley@bakerlaw.com
rraile@bakerlaw.com

Baker & Hostetler LLP

Patrick T. Lewis (*pro hac vice pending*)
Ohio State Bar No. 0078314
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114
Telephone: 216-621-0200
Facsimile: 216-696-0740
plewis@bakerlaw.com

ATTORNEYS FOR MOVANTS

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 4561 words as counted by the word count feature of Microsoft Word.

Chalmers, Adams, Backer & Kaufman, PLLC

/s/ Philip Thomas
Philip R. Thomas
N.C. Bar No. 53751

CERTIFICATE OF SERVICE

I hereby certify that I filed the forgoing document using the Court's CM/ECF System which will send notification to all counsel of record.

This 26th day of October, 2023.

Chalmers, Adams, Backer & Kaufman, PLLC

/s/ Philip Thomas
Philip R. Thomas
N.C. Bar No. 53751