

STATE OF NORTH CAROLINA

WAKE COUNTY

NORTH CAROLINA REPUBLICAN
PARTY and REPUBLICAN NATIONAL
COMMITTEE,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants,

and

NORTH CAROLINA ASIAN AMERICANS
TOGETHER, et al.,

Intervenor-Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV026820-910

MEMORANDUM OF LAW
IN SUPPORT OF
MOTION FOR ENTRY OF
CONSENT JUDGMENT

INTRODUCTION

Plaintiffs and Defendants have agreed to resolve this litigation and Plaintiffs now respectfully request that the Court enter a consent judgment memorializing their agreement.¹ As this memorandum shows, the proposed consent judgment memorializes an agreement that resulted from arm's length negotiations between represented parties, is fair, and does not contradict any statutory, judicial, or public policy. Accordingly, the Court should enter the proposed consent judgment.

¹ While Defendants, whose litigation counsel in this case is the N.C. Dept. of Justice, have specifically agreed to the terms of the proposed consent judgment, the NCDOJ declined to sign this memorandum of law.

BACKGROUND

North Carolina law prohibits persons who are not United States citizens from voting in state elections. N.C. Const. art. VI, § 1; N.C. Gen. Stat. §163-55(a). State law similarly prohibits non-citizens from serving on juries. N.C. Gen. Stat. 9-3(a)(1). Consequently, a non-citizen may request that he or she be excused from serving on a jury due to his or her status as a non-citizen. N.C. Gen. Stat. § 9-6(a1).

In 2023, the General Assembly passed a session law amending and adding various voting and jury-selection statutes so that, when a person requests to be excused from jury duty based on the fact he or she is not a U.S. citizen, that information can be used to determine whether he or she is registered to vote in North Carolina. 2023 N.C. Sess. Law 140, § 44(d) & (e); *see also id.* § 44(f) (making the law effective July 1, 2024).

Under newly enacted statutes, clerks of superior court were required to begin advising the North Carolina State Board of Elections (the “NCSBE”) when someone requested to be excused from jury duty based on his or her status as a non-citizen. *See* 2023 N.C. Sess. Law 140, § 44(d) (enacting N.C. Gen. Stat. § 9-6.2(b)). Under the new law, the NCSBE must use this information when it performs statutorily required reviews of voter-registration lists for ineligible voters. N.C. Gen. Stat. §§ 9-6.2(b). Generally speaking, the law now requires, among other things, that the NCSBE review the citizenship status of each person so identified and then identify those persons to county boards of elections. *See* 2023 N.C. Sess. Law 140, § 44(e) (enacting N.C. Gen. Stat. § 163-82.14(c1)(1)). Next, a county board must notify a person who has been identified as a non-citizen and take certain statutorily prescribed additional steps before removing him or her from its voter-registration records. N.C. Gen. Stat. § 163-82.14(c1)(2).

The General Assembly also enacted a statute providing that, “[e]xcept as provided by State and federal law, the records retained pursuant to [the voter-registration laws described above] . . .

are public records under G.S. 132-1, notwithstanding the requirements of G.S. 20-43.4.” 2023 N.C. Sess. Law 140, § 44(e) (enacting N.C. Gen. Stat. § 163-82.14(c1)(3)).² This new statute required the NCSBE and county boards to retain the records for at least four years. *Id.*

On July 10, 2024, Plaintiffs made a public-records request to the NCSBE requesting certain records related to the NCSBE’s compliance with the newly enacted statutes described above. Plaintiffs were not satisfied with the NCSBE’s response.

On August 22, 2024, Plaintiffs filed this lawsuit against the NCSBE and its members and executive director in their official capacities (collectively, the “Board Defendants”). Plaintiffs requested, among other relief, a declaratory judgment concerning the NCSBE’s obligations under the newly amended laws. Plaintiffs also requested an order directing the NCSBE to produce records pursuant to the N.C. Public Records Act.

On August 30, 2024, two groups calling themselves the North Carolina Asian Americans Together and El Pueblo, respectively, filed a motion to intervene as Defendants. The motion was granted on October 14, 2024. The Intervenor-Defendants filed an Answer, but have not asserted any claims for relief in this action.

After extended, arm’s length negotiations between Plaintiffs’ counsel and the North Carolina Department of Justice, which represents the Board Defendants, the Plaintiffs and Board Defendants reached an agreement on the terms of a proposed consent judgment to resolve this lawsuit. (A copy of the proposed consent judgment is attached to the Motion for Entry of Consent Judgment filed in this action.)

² N.C. Gen. Stat. § 132-1 defines the term “public records” for purposes of the N.C. Public Records Act, N.C. Gen. Stat. §§ 132-1, et seq. N.C. Gen. Stat. § 20-43.4(c) makes confidential lists of county residents over 18 years of age that the Commissioner of Motor Vehicles must provide to county jury commissions.

On January 23, 2026, the Intervenor-Defendants’ counsel sent an e-mail to counsel for the other parties stating that, “Intervenors do not consent to the proposed judgment. We will be filing a notice of non-consent stating our position.”

ARGUMENT

I. Standard of Decision

“A consent judgment is a contract between the parties entered upon the records of the court with the approval and sanction of a court of competent jurisdiction.” *Silvers v. Horace Mann Ins. Co.*, 324 N.C. 289, 296 n.4 (1989) (cleaned up). “When the parties enter into an agreement and ask the court to approve the agreement as a consent judgment, they waive their right to have the court adjudicate the merits of the case.” *Buckingham v. Buckingham*, 134 N.C. App. 82, 90, *disc. review denied*, 351 N.C. 100 (1999). Accordingly, when it enters a consent judgment, a court is not required to adjudicate the case by, for example, making findings of fact or conclusions of law. *Id.* at 89; *see In re Estate of Peebles*, 118 N.C. App. 296, 300 (1995). Indeed, the point of entering into a consent judgment is to avoid the time and expense of such an undertaking. Thus, the court merely examines a consent judgment “more generally to see if it is fair,” *Cox v. Cox*, 36 N.C. App. 573, 576 (1979), and “to ensure that it does not contradict statutory, judicial, or public policy.” *Buckingham*, 134 N.C. App. at 90.

II. The Court should enter the proposed consent judgment.

A. The proposed consent judgment is fair and does not contradict any statutory, judicial or public policy.

The proposed consent judgment in this case easily satisfies the requirements for entry. The consent judgment does not contradict any statutory, judicial, or public policy. To the contrary, the NCSBE is agreeing in the consent judgment to follow new statutory law, N.C. Gen. Stat. §§ 9-6.2 & 163-82.14(c1), that implements the North Carolina Constitution’s mandate that only United

States citizens may vote in North Carolina elections, N.C. Const. art. VI, § 1. Specifically, the NCSBE is agreeing (a) to comply with its statutory obligations under the statutes concerning the use of juror information in efforts to maintain accurate voter-registration lists and (b) to a schedule of dates by which the NCSBE will comply with those statutes.

The NCSBE also is agreeing to comply with the North Carolina Public Records Act's requirements for information obtained in connection with the NCSBE's efforts to comply with its obligations under voter-list maintenance statutes. This agreement is consistent with (1) new statutory obligations imposed the NCSBE by N.C. Gen. Stat. § 163-82.14(c1)(3), (2) the purpose of the Public Records Act, which is to ensure that, "as a general rule, the public [will] have liberal access to public records," *News & Observer Publ'g Co. v. Poole*, 330 N.C. 465, 475 (1992), and (3) the "good public policy" that "require[s] liberality in the right to examine public records," *id.* (cleaned up).

The proposed consent judgment also is fair. Its terms are the result of arm's length, extended negotiations undertaken in good faith between attorneys over the last several months. The parties have been represented by their own counsel in those negotiations. The NCSBE and other Board Defendants are represented by experienced attorneys from the North Carolina Department of Justice, which is, of course, a separate North Carolina state agency. And Plaintiffs are represented by counsel from two national law firms. Additionally, the proposed consent judgment ends this litigation with a dismissal without prejudice. It allows the Plaintiffs and the Board Defendants to resolve the lawsuit without continuing to incur legal fees and costs. Furthermore, as Plaintiffs and Board Defendants agreed to bear their own legal fees and costs in this case, neither side will risk having to pay the other side's fees and costs incurred in this case

after the consent judgment is entered.³

B. The Intervenor-Defendants' agreement is not required for the Court to enter the proposed consent judgment.

As noted above, the Intervenor-Defendants have indicated that they do not consent to the proposed consent judgment's entry. They have not explained why they are unwilling to consent, but whatever objection they may have is meritless. As shown above, the proposed consent judgment is proper in all respects and easily satisfies the relaxed requirements for entry.

Additionally, the Intervenor-Defendants' refusal to sign the proposed consent judgment is not a valid reason for the Court to refuse to enter the judgment. A consent judgment requires only the "consent of the parties thereto." *Silvers*, 324 N.C. at 296 n.4 (cleaned up). The Intervenor-Defendants, however, will not be parties to the proposed consent judgment in this case. Thus, their consent is not required.

As the U.S. Supreme Court has held, "[i]t has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation." *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 528-29 (1986). If the rule were otherwise, "one party could hold the other parties hostage in ongoing litigation, and a global settlement or judgment would be the only option." *Sierra Club v. N. Dakota*, 868 F.3d 1062, 1066 (9th Cir. 2017).

Consequently, "while an intervenor is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have power to block the decree merely by withholding its consent." *Local No. 93*, 478 U.S. at 529. This right to be heard

³ For example, Plaintiffs are waiving the possibility of recovering attorneys' fees from the Board Defendants under the N.C. Public Records Act, N.C. Gen. Stat. § 132-9(c) in this action.

does not, however, translate into a right to some sort of evidentiary hearing on the merits of a settlement agreement, because “allow[ing] evidentiary hearings on the call of any party allowed to intervene would delay, complicate, and perhaps jeopardize the timely resolution of . . . issues.” *Puerto Rico Dairy Farmers Ass’n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) (cleaned up); *see also Buckingham*, 134 N.C. App. at 89 (holding that courts are not required to make findings of fact or conclusions of law in a consent judgment); *Peebles*, 118 N.C. App. at 300 (same). Rather, the opportunity to object is “all the process . . . [an intervenor] is due.” *Local No. 93*, 478 U.S. at 529 (cleaned up).

The proposed consent judgment memorializes a settlement between only the Plaintiffs and Board Defendants. It does not purport to bind or compel the intervenor-Defendants (or anyone else) to do anything or to refrain from doing anything. *See Silvers*, 324 N.C. at 296 n.4 (holding that a person who is not a party to a consent judgment is not bound by it). Furthermore, the proposed consent judgment dismisses this lawsuit *without prejudice*. Thus, it does not bar *any party*—including Intervenor-Defendants—from later litigating the merits of a claim or defense. (As noted above, the Intervenor-Defendants have not even filed a claim in this case.) Thus, the Court should enter the proposed consent judgment and dismiss this action without prejudice, notwithstanding the Intervenor-Defendants’ objections.

CONCLUSION

For the reasons discussed above, the Court should enter the proposed consent judgment.

This, the 6th day of April, 2026.

**BAKER, DONELSON, BEARMAN,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the persons indicated below via electronic mail and through filing via the Court's electronic filing system, addressed as follows:

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Submitted this, the 6th day of April 2026.

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