STATE OF NORTH CAROLINA COUNTY OF WAKE VIRGINIA WASSERBERG, NORTH CAROLINA REPUBLICAN PARTY, and REPUBLICAN NATIONAL COMMITTEE Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, in his Official Capacity as the Chair of and a Member of the North Carolina State Board of Elections; JEFF CARMON, in his Official Capacity as the Secretary of and a member of the North Carolina State Board of Elections; KEVIN N. LEWIS, in his Official Capacity as a Member of the North Carolina State Board of Elections; SIOBHAN O'DUFFY MILLEN, in her Official Capacity as a Member of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV, in his Official Capacity as a Member of the North Carolina State Board of Elections, and KAREN BRINSON BELL, in her Official Capacity as Executive Director of the North Carolina State Board of Elections, Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION NO. 24CV027855-910

NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS'S MOTION TO INTERVENE AS DEFENDANT AND MEMORANDUM OF LAW IN SUPPORT

Proposed Intervenor North Carolina Alliance for Retired Americans ("Alliance") moves to intervene as a defendant in this case under North Carolina Rule of Civil Procedure 24.

INTRODUCTION

Just weeks before voting in the 2024 general election begins, Plaintiffs the Republican National Committee and the North Carolina Republican Party are in search of new procedural traps

to drum up alleged errors in hopes of disqualifying mail ballots cast by qualified voters. Under North Carolina law, absentee ballots must be returned to the county board of elections inside a sealed envelope. Last year, the Board updated its guidance regarding "Absentee Container-Return Envelope Deficiencies" to reflect the implementation of new absentee voter identification rules that required the existing absentee ballot return envelope to be placed inside a second absentee ballot return envelope. *See* N.C. State Bd. of Elections, Numbered Memo 2021-03 at 3 (2024).[1] The updated guidance clarified that so long as a mail ballot is sealed inside either the outer or the inner envelope, "the ballot was received in a sealed envelope and is therefore not deficient" under North Carolina law. *Id.* at 4. This common-sense clarification prevents the unnecessary disenfranchisement of voters who have substantively complied with the requirements for voting absentee, but Plaintiffs ask this Court to overturn the Board's guidance and require that ballots sealed inside one—but not both—envelopes cannot be counted.

The Alliance is a nonprofit organization incorporated in North Carolina that organizes and advocates for retirees, who disproportionately rely on absentee ballots. The extraordinary relief that Plaintiffs seek strikes directly at the heart of the Alliance's organizational mission and at the fundamental rights of its members and constituents. If Plaintiffs succeed in overturning existing rules governing the counting of mail ballots, the Alliance's members will be placed at risk of disenfranchisement and the Alliance will need to reallocate limited resources to try to ensure its members can exercise their right to vote. That eleventh-hour emergency response effort would come at the expense of the Alliance's other programming and priorities.

[1] Exhibit A to Complaint; also available at https://dl.ncsbe.gov/sboe/numbermemo/2021/Numbered%20Memo%202021-03_Absentee%20Deficiencies.pdf (last updated Jan. 19, 2024).

Because the Board does not have any particular responsibility to consider the effect of its decisions on the retired North Carolinians that comprise the Alliance's membership—and because the Board faces several other suits that will require its attention—the Alliance cannot rely on the Board to adequately represent its interests. So that the Alliance can protect its own interests and those of its members and constituents, the Court should grant intervention as a matter of right under North Carolina Rule of Civil Procedure 24(a)(2) or, alternatively, permissively under Rule 24(b)(2).[2]

BACKGROUND

I. The Board's Guidance

Because North Carolina law requires county boards of elections to provide would-be absentee voters with notice of and the opportunity to correct "curable deficiencies" with their ballots, N.C.G.S. § 163-230.1(e), the State Board of Elections in 2021 provided guidance to county boards to assist in the determination of whether a defect exists and, if so, whether it is curable. *See* Numbered Memo 2021-03. Prior to 2023, absentee ballots in North Carolina were returned inside a single, sealed container-return envelope. *See* N.C.G.S. § 163-231. The implementation of voter identification requirements in 2023, however, necessitated the addition of a second envelope so that a voter's photocopied identification paperwork could be submitted without being publicly revealed. *See id.* §§ 163-230.1(a)(4), 163-82.10(a1); *see also* Numbered Memo 2021-03 at 3. The Board therefore in September 2023 updated its guidance to clarify that ballots are "sealed in the container-return envelope" so long as either the outer or the inner envelope is sealed. *See*

[2] Proposed Intervenor filed a proposed answer along with its motion (attached as Exhibit 3) to comply with Rule 24's requirement that any motion to intervene "be accompanied by a pleading setting forth the claim or defense for which intervention is sought." N.C. R. Civ. P. 24(c). Proposed Intervenor intends to file a motion to dismiss if intervention is granted.

Numbered Memo 2021-03 at 3–4 & n.9 (quoting N.C.G.S. § 163-230.1(d)). As the Board subsequently explained, its primary rationale was that the "changes to the absentee-by-mail voting process [that] were required after the photo ID laws went into effect, . . . included a redesign to the container-return envelope so that it constituted two separate envelopes," such that sealing the ballot inside either the outer or inner envelope satisfied the statutory sealing requirements. N.C. State Bd. of Elections Declaratory Ruling at 15 (Aug. 2, 2024).[3] Any other interpretation "would lead to some level of voter disenfranchisement" because of the reasonable possibility that voters would not understand that both inner and outer envelopes must be sealed. *Id.* at 16.

II. Plaintiffs' Action.

On May 20, 2024—eight months after the Board issued its guidance—Plaintiffs the North Carolina Republican Party, the Republican National Committee, and Virginia Wasserberg requested a Declaratory Ruling from the Board on the validity of this clarification. *Id.* at 1. On August 2, 2024, the Board unanimously concluded "that the instruction at issue in Numbered Memo 2021-03 pertaining to how county boards must address a ballot that is sealed in the return envelope rather than sealed in the ballot envelope is the correct application of the law." *Id.* at 2.

On September 4, 2024, Plaintiffs filed this action challenging the Board's guidance and seeking declaratory and injunctive relief to force county boards of elections not to count ballots delivered in sealed outer envelopes unless the inner envelope also is sealed. Compl. ¶¶ 60–61. Plaintiffs have not filed a motion for preliminary injunction or any other motion. Defendants have not yet filed their responsive pleading.

[3] Exhibit C to Complaint.

III. Proposed Intervenor

The Alliance is a 501(c)(4) nonprofit social welfare organization incorporated in North Carolina. *See* Ex. 1, Declaration of William Dworkin ¶ 1 ("Dworkin Decl."). It is a chartered state affiliate of the Alliance for Retired Americans, a nationwide grassroots organization with more than 4.3 million members. *Id*. The Alliance has approximately 58,000 members across North Carolina and seeks to ensure social and economic justice and full civil rights for retirees, with particular emphasis on safeguarding their right to vote. *Id*. ¶¶ 1–2. The Alliance's members are primarily older, retired Americans, many of whom vote absentee in order to avoid difficulties associated with traveling to a polling location and potentially waiting in line to vote in person. The Alliance's members often face greater obstacles in casting a ballot and having their voices heard because of the need for assistance with paperwork and travel. *Id*. ¶¶ 6–7, 13.

ARGUMENT

I. The Alliance is entitled to intervene as of right under Rule 24(a).

Movants are entitled to intervene as of right where, as here, they file a timely motion that demonstrates "(1) an interest relating to the property or transaction, (2) practical impairment of the protection of that interest, and (3) inadequate representation of the interest by existing parties." *See Procter v. City of Raleigh Bd. of Adjustment*, 133 N.C. App. 181, 184, 514 S.E.2d 745, 747 (1999) (citing *State ex rel. Long v. Interstate Casualty Ins. Co*., 106 N.C. App. 470, 473, 417 S.E.2d 296, 299 (1992)). "[L]iberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (cleaned up).[4]

[4] Because Rule 24 is analogous to Rule 24 of the Federal Rules of Civil Procedure, North Carolina courts look to federal courts' interpretations of the rule's federal counterpart for guidance. *See Harvey Fertilizer & Gas Co. v. Pitt Cnty.*, 153 N.C. App. 81, 87, 568 S.E.2d 923, 927 (2002).

A. This motion to intervene is timely.

The Alliance's motion is filed just weeks after Plaintiffs docketed their complaint and before any responsive pleadings have been filed. Plaintiffs have not moved for preliminary relief and there are no other motions pending in this case. Accordingly, neither Plaintiffs nor the Board will be prejudiced if intervention is granted. Because there has been no delay, the Alliance has clearly met the timeliness requirement. *See State Emps.' Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264, 330 S.E.2d 645, 648 (1985) (noting "motions to intervene made prior to trial are seldom denied" due to lack of timeliness); *see also Moore v. Circosta*, Nos. 1:20CV911 & 1:20CV912, 2020 WL 6597291, at *1 (M.D.N.C. Oct. 8, 2020) (finding the Alliance's motion timely when filed "before the original Defendants submitted any substantive responses to the Complaints and motions"); *Carcaño v. McCrory*, 315 F.R.D. 176, 178 (M.D.N.C. 2016) (finding motion timely when made "just nine days after Plaintiffs" filed preliminary injunction motion and "before any of the original Defendants made any filings"); *Dowdy v. City of Durham*, 689 F. Supp. 3d 143, 146 (M.D.N.C. 2023) (motion to intervene was "plainly timely, having been filed within 90 days of the filing of this action, less than two weeks after [plaintiff] filed a first amended complaint, and before the [defendant] filed an answer").

B. The Alliance has interests in protecting its members from disenfranchisement, and a ruling in Plaintiffs' favor would impair those interests.

The Alliance has interests of "such direct and immediate character that [they] will either gain or lose by the direct operation and effect of the judgment." *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 459, 515 S.E.2d 675, 682–83 (1999) (quoting *Strickland v. Hughes*, 273 N.C. 481, 485, 160 S.E.2d 313, 316 (1968)). Specifically, the Alliance has an interest in protecting its members who rely on mail voting from having their ballots discarded despite complying with North Carolina election procedures, and in protecting against the diversion of

resources that would be necessary should Plaintiffs succeed in obtaining their last-minute rule change. And because the relief that Plaintiffs seek would plainly run counter to these interests, the Alliance also satisfies the "impairment" element of intervention as of right. *See Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978) ("[T]he question of impairment is not separate from the question of existence of an interest."); *Taco Bell Corp. v. TWNA Chiat/Day, Inc.*, No. SACV 03-1107 DOC (ANx), 2004 WL 7334916, at *2 (C.D. Cal. May 5, 2004) ("[T]he 'interest' and 'impairment of interest' prongs are intertwined and best analyzed together.").

First, the Alliance has a "direct and immediate" interest, *Virmani*, 350 N.C. at 459, 515 S.E.2d at 682–83, in avoiding last minute changes to mail ballot counting procedures in North Carolina that threaten to disenfranchise its members. Plaintiffs' requested relief would directly injure North Carolina voters that rely on absentee voting by requiring ballots sealed within return envelopes to be discarded. Because many of these voters are members and constituents of the Alliance and because the Alliance can only be as strong and successful as the communities it serves, the Alliance also seeks to prevent the direct impairment of these voters' interests. And Plaintiffs' last-minute challenge to mail ballot counting procedures will be especially damaging to the interests of retirees, who disproportionately rely on mail voting.

The Alliance's members consist of retirees of advanced age who rely heavily on mail voting to participate in North Carolina elections. These members choose to vote by mail for many reasons, including lack of transportation to the polls, difficulty voting in-person due to disability or injuries that make standing in long lines or navigating polling places challenging, concerns about potential voter intimidation or harassment at the polls, or the need for additional time

reviewing and completing their ballot. Dworkin Decl. ¶¶ 6–7, 13. If Plaintiffs succeed, these voters will face heightened risks of having their mail ballots rejected.

Courts have consistently held that an organization's interest in protecting its constituents' and/or members' voting rights satisfies even the "more stringent" requirement of standing, which "compels the conclusion that they have an adequate interest" for purposes of Rule 24. *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991); *see also Voto Latino v. Hirsch*, Nos. 1:23-CV-861 & 1:23-CV-862, 2024 WL 230931, at *10 (M.D.N.C. Jan. 21, 2024) (finding organization had standing based on injury to members' voting rights); *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (holding risk that some voters will be disenfranchised confers standing upon labor organizations and political parties). This is particularly true here, where the Alliance represents voters who face unique challenges that make them particularly vulnerable to additional mail voting restrictions that will result in disenfranchisement should Plaintiffs obtain the relief they seek. Indeed, the Alliance's interests in protecting the voting rights of its members are well recognized by North Carolina courts. *See Deas v. N.C. State Bd. of Elections*, Case No. 22-CVS-11290 (Wake Cnty. Sup. Ct. Oct. 26, 2022) (granting intervention); *In re Appeal of Declaratory Ruling from the State Board of Elections*, Case No. 22-CVS-10520 (Wake Cnty. Sup. Ct. Dec. 19, 2022) (same); *cf. Moore*, 2020 WL 6597291, at *2 (same).

The Alliance also has significant protectable interests in this lawsuit independent from its associational interest in its members' and constituents' voting rights, because the relief Plaintiffs seek will impact how the Alliance allocates its resources, including financial resources as well as volunteer and staff time, as it prepares to educate and turn out its members and constituents for the 2024 elections. To ensure that its members and constituents are able to effectively cast a mail ballot

in the fast-approaching 2024 election, the Alliance would have to scramble to respond to instances where members and constituents have their ballots rejected by contacting those voters and encouraging them to cure their ballots. This would require the Alliance to redirect scarce resources away from other core activities, including scaling back efforts to help members access Social Security and Medicare benefits. Dworkin Decl. ¶¶ 15–16. *See County of San Miguel v. MacDonald*, 244 F.R.D. 36, 47 (D.D.C. 2007) (granting intervention where plaintiffs' requested relief would require "the expenditure of additional time and resources" by intervenors (internal citation omitted)); *cf. Voto Latino*, 2024 WL 230931, at *10 (finding standing where organization alleged "resource expenditures required to address the change in law"); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 182–83 (M.D.N.C. 2020) (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). Moreover, the power of the Alliance's community is decided at the ballot box, and so the Alliance has a critical interest in ensuring that the people it serves are able to vote.

C. Existing parties do not adequately represent the Alliance's interests.

The Alliance further qualifies for intervention of right because its interests are not adequately represented by the existing parties. As explained, Plaintiffs' efforts are directly adverse to the Alliance's interests in protecting its members' right to vote. And, as a public body, the Board's "sole litigation interests are to protect the 'public welfare' and the interests of [the] 'general citizenry.'" *Letendre v. Currituck County*, 261 N.C. App. 537, 817 S.E.2d 920, 2018 WL 4440587, *4 (2018) (unpublished table decision) (attached as Exhibit 2). The Alliance's interests

are not so generalized—it seeks to protect the welfare and interests of a particular community with unique needs and vulnerabilities.

As the U.S. Supreme Court recently emphasized, the Board must "bear in mind broader public-policy implications" than proposed intervenors with more parochial interests, underscoring that the requirement of inadequate representation "presents proposed intervenors with only a minimal challenge." *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2195, 2204 (2022). Indeed, courts have recognized that the Board and similar entities do not necessarily represent the interests of private organizations and their narrower constituencies in litigation. *See, e.g., N.C. Green Party v. N.C. State Bd. of Elections*, 619 F. Supp. 3d 547, 562 (E.D.N.C. 2022) (granting political party intervention as defendant alongside the State Board because they "do not share identical interests"); *cf. Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 539 (1972) (granting intervention where government defendant represented interests that "transcend[] the narrower interest" of proposed intervenor); *Democratic Party of Va. v. Brink*, No. 3:21-cv-756-HEH, 2022 WL 330183, at *2 (E.D. Va. Feb. 3, 2022) ("[The State's] interests are to defend [the State's] voting laws no matter the political repercussions while [the intervenors'] interest is to defend the voting laws when doing so would benefit its candidates and voters."); *Am. Petroleum Inst. v. Cooper*, No. 5:08-CV-396-FL, 2009 WL 10688053, at *4 (E.D.N.C. Feb. 27, 2009) ("there remains a sufficient divergence in interests between the state, representing all members of the public, . . . and the [Proposed Intervenor], representing only members of the association"). While the Board must balance "twin objectives -- easing barriers to registration and voting, while at the same time protecting electoral integrity," *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019), the Alliance is directly concerned with protecting the voting rights of the members of its retiree community, *id.*

Because the Board lacks the Alliance's particularized interests in mobilizing retired voters, "there are many decisions it might make which would not be aligned with the interests" of the Alliance. *Letendre*, 2018 WL 4440587, at *5 (concluding county did "not have the same interests" as private parties). This is not hypothetical—the divergent interests of the Board and the Alliance have previously resulted in litigation between the two entities. *See N.C. All. for Retired Ams. v. N.C. State Bd. of Elections*, No. 20-CVS-8881, 2020 WL 10758667 (N.C. Super. Ct. Oct. 2, 2020) (unpublished) (action by the Alliance against the Board regarding restrictive election procedures implemented during the COVID-19 pandemic); *cf. Maxum Indem. Co. v. Biddle L. Firm, PA*, 329 F.R.D. 550, 556 (D.S.C. 2019) (finding intervenors' interests were not adequately represented where parties seeking intervention were adverse to defendants in a related state-court action brought by the intervenors). In addition, the Board may seek to settle this litigation by agreeing to revise its procedures without affording special concern for the ways that those procedures could uniquely burden retired voters. That concern is particularly acute given the significant amount of litigation the Board currently faces. *See, e.g.*, *N.C. Republican Party v. N.C. State Bd. of Elections*, No. 24CV026820-910 (Wake Cnty. Super. Ct.); *United Sovereign Ams. v. N.C. State Bd. of Elections*, No. 4:24-cv-00128-M (E.D.N.C); *Hogarth v. Bell*, No. 5:24-cv-00481 (E.D.N.C.); *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, No. 24CV026995-910 (Wake Cnty. Super. Ct.); *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, No. 24CV028888-910 (Wake Cnty. Super. Ct.).

Accordingly, the Board does not adequately represent the Alliance's significant interests at stake in this litigation, and the Alliance must be permitted to intervene to ensure those interests are protected.

II. In the alternative, the Alliance requests permissive intervention under Rule 24(b).

In the alternative, the Court should grant permissive intervention because the Alliance's defenses will depend on resolution of the same issues of law and facts as the main action, its participation will not prejudice the existing parties, and it will aid the Court's resolution of the issues in this case.

The Court has the discretion to grant permissive intervention upon "timely application" where the movant's "claim or defense and the main action have a question of law or fact in common" and where intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." *See State ex rel. Biser v. Chemours Co. FC, LLC*, 2022-NCCOA-413, ¶ 19, 284 N.C. App. 117, 124, 875 S.E.2d 20, 26 (quoting N.C.G.S. § 1A-1, Rule 24). Under the related Federal Rule 24(b), these standards are liberally construed in favor of intervention. *Thomas v. Andino*, 335 F.R.D. 364, 369 (D.S.C. 2020).

As explained, this motion is timely and will not unduly delay or prejudice the adjudication of the rights of the original parties. The Alliance has moved expeditiously to intervene before any case schedule has been set, and the organization is prepared to work with the other parties to the case to litigate this case expeditiously and efficiently. Thus, the Alliance's participation will serve only to contribute to the full development of the factual and legal issues before the Court.

The Alliance's position—that the Board has complied with relevant law and that Plaintiffs' requested relief would harm its members—also raises common questions of law and fact with the issues presented in the complaint. Accordingly, the Alliance qualifies for permissive intervention. *Cf., Moore*, 2022 WL 6597291, at *2 (permitting Alliance to permissively intervene in litigation involving absentee ballot and in-person voting rules).

CONCLUSION

For these reasons, the Alliance respectfully requests that the Court grant its motion to intervene as a matter of right under North Carolina Rule of Civil Procedure 24(a), or, in the alternative, permit it to intervene under Rule 24(b).

Dated: September 24, 2024

Respectfully submitted,

/s/ Narendra K. Ghosh

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*Motion for admission *pro hac vice* forthcoming
Attorneys for Proposed Intervenor Defendant

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CASE NO. 24CV027855-910
VIRGINIA WASSERBERG, NORTH CAROLINA REPUBLICAN PARTY, and REPUBLICAN NATIONAL COMMITTEE Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, in his Official Capacity as the Chair of and a Member of the North Carolina State Board of Elections; JEFF CARMON, in his Official Capacity as the Secretary of and a member of the North Carolina State Board of Elections; KEVIN N. LEWIS, in his Official Capacity as a Member of the North Carolina State Board of Elections; SIOBHAN O'DUFFY MILLEN, in her Official Capacity as a Member of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV, in his Official Capacity as a Member of the North Carolina State Board of Elections, and KAREN BRINSON BELL, in her Official Capacity as Executive Director of the North Carolina State Board of Elections, Defendants.	**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served a copy of the foregoing document (filed on September 24, 2024) on counsel for Plaintiffs and Defendants by electronic mail at:

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RESPECTFULLY SUBMITTED, the 24th day of September, 2024.

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Exhibit 1

STATE OF NORTH CAROLINA COUNTY OF WAKE VIRGINIA WASSERBERG, NORTH CAROLINA REPUBLICAN PARTY, and REPUBLICAN NATIONAL COMMITTEE Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, in his Official Capacity as the Chair of and a Member of the North Carolina State Board of Elections; JEFF CARMON, in his Official Capacity as the Secretary of and a member of the North Carolina State Board of Elections; KEVIN N. LEWIS, in his Official Capacity as a Member of the North Carolina State Board of Elections; SIOBHAN O'DUFFY MILLEN, in her Official Capacity as a Member of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV, in his Official Capacity as a Member of the North Carolina State Board of Elections, and KAREN BRINSON BELL, in her Official Capacity as Executive Director of the North Carolina State Board of Elections, Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION NO. 24CV027855-910

DECLARATION OF WILLIAM DWORKIN

I, William Dworkin, pursuant to N.C. Gen. Stat. § 7A-98, hereby declare as follows:

1. I am the President of the North Carolina Alliance for Retired Americans ("the Alliance"), a 501(c)(4) nonprofit, social welfare organization incorporated in North Carolina. The Alliance has approximately 58,000 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. As a central part of its mission, the Alliance works to protect the rights of its members to vote and to have their votes be counted. The Alliance has strong interests in ensuring that the greatest number of our members are allowed to vote and have their votes counted and in ensuring that we advocate for policies that make voting safe, easy, and reliable for our members.

3. The Alliance undertakes a broad range of initiatives to protect its members' right to vote, including tabling, presenting about relevant issues, canvassing, and other voter turnout programming and communications. The Alliance has also previously initiated and intervened in litigation in North Carolina courts to protect our members' ability to vote. *See, e.g., N.C. All. for Retired Ams. v. N.C. State Bd. of Elections*, Case No. 20-CVS-8881 (N.C. Super. Ct. Oct. 2, 2020) (Alliance challenged restrictive election procedures implemented during the COVID-19 pandemic); *see also Deas v. North Carolina State Board of Elections*, Case No. 22-CVS-11290 (Wake Cnty. Sup. Ct. Oct. 26, 2022) (granting intervention to Alliance in case involving voting rules); *In re Appeal of Declaratory Ruling from the State Board of Elections*, Case No. 22-CVS-10520 (Wake Cnty. Sup. Ct. Dec. 19, 2022) (same); *cf. Moore v. Circosta*, No. 1:20CV911, 2020 WL 6597291, at *2 (M.D.N.C. Oct. 8, 2020) (same).

4. As the Alliance engages members and the larger community of retired North Carolinians, it answers questions regarding voting requirements and procedures. During Alliance meetings, members discuss and learn about key issues and candidate positions.

5. Among other efforts, the Alliance develops and circulates a newsletter to educate its members about important issues facing older and retired Americans, including the voting

process. The Alliance regularly communicates with its members to keep them aware of issues that could impact them, their rights, and their quality of life.

6. Because we are an organization of retirees, Alliance members are generally older individuals, and to my knowledge, the average age is between 60 and 70 years of age. Our members often experience issues that come naturally with getting older, including difficulty with mobility, memory, vision, and administrative tasks. Some of those challenges prevent members from reading or writing. Many of our members no longer regularly leave home, and so they must plan significantly ahead for errands and other obligations.

7. These limitations impose obstacles on the Alliance's members when they attempt to cast a ballot. Because of the challenges that many of our members face with mobility issues, the Alliance's members are disproportionately reliant on opportunities to vote by mail. Ensuring that our members can successfully navigate the vote-by-mail process is therefore central to our mission.

8. I understand that the Plaintiffs ask this court to invalidate the North Carolina State Board of Elections' guidance instructing county boards of elections to accept absentee ballots if they are submitted in a sealed outer envelope, even if the ballot is not separately sealed in the inner envelope.

9. I also understand that this guidance was issued in response to a new law requiring absentee voters to mail a photocopy of a photo ID or a photo ID exception form with their voted ballot. Thus, the absentee ballot package that is mailed to voters who request to vote by mail now contains two envelopes: an inner envelope for the voted ballot and an outer envelope to protect the confidentiality of the photo ID documentation.

10. If successful, Plaintiffs' lawsuit would directly harm our organization and its members.

11. Because many of our members experience memory and vision challenges that come with older age, under the new two-envelope system, it is likely that at least some of our members who vote by mail will mistakenly seal their ballots in the outer return envelope or place an unsealed ballot envelope in the sealed return envelope.

12. The absentee ballot instructions included with the absentee ballot package will not prevent all these mistakes, especially among our members who experience significant vision impairment that makes it difficult to read the instructions.

13. If Alliance members' ballots are rejected for forgetting to seal the inner envelope or mistakenly placing their ballots directly in the outer envelope, they will also face other challenges to cure those ballots in time for them to count. Retirees with limited mobility, and those who rely on friends, relatives, and advocates to access computer forms, often require extra time and assistance to navigate administrative processes. But by the time a ballot is rejected, and a voter is notified of an opportunity to cure, there will be little time remaining to complete the steps required to ensure their ballot is counted.

14. As a result of all of these realities, I fear the serious likelihood that some members—or other non-member retirees whose interests we seek to protect—would not be able overcome the hurdles that Plaintiffs ask the Court to impose on the absentee voting process.

15. To mitigate that threat, the Alliance would do all that it could to redirect its resources toward assisting affected voters. As an organization with limited resources, we would be forced to divert some efforts from our important mission of helping retirees secure all the benefits they worked so hard for all their lives, just to make sure that they can do what they legally have a right to do: vote and have their vote counted.

16. This diversion would likely require cutting the staff hours the Alliance would otherwise devote to other aspects of our work—like helping members access Social Security and Medicare benefits—in a scramble to identify and assist elderly voters whom Plaintiffs would make jump through extra hoops during the ongoing election. And this diversion would undermine the Alliance's efforts to accomplish its full mission.

Date: 9/24/2024

Bill Dworkin

William Dworkin
President, North Carolina Alliance for Retired Americans

Exhibit 2

261 N.C.App. 537
Unpublished Disposition
NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN THE REPORTER.
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Court of Appeals of North Carolina.

Elizabeth E. LETENDRE, Plaintiff,
v.
CURRITUCK COUNTY, North Carolina, Defendant.

No. COA18-163
|
Filed: September 18, 2018

Appeal by proposed intervenors from order entered 9 October 2017 by Judge Beecher R. Gray in Superior Court, Currituck County. Heard in the Court of Appeals 22 August 2018. Currituck County, No. 17-CVS-146

Attorneys and Law Firms

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The Brough Law Firm, PLLC, by G. Nicholas Herman and Donald I. McRee, Jr., for defendant.

Opinion

STROUD, Judge.

***1** Michael and Marie Long, proposed intervenors, appeal the trial court's order denying their motion to intervene. Because defendant Currituck County does not adequately represent the interests of the Longs, we reverse and remand.

I. Background

The background of this case may be found in two prior opinions from this Court. *See Letendre v. Currituck County.* —— N.C. App. ——, —— S.E.2d —— (May 15, 2018) (COA17-1108) ("*Letendre I*"), *temporary stay allowed*, —— N.C. ——, 814 S.E.2d 111 (2018); *Long v. Currituck County*, —— N.C. App. ——, 787 S.E.2d 835, *disc. review dismissed*, 369 N.C. 74, 793 S.E.2d 222, *stay dissolved, writ of supersedeas denied, disc. review denied*, 369 N.C. 74, 793 S.E.2d 232 (2016). In *Long*, Michael and Marie Long ("Longs"), proposed intervenors herein, appealed two orders from the trial court which upheld the Currituck County Board of Adjustment's decision to allow plaintiff Elizabeth Letendre to build a 15,000 square foot project comprised of three buildings on her property adjacent to the Longs' property. *See Long*, —— N.C. App. at ——, 787 S.E.2d at 836. The primary question before this Court was whether Currituck County had properly classified plaintiff's proposed project as a "Single Family Dwelling" under the Currituck County Uniform Development Ordinance ("UDO"); this Court determined the project was not a Single Family Dwelling as defined by the UDO and reversed and remanded the trial court's order, concluding:

> this project includes multiple "buildings," none of which are "accessory structures;" *see* UDO § 10.34. Any determination that this project fits within the definition of Single Family Dwelling requires disregarding the structural elements of the definition, including the singular "a" at the beginning of the definition to describe "building" and allowing multiple attached "buildings," none of which are accessory structures, to be treated as a Single Family Dwelling in clear contravention of the UDO. UDO § 10.51. The project does not fit within the plain language of the definition of Single Family Dwelling, and thus is not appropriate in the SF District. *See* UDO §§ 3.4.4; 10.51. We therefore must reverse the Superior Court order and remand for further proceedings consistent with this opinion.

Id. at ——, 787 S.E.2d at 841.

While the appeal was pending in *Long*, plaintiff obtained a building permit and began construction of her project. *See Letendre I*, —— N.C. App. at ——, —— S.E.2d at ——, *10 (2018). After this Court issued its opinion in *Long*, defendant Currituck County issued a Stop Work Order and Notice of Violation in compliance with this Court's opinion in *Long*. *Id.* at ——, —— S.E.2d at ——, *1-2. On 27 March 2017, plaintiff Letendre filed this lawsuit against defendant Currituck County "seeking a declaratory judgment, preliminary injunction, permanent injunction, monetary damages, and attorney fees." *Id.* at ——, —— S.E.2d at ——, *2. [1] Plaintiff Letendre sought to enjoin defendant Currituck County from enforcing its UDO so that she could complete and use the project, or in the alternative, monetary damages for inverse condemnation of her property. *Id.* at ——, —— S.E.2d at ——, *2, 56. On 25 May 2017, the Longs filed a motion to intervene in this case, plaintiff Letendre's action against defendant Currituck County, and on 18 September 2017, they filed an amended motion. On 9 October 2017, the trial court denied the motion "in its original form and as amended[.]" The Longs appeal.

II. Interlocutory Order

***2** Proposed intervenors acknowledge that their appeal is interlocutory since it is not a final judgment:

> An order is either interlocutory or the final determination of the rights of the parties. An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy..... As a general proposition, only final judgments, as opposed to interlocutory orders, may be appealed to the appellate courts. Appeals from interlocutory orders are only available in exceptional cases. Interlocutory orders are, however, subject to appellate review:
>
> > if (1) the order is final as to some claims or parties, and the trial court certifies pursuant to N.C. Gen. Stat. § 1A–1, Rule 54(b) that there is no just reason to delay the appeal, or (2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.
>
> The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature.

Hamilton v. Mortg. Info. Servs., Inc., 212 N.C. App. 73, 76–77, 711 S.E.2d 185, 188–89 (2011) (citations and quotation marks omitted).

The order here is not certified, so proposed intervenors "bear[ ] the burden of demonstrating that" "the order deprives ... [them] of a substantial right that would be lost unless immediately reviewed." *Id.* at 77, 711 S.E.2d at 189.

> The test for whether a substantial right has been affected consists of two parts: (1) the right itself must be substantial; and (2) the deprivation of that substantial right must potentially work injury to the appealing party if not corrected before appeal from final judgment. Whether a substantial right is affected is determined on a case-by-case basis and should be strictly construed.

Builders Mut. v. Meeting Street Builders, —— N.C. App. ——, ——, 736 S.E.2d 197, 199 (2012) (citations, quotation marks, and brackets omitted).

The Longs contend they have a substantial right based upon the effects of plaintiff Letendre's project on their adjacent real property, and, if they are not allowed to intervene, the resolution of this case may cause injury to their rights as they would be unable to appeal or challenge any final order or resolution if they are are not parties. The Longs allege that if plaintiff Letendre is successful in this case, "the Letendre project will cause adverse secondary effects to the Longs' adjacent property, including but not limited to a diminution of the value of their property." In *Long*, defendant Currituck County had approved plaintiff Letendre's project, but the Longs challenged this approval. *See generally Long*, —— N.C. App. ——, 787 S.E.2d 835. In the *Long* case, plaintiff Letendre and defendant Currituck County were on the same side of the case, opposed to the Longs. *See generally id.* Only after this Court's opinion in *Long* did defendant Currituck County take the same position as the Longs. *See Letendre I*, —— N.C. App. at ——, —— S.E.2d at ——, *2.

In this case, plaintiff Letendre is a private citizen contending that defendant Currituck County has violated her rights.

See Letendre I, —— N.C. App. ——, —— S.E.2d ——. Plaintiff Letendre is seeking not only monetary damages from defendant Currituck County, but she also seeks an injunction to prevent defendant Currituck County from enforcing *Long* and to "deem" her project to be a Single Family Dwelling so it may be constructed and occupied within the Single Family Residential Outer Banks Remote District. *See generally id.* —— N.C. App. ——, —— S.E.2d ——. The trial court essentially recognized the Longs' substantial right, even in its order denying intervention, since the trial court determined the Longs have "a direct and immediate interest relating to the property or transaction" and "denying intervention would result in a practical impairment of the protection of that interest[.]" *Harvey Fertilizer & Gas Co. v. Pitt Cty.*, 153 N.C. App. 81, 85, 568 S.E.2d 923, 926 (2002). Because the Longs have a substantial interest in ensuring that both plaintiff Letendre and defendant Currituck County comply with *Long* and because plaintiff Letendre seeks, as a practical matter, to overturn *Long* in this case, we conclude the Longs have demonstrated a substantial right as their property "right itself ... [is] substantial; and ... the deprivation of that substantial right [would] potentially work injury to ... [them] if not corrected before appeal from final judgment." *Builders Mut.*, —— N.C. App. at ——, 736 S.E.2d at 199. We will therefore consider the Longs' appeal.

III. Motion to Intervene

***3** The Longs first contend that the trial court erred in denying their "motion to intervene as a matter of right under N.C. R. Civ. P. 24(a)[.]" (Original in all caps.)

N.C. Gen. Stat. § 1A–1, Rule 24(a) provides that a third party may intervene as a matter of right:

> (1) When a statute confers an unconditional right to intervene; or
>
> (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

N.C.G.S. § 1A–1, Rule 24(a) (2001). To satisfy the requirements of Rule 24(a)(2), our Supreme Court has recently stated that an intervening party must show that (1) it has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.

Harvey Fertilizer & Gas Co. v. Pitt Cty., 153 N.C. App. 81, 85–86, 568 S.E.2d 923, 926 (2002) (citations and quotation marks omitted). The Longs do not contend they have "an unconditional right to intervene" so they are proceeding under (a)(2). *See id.* In *Harvey*, this Court addressed prior inconsistencies with our standard of review and clarified that we review the trial court's ruling on intervention *de novo*:

> [W]e believe the *de novo* standard to be the better approach. In that our appellate courts have not heretofore adopted a specific standard of review for N.C.G.S. § 1A–1, Rule 24(a)(2) decisions, we expressly adopt the *de novo* standard. Furthermore, this explicit adoption of the *de novo* standard comports with the past decisions of our State's appellate courts in reviewing N.C.G.S. § 1A–1, Rule 24(a)(2) decisions.

153 N.C. App. at 89, 568 S.E.2d at 928.

Here, the trial court's order determined the Longs met the first and second prongs of (a)(2) because they have "a direct and immediate interest relating to the property or transaction" and "denying intervention would result in a practical impairment of the protection of that interest[,]" *id.* at 85, 568 S.E.2d at 926, but concluded the Longs did not meet the third prong: "[T]he Proposed Intervenors have met the first two requirements for Intervention of Right pursuant to Rule 24(a)(2), they have failed to meet their burden of demonstrating that their interests are not adequately represented by the existing parties to this action[.]" Plaintiff Letendre argues the Longs do not have "an interest sufficient for intervention in this case" and "[t]he unsupported fear of a diminished property value is too speculative to warrant intervention[,]" but the trial court's order determined otherwise on the first two prongs of North Carolina General Statute § 1A–1, Rule 24(a)(2), and plaintiff Letendre did not cross-appeal the trial court's order. Only the Longs have appealed, so the only issue before

this Court is whether "there is inadequate representation of [the Longs'] interest by existing parties." *Id.*

***4** Plaintiff Letendre also contends that the Longs failed to properly plead inadequately aligned interests with defendant Currituck County because they did not state in sufficient detail *why* defendant Currituck County's interests are different from their own. We disagree, as the Longs' motion alleged their "special damages" which included "increased noise and lighting, increased safety concerns, increased traffic and a negative impact on aesthetics." The Longs also argued plaintiff Letendre's proposed project would "completely block" their "view of the ocean toward the northeast." These "special damages" enumerated are interests specific to the Longs as adjacent property owners, but not defendant Currituck County.

On appeal, the Longs contend that their interests are not adequately represented by defendant Currituck County. Plaintiff Letendre argues defendant Currituck County's "defense of the UDO—the goal of which is to have the UDO upheld—adequately protects the Longs' same interest, which is also to have the UDO upheld." But the Longs and defendant Currituck County have other interests as well which are quite different. Plaintiff Letendre's argument entirely ignores the "special damages" unique to the Longs as adjacent property owners. While both the Longs and defendant Currituck County seek to the have the UDO upheld and to ensure compliance with this Court's opinion in *Long*, defendant Currituck County concurs with the Longs and explains the difference in their positions:

> [T]he County's defenses, and its interests in upholding its ordinance, have *nothing* to do with the purely "parochial" or "personal" interests of any particular landowner—like the Longs—in the SFR District. Rather, the County's sole litigation interests are to protect the "public welfare" and the interests of its "general citizenry" to enact reasonable zoning restrictions on behalf of the common good of the County.
>
> In contrast, the Longs, as an adjacent neighbor of Plaintiff's property, have different interests from the County in the instant litigation. There interests are entirely "parochial" and "personal," which have nothing to do with the interests of the overall "public welfare" and "general citizenry" sought to be vindicated by the County as a "sovereign" for the benefit of its citizens are large. For the Longs, they allege "special damages" to their property if Plaintiff is adjudicated as exempt from the single-family detached dwelling requirement due to adverse secondary effects on the Longs' property in the form of: (i) increased noise; (ii) increased lighting; (iii) increased traffic; (iv) negative impacts on aesthetics, including partial blocking of ocean views; (v) potential fire hazards; (vi) potential adverse effects on water supply; and (vii) overall negative impacts on the quiet use and reasonable enjoyment of the Longs' property.

Because defendant Currituck County's "sole litigation interests are to protect the 'public welfare' and the interests of its 'general citizenry' " there are many decisions it might make which would not be aligned with the interests of the Longs. For example, this is the third appeal to this Court regarding this property and *Letendre I* is currently pending at our Supreme Court; defendant Currituck County could make a financial decision not to proceed with litigation and agree to a settlement with plaintiff Letendre which would not protect the Longs' interests. The Longs argue, and the record reflects, that plaintiff Letendre and defendant Currituck County have already "been engaged in settlement negotiations which have not included the Longs and which could result in dismissal of the lawsuit" without protecting the Longs' interests. This Court has previously recognized that the risk of settlement of case between a landowner and a Board of Adjustment, without the participation of a landowner "in close proximity" who sought to intervene, demonstrated that the Board of Adjustment could not adequately represent the interests of the proposed intervenor. *See Councill v. Town of Boone Bd. of Adjust.*, 146 N.C. App. 103, 104-08, 551 S.E.2d 907, 908-10 (2001) ("As to the second and third requirements—a practical impairment of the protection of the party's interest and inadequate representation of that interest by existing parties—appellants alleged that the Board intended to settle the dispute with Councill without appellants' input, and that the Board intended to issue a permit to Councill. There being no allegations or evidence to the contrary, we hold that all three requirements of Rule 24 have been satisfied and appellants have standing to intervene.").

***5** Plaintiff Letendre is also seeking monetary damages from defendant Currituck County, but the Longs are not subject to any potential claim for monetary damages in this case. The Longs seek compliance with the UDO as written and interpreted by *Long*. It is not necessary that the Longs and defendant Currituck County have entirely different interests, and their incentives may be different. *See Wichnoski v. Piedmont Fire Prot. Sys., LLC*, —— N.C. App. ——, 796 S.E.2d 29, 40 (2016) ("As Main Street

observed at the hearing on its motion to intervene, Plaintiffs may have little incentive to use their resources to seek damages beyond what is necessary to make themselves whole. This proposition does not require an assumption that Plaintiffs would act in bad faith in their efforts to recover on Main Street's behalf; it merely acknowledges that they may encounter practical limitations that Main Street's participation could alleviate. Main Street alleged it has all the resources to pay for a fire protection engineering expert and to assist in bearing Plaintiffs' costs. Finally, Plaintiffs' opposition to Main Street's effort to intervene indicates that, at minimum, Plaintiffs' and Main Street's interests are not entirely aligned." (quotation marks, ellipses, and brackets omitted)), *disc. review allowed sub nom. David Wichnoski, O.D., P.A. v. Piedmont Fire Protection Systems, LLC and Shipp's Fire Extinguisher Sales and Services, Inc.*, 370 N.C. 64, 802 S.E.2d 733 (2017), *appeal withdrawn*, 370 N.C. 691, 809 S.E.2d 889 (2018). We agree with the Longs and defendant Currituck County that the County does not have the same interests as the Longs as private property owners.

Plaintiff Letendre also contends that "lack of participation in this case does not impede [the Longs] ability to protect whatever speculative or indirect interests they may have" as they have by "means other than intervention." Plaintiff Letendre contends "[a]ny issues the Longs may face with noise, lighting, safety, traffic, or aesthetics are addressed in the County's ordinances, through law enforcement, or with claims for damages and nuisance." First, as discussed above, the trial court determined the Longs' interests are not "speculative or indirect" and that issue is not before us on appeal. Furthermore, if the trial court should ultimately make a final ruling adverse to defendant Currituck County in this case, it is likely that any effort by the Longs to seek relief may then be foreclosed. Considering the contentious history of the project and plaintiff Letendre's multiple attempts to not comply with the UDO, intervention in this action is likely the only way the Longs can seek to protect their interests. We also do not agree that the Longs should be required to file yet another lawsuit after this one is resolved to try to protect their interests. "The interests of judicial economy and efficiency weigh in favor of suits that will settle all of the issues in the underlying controversy." *Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 578, 541 S.E.2d 157, 163 (2000). Because defendant Currituck County admittedly cannot provide adequate representation of the Longs' interests, we conclude the Longs should have been allowed to intervene as a matter of right under Rule 24(a)(2). We therefore will not address their arguments for intervention under Rule 24(b).

IV. Conclusion

Because we conclude that the interests of the Longs are not adequately represented by defendant Currituck County, we reverse and remand the trial court's order.

REVERSED and REMANDED.

Report per Rule 30(e).

Judges ZACHARY and MURPHY concur.

All Citations

261 N.C.App. 537, 817 S.E.2d 920 (Table), 2018 WL 4440587

Footnotes

1 At the trial level plaintiff Letendre was granted a preliminary injunction, but upon appeal to this Court, the injunction was reversed and the case remanded because this Court concluded plaintiff Letendre was unlikely to succeed on any of her underlying claims. *See Letendre I*, —— N.C. App. ——, —— S.E.2d ——. Plaintiff Letendre was allowed a temporary stay at the Supreme Court, and thus the issues in *Letendre I* are currently pending before that Court, the substance of which has no direct effect on the appeal before us. *See Letendre I*, —— N.C. ——, 814 S.E.2d 111.

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Exhibit 3

STATE OF NORTH CAROLINA COUNTY OF WAKE VIRGINIA WASSERBERG, NORTH CAROLINA REPUBLICAN PARTY, and REPUBLICAN NATIONAL COMMITTEE, Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his Official Capacity as the Chair of and a Member of the North Carolina State Board of Elections, JEFF CARMON, in his Official Capacity as the Secretary of and a Member of the North Carolina State Board of Elections, KEVIN N. LEWIS, in his Official Capacity as a Member of the North Carolina State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her Official Capacity as a Member of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV, in his Official Capacity as a Member of the North Carolina State Board of Elections, and KAREN BRINSON BELL, in her Official Capacity as Executive Director of the North Carolina State Board of Elections, Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION NO. CV027855-910

[PROPOSED] ANSWER

Proposed Intervenor North Carolina Alliance for Retired Americans, by and through its attorneys, submit the following Answer to Plaintiffs' Complaint. Proposed Intervenor responds to the allegations in the Complaint as follows:

INTRODUCTION

1. In *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), the Supreme Court of the United States correctly observed that: "Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

ANSWER: Paragraph 1 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited case contains the quoted text.

2. The North Carolina General Assembly has enacted a series of detailed statutes aimed at preventing electoral fraud with respect to absentee voting. Among those statutes is N.C. Gen. Stat. § 163-231(a)(3), which requires that an absentee voter place his or her ballot in a special envelope called a "container-return envelope" that satisfies several statutorily prescribed requirements. Then, pursuant to that same statute, the voter must "securely seal" the container-return envelope "or have this done in the voter's presence." N.C. Gen. Stat. § 163-229(b)(1) requires that the voter certify on the application printed on the container-return envelope that the voter voted the ballot enclosed in that container-return envelope. Two witnesses or one notary public must sign that container-return envelope. Then, the sealed container-return envelope must be submitted to the appropriate county board of elections so that the absentee ballot may be counted.

ANSWER: Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that N.C. Gen. Stat. § 163-231(a)(3) contains the quoted text; Proposed Intervenor denies the remaining allegations as mischaracterizations of the law.

3. The steps carefully outlined by the General Assembly in the General Statutes for absentee voting, including those described above, help ensure that the voter entitled to vote the

absentee ballot in the container-return envelope is the one who actually marks that ballot and that the ballot is not tampered with between the time the ballot is marked and sealed in the container-return envelope and the time the container-return envelope is unsealed by the appropriate county board of elections and the ballot is counted.

ANSWER: Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the law.

4. Unfortunately, the North Carolina State Board of Elections (the "***State Board***" or the "***NCSBE***"), has issued guidance in a document titled Numbered Memo 2021-03 (the "***Numbered Memo***") to North Carolina's county boards of elections that undermines the protections afforded by the General Assembly's carefully drafted absentee-voting statutes.

ANSWER: Paragraph 4 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the State Board issued Numbered Memo 2021-03. Proposed Intervenor otherwise denies the allegations.

5. In N.C. Gen. Stat. § 163-22(a), the North Carolina General Assembly delegated certain limited powers to the NCSBE; weakening voter-fraud laws contained in Chapter 163 of the General Statutes was not one of those powers:

> The State Board shall have general supervision over the primaries and elections in the State, and it shall have 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 provisions of this Chapter***.

(Emphasis added.)

ANSWER: Paragraph 5 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits

the North Carolina General Assembly delegated certain powers to the NCSBE and the cited statute contains the quoted text. Proposed Intervenor otherwise denies the allegations.

6. Yet, the Numbered Memo directly conflicts with several provisions of Chapter 163 of the General Statutes.

ANSWER: Proposed Intervenor denies the allegations.

7. Specifically, the plain and unequivocal language of N.C. Gen. Stat.§ 163-23l(a), § 163-23l(a)(3), § 163-23l(b), and § 163-230.l(d) requires that an absentee ballot must be received by the proper county board of elections in a sealed envelope for the ballot to be counted.

ANSWER: Paragraph 7 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the law.

8. Nevertheless, in contravention of the General Statutes' clear and unmistakable directives, Numbered Memo 2021-03 advises county boards of elections that an absentee ballot may be counted even if it is not submitted in a sealed container-return envelope.

ANSWER: Paragraph 8 contains mere characterizations, legal contentions, and conclusions to which no response is required. Numbered Memo 2021-03 speaks for itself. To the extent a response is required, Proposed Intervenor denies the allegations.

9. Plaintiffs attempted through a request for declaratory ruling submitted to the NCSBE to convince the NCSBE that the Numbered Memo was wrong, but the NCSBE issued a declaratory ruling rejecting Plaintiffs' arguments.

ANSWER: Proposed Intervenor admits the allegations.

10. Left with no other means to address the NCSBE's error, Plaintiffs now file this lawsuit petitioning the Court to make a ruling reversing the NCSBE's declaratory ruling and further

requesting that the Court enter a declaratory judgment and injunctive relief correcting the NCSBE's erroneous interpretation of the General Statutes and the guidance that the NCSBE has given to county boards of elections across the State of North Carolina.

ANSWER: Proposed Intervenor denies the allegations that the NCSBE erred, and that Plaintiffs are "[l]eft with no other means to address" the alleged error. Proposed Intervenor otherwise admits that Plaintiffs have filed this lawsuit petitioning the Court for declaratory and injunctive relief.

PARTIES, JURISDICTION & VENUE

11. Plaintiff Virginia Wasserberg is a citizen and resident of, and duly and properly registered to vote in, Pasquotank County, North Carolina. Ms. Wasserberg voted by absentee mail in ballot in the March 2024 primary election and has submitted her application to vote via absentee mail-in ballot in the upcoming November 2024 election.

ANSWER: Proposed Intervenor is without information or knowledge with which to form a belief as to the truth or falsity of the allegations.

12. Plaintiff North Carolina Republican Party ("***NCGOP***"), founded in 1867, is a political party as defined in Article 9 of Chapter 163 of the North Carolina General Statutes and is the state political organization of the Republican Party. A significant part of the NCGOP's mission is to support Republican candidates running in North Carolina elections.

ANSWER: Paragraph 12 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor is without information or knowledge with which to form a belief as to the truth or falsity of the allegations.

13. Plaintiff Republican National Committee ("***RNC***") is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14) and is a political party as defined in Article

9 of Chapter 163 of the North Carolina General Statutes. The RNC manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, including in North Carolina, coordinates fundraising and election strategy, develops and promotes the national Republican platform, and communicates the Republican Party's positions and messages to voters.

ANSWER: Paragraph 13 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the RNC is the national committee of the Republican Party; Proposed Intervenor is otherwise without information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations.

14. To help elect Republican candidates for office in North Carolina, the RNC makes considerable expenditures directly in this state and through its support of the NCGOP. The RNC also assists the NCGOP and its county party chairs in recruiting, training, and appointing at-large election observers and intends to continue its assistance for the upcoming election. Additionally, the RNC educates voters on the laws that govern the voting process in North Carolina.

ANSWER: Proposed Intervenor is without information or knowledge with which to form a belief as to the truth or falsity of the allegations.

15. Defendant North Carolina State Board of Elections is the agency created by the North Carolina General Assembly and is responsible, pursuant to N.C. Gen. Stat. § 163-22, for the administration of North Carolina's election laws.

ANSWER: Paragraph 15 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the allegations.

16. Defendant Alan Hirsch is a Member and the Chair of the NCSBE, and Plaintiffs are suing Mr. Hirsch in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

17. Defendant Jeff Carmon is a Member and the Secretary of the NCSBE, and Plaintiffs are suing Mr. Carmon in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

18. Defendant Kevin N. Lewis is a Member of the NCSBE, and Plaintiffs are suing Mr. Lewis in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

19. Defendant Siobhan O'Duffy Millen is a Member of the NCSBE, and Plaintiffs are suing Ms. Millen in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

20. Defendant Stacy "Four" Eggers IV is a Member of the NCSBE, and Plaintiffs are suing Mr. Eggers in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

21. Defendant Karen Brinson Bell is the Executive Director of the NCSBE, and Plaintiffs are suing Ms. Bell in that official capacity.

ANSWER: Proposed Intervenor admits the allegations.

22. This Court has jurisdiction over this action pursuant to N.C. Gen. Stat.§§ 1-253, et seq., N.C. Gen. Stat.§ 7A-245, and N.C. Gen. Stat.§§ 150B-43, et seq.

ANSWER: Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

23. This Court is the proper venue for this action pursuant to N.C. Gen. Stat. § 163-22(l) and § 1-82.

ANSWER: Paragraph 23 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the allegations.

BACKGROUND

24. Under N.C. Gen. Stat. § 163-230.1, a North Carolina voter may request absentee ballots from the board of elections for the county in which the voter is properly registered to vote.

ANSWER: Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the allegations.

25. Once a voter's request has been submitted, the county board of elections is then required by N.C. Gen. Stat. § 163-230.l(a)(l)-(4) to mail the following four items to the voter:

a. the official ballots that the voter is entitled to vote;

b. a container-return envelope, which meets specific statutory requirements and in which the voter's absentee ballots must be submitted to the county board of elections;

c. an instruction sheet; and

d. a clear statement of the requirement that the voter provide a photocopy of a legally acceptable form of identification or an alternative affidavit demonstrating why such identification should not be provided.

ANSWER: Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies

the allegations as an incomplete statement of the law.

26. N.C. Gen. Stat. § 163-229(b) requires each county board of elections to print an application on the outside of the container-return envelope that must include the following:

a. a certification, to be completed by the absentee voter, certifying his or her eligibility to vote the ballot enclosed in the container-return envelope and certifying that he or she voted the ballot that is enclosed in the container- return envelope;

b. a space for identification of the container-return envelope with the voter and the voter's signature;

c. a space for the signatures, printed names, and addresses of two witnesses or one notary public who witnessed the voter casting his or her absentee ballots;

d. a space for the name and address of any person who, being legally permitted to do so, assisted the absentee voter in casting the ballots;

e. a space for approval by the county board of elections;

f. a space for reporting if the voter's name has changed;

g. a list of certain acts related to absentee voting that are unlawful;

h. an area to attach documents satisfying the requirement that the voter provide a legally acceptable form of identification for him- or herself; and

i. a bar code or other unique identifier used to track the voter's ballots.

ANSWER: Paragraph 26 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies

the allegations as an incomplete statement of the law.

27. N.C. Gen. Stat. § 163-231(b) requires that, after the voter completes his or her absentee ballot, the voter must submit that ballot to the county board of elections in the container-return envelope.

ANSWER: Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the law.

28. Several General Statutes further specifically require that the container-return envelope must be sealed before absentee ballots are returned to and counted by a county board of elections:

a. N.C. Gen. Stat. § 163-231(a)(3) requires that the voter must place his or her "folded ballots *in the container-return envelope and securely seal it* or have this done in the voter's presence." (Emphasis added.)

b. Similarly, N.C. Gen. Stat. § 163-230.1(d) specifically provides that an application for an absentee ballot "shall be completed and signed by the voter personally, the ballots marked, the ballots *sealed in the container-return envelope*, and the certificate [on the sealed container-return envelope] completed as provided in G.S. 163-231." (Emphasis added.)

c. N.C. Gen. Stat. § 163-23l(a) provides directions for transmitting *"the sealed container-return envelope,* with the ballots enclosed," to the appropriate county board of elections. (Emphasis added.)

d. N.C. Gen. Stat. § 163-23l(b) describes in detail how *"[tlhe sealed*

container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued those ballots." (Emphasis added.)

ANSWER: Paragraph 28 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statutes contain the quoted text; Proposed Intervenor otherwise denies the allegations.

29. On June 11, 2021, Defendant Karen Brinson Bell, acting as the NCSBE's Executive Director, issued Numbered Memo 2021-03 on the NCSBE's behalf (the "***Numbered Memo***"). A true and accurate copy of the Numbered Memo is attached to this Complaint as Exhibit A and is incorporated into this Complaint by this reference.

ANSWER: Proposed Intervenor admits the allegations.

30. As alleged above, the plain language of N.C. Gen. Stat. § 163-23l(a), § 163-23l(a)(3), § 163-23l(b), and §163-230.1(d) requires that absentee ballots be sealed in a container-return envelope.

ANSWER: Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the law.

31. Yet, according to pages 3 and 4 of the Numbered Memo, county boards of elections should count an absentee ballot even if the ballot is not received in a sealed container-return envelope, so long as the ballot is received in some other sealed envelope.

ANSWER: Paragraph 31 contains mere characterizations, legal contentions, and conclusions to which no response is required. Numbered Memo 2021-03 speaks for itself. To the extent a response is required, Proposed Intervenor admits that Numbered Memo 2021-03 says that a ballot that was

received in a sealed envelope is not deficient; Proposed Intervenor otherwise denies the allegations.

32. Specifically, pages 3 and 4 of the Numbered Memo—which refer to container-return envelopes as "ballot envelopes"—indicates that an absentee ballot should be considered "received in a sealed envelope and . . . therefore not deficient" if:

a. the "[b]allot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return envelope;" or

b. the "[b]allot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed."

(Emphasis in original).

ANSWER: Paragraph 32 contains mere characterizations, legal contentions, and conclusions to which no response is required. Numbered Memo 2021-03 speaks for itself. To the extent a response is required, Proposed Intervenor admits that Numbered Memo 2021-03 contains the quoted text. Proposed Intervenor otherwise denies the allegations.

33. In an attempt to support its assertion that an absentee ballot should be counted if it is returned in any sealed envelope, footnote 14 on page 4 of the Numbered Memo cites N.C. Gen. Stat.§ 163-230.l(d) and § 163-231(a)(3).

ANSWER: Paragraph 33 contains mere characterizations, legal contentions, and conclusions to which no response is required. Numbered Memo 2021-03 speaks for itself. To the extent a response is required, Proposed Intervenor admits that footnote 14 on page 4 of Numbered Memo 2021-03 cites N.C. Gen. Stat.§ 163-230.l(d) and § 163-231(a)(3). Proposed Intervenor otherwise denies the

allegations.

34. But neither N.C. Gen. Stat. § 163-230.l(d) nor § 163-23 l(a)(3) even mentions an outer return envelope, much less provides that if an outer return envelope is sealed, the container-return envelope in which the absentee ballot is stored need not be sealed. To the contrary, both statutes expressly provide that ballots must be placed in the *container-return envelope* which, in turn, must be sealed.

ANSWER: Paragraph 34 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the law.

35. Finally, page 4 of the Numbered Memo suggests that, "[i]mmediately upon opening the return envelope and noticing" that the container-return envelope is not sealed, the county elections "staff should re-seal the return envelope with a notation of 'sealed in return envelope'" and "[t]he county board should open the return envelope and address that ballot at its next absentee meeting." Nowhere, however, do the General Statutes require, permit, or contemplate this re-sealing and re-labeling procedure.

ANSWER: Paragraph 35 contains mere characterizations, legal contentions, and conclusions to which no response is required. Numbered Memo 2021-03 speaks for itself. To the extent a response is required, Proposed Intervenor admits that Numbered Memo 2021-03 contains the quoted text. To the extent the remaining allegations misstate the law, Proposed Intervenor denies the allegations.

36. On May 20, 2024, Plaintiffs submitted a request for declaratory ruling to the NCSBE pursuant to N.C. Gen. Stat.§ 150B-4 (the "RFR"). A true and accurate copy of the RFR is attached to this Complaint as Exhibit B and is incorporated into this Complaint by this reference.

ANSWER: Proposed Intervenor admits the allegations.

37. In the RFR, Plaintiffs notified the NCSBE of the flaws in the Numbered Memo's guidance to the county boards of elections about the counting of absentee ballots that are not returned in sealed container-return envelopes.

ANSWER: Paragraph 37 contains mere characterizations, legal contentions, and conclusions to which no response is required. The RFR speaks for itself. To the extent a response is required, Proposed Intervenor admits that the RFR purports to challenge Numbered Memo 2021-03's guidance. Proposed Intervenor otherwise denies the allegations.

38. The RFR specifically identified the statutes that require absentee ballots to be returned in sealed-container return envelopes, noted issues with counting ballots not returned in sealed-container return envelopes, and explained how the Numbered Memo's opinion exceeded the NCSBE's authority and ignored well-established canons of statutory construction.

ANSWER: Paragraph 38 contains mere characterizations, legal contentions, and conclusions to which no response is required. The RFR speaks for itself. To the extent a response is required, Proposed Intervenor admits that the RFR argues that Numbered Memo 2021-03 conflicts with statutes and exceeds the NCSBE's authority. Proposed Intervenor otherwise denies the allegations.

39. At a subsequent NCSBE meeting, Defendants Alan Hirsch, Jeff Carmon, Kevin N. Lewis, Siobhan O'Duffy Millen, and Stacy "Four" Eggers IV, acting in their official capacity as members of the NCSBE, voted on a response to the RFR, and on August 2, 2024, the NCSBE issued its declaratory ruling in response to the RFR (the ***"Declaratory Ruling"***). A true and accurate copy of the Declaratory Ruling, which was signed by Defendant Alan Hirsch in his capacity as Chair of the NCSBE, is attached to this Complaint as **Exhibit C** and is incorporated into this Complaint by this reference.

ANSWER: Proposed Intervenor admits the allegations.

40. On page 23 of the Declaratory Ruling, the NCSBE erroneously declared, among other things, that:

> the instruction at issue in Numbered Memo 2021-03 pertaining to how county boards must address a ballot that is sealed in the return envelope rather than sealed in the ballot envelope is the correct application of the law.

ANSWER: Paragraph 40 contains mere characterizations, legal contentions, and conclusions to which no response is required. The declaratory ruling speaks for itself. To the extent a response is required, Proposed Intervenor admits that the declaratory ruling contains the quoted text. Proposed Intervenor otherwise denies the allegations.

41. The NCSBE based its ruling on several erroneous conclusions.

ANSWER: Proposed Intervenor denies the allegations.

42. **First,** the NCSBE correctly noted that because a photo ID or photo ID exception form must be attached to the outside of the container-return envelope, it is now necessary, as a practical matter, for absentee voters to also use a second return envelope that will keep the photo ID or photo ID exception form confidential.

ANSWER: Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. The declaratory ruling speaks for itself. To the extent a response is required, Proposed Intervenor admits the allegations.

43. The NCSBE then erroneously concluded, however, that the second, external envelope could somehow now be considered a container-return envelope, notwithstanding the external envelope's failure to satisfy any of the specifically enumerated statutory requirements for a container-return envelope.

ANSWER: Paragraph 43 contains mere characterizations, legal contentions, and conclusions to

which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

44. The NCSBE further erroneously concluded that the mere fact that a second envelope must also now be used when transmitting absentee ballots somehow permits county boards of elections to ignore the clear statutory requirement that container-return envelopes in particular must be sealed.

ANSWER: Paragraph 44 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

45. **Second,** the NCSBE asserted that an absentee voter might mistakenly seal an external envelope while failing to seal the container-return envelope, notwithstanding the fact that, as the NCSBE conceded in its Ruling, such voters will be specifically instructed in writing on the process for submitting their absentee ballots.

ANSWER: Paragraph 45 contains mere characterizations, legal contentions, and conclusions to which no response is required. The declaratory ruling speaks for itself. To the extent a response is required, Proposed Intervenor denies the allegations as mischaracterizations of the declaratory ruling.

46. The NCSBE erroneously concluded that the possibility that a voter might fail to follow a statutory mandate—about which he or she has been specifically instructed—for casting an absentee ballot somehow eliminates the need for the voter or the county board of elections to follow or adhere to the mandate.

ANSWER: Paragraph 46 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the

allegations.

47. **Third,** page 16 of the Ruling asserts that whether an "absentee ballot was sealed in the inner or outer envelope, the voter sealed their ballot in an envelope and attested (with witnesses) to having voting the enclosed ballot." But N.C. Gen. Stat.§ 163-23 l(a)(3) requires that the absentee voter place his or her ballot "in the container-return envelope and securely seal it or have this done in the voter's presence." N.C. Gen. Stat. § 163-229(b)(l) requires that the voter then certify on the application *printed on the container-return envelope* that the voter voted the ballot enclosed *in that container-return envelope*.

ANSWER: Paragraph 47 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that N.C. Gen. Stat.§ 163-23 l(a)(3) contains the quoted text. Proposed Intervenor otherwise denies the allegations.

48. **Fourth,** the NCSBE noted that the Numbered Memo's guidance "does not require the acceptance of a ballot that arrives completely unsealed or that indicates it may not have been sealed in the voter's presence." This statement is irrelevant. It certainly does not support the Numbered Memo's conclusion that county boards of elections are free to ignore the General Statutes and count absentee ballots that are not sealed in container-return envelopes.

ANSWER: Paragraph 48 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the declaratory ruling contains the quoted text. Proposed Intervenor otherwise denies the allegations.

49. **Fifth,** the NCSBE erroneously concluded that 52 U.S.C. § 1010l(a)(2)(B), which is sometimes called the ***"Materiality Provision"*** of the Civil Rights Act of 1964, requires that a

county board of elections count an absentee ballot that is not submitted in a sealed container-return envelope.

ANSWER: Paragraph 49 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

50. As the United States Court of Appeals for the Third Circuit recently held in *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania,* 97 F.4th 120 (3d Cir.), *reh'g & reh'g en banc denied,* 2024 WL 3085152, 2024 U.S. App. LEXIS 15273 (3d Cir. Apr. 30, 2024), an opinion that thoroughly analyzed the Materiality Provision's text and history, the Materiality Provision does not apply to rules that govern the casting of absentee ballots. Thus, the Materiality Provision does not apply to the General Statutes' requirement that an absentee ballot be submitted in a sealed container-return envelope.

ANSWER: Paragraph 50 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

51. In short, the NCSBE's interpretation of the General Statutes is plainly incorrect. The NCSBE's attempt to explain its erroneous interpretation reveals that the reasoning it employed to reach its interpretation is fatally flawed. And the guidance provided by the Numbered Memo directly conflicts with provisions of Chapter 163 of the North Carolina General Statutes.

ANSWER: Paragraph 51 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

52. Plaintiffs have satisfied any and all conditions precedent to and other requirements for filing this lawsuit.

ANSWER: Paragraph 52 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment/ Judicial Review)

53. Plaintiffs incorporate by reference and reallege the preceding paragraphs of this Complaint.

ANSWER: Proposed Intervenor incorporates by reference their responses in the preceding and following paragraphs as if fully set forth herein.

54. Plaintiffs bring this claim for declaratory judgment pursuant to N.C. R. Civ. P. 57 and N.C. Gen. Stat.§§ 1- 253, et seq., as to the rights, status, or other legal relations between Plaintiffs and Defendants and for judicial review and reversal of the NCSBE's ruling pursuant to N.C. Gen. Stat.§§ 150B-43, et seq.

ANSWER: Paragraph 54 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

55. As alleged above, in N.C. Gen. Stat. § 163-22(a), the North Carolina General Assembly delegated certain powers to the NCSBE, subject to a critically important limitation:

> The State Board shall have general supervision over the primaries and elections in the State, and it shall have 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 provisions of this Chapter.***

(Emphasis added.)

ANSWER: Paragraph 55 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the North Carolina General Assembly delegated certain powers to the NCSBE and the cited statute contains the quoted text. Proposed Intervenor otherwise denies the allegations.

56. The NCSBE provided guidance in the Numbered Memo to county boards of elections that directly conflicts with provisions of Chapter 163 of the North Carolina General Statutes, including N.C. Gen. Stat. § 163-23l(a), § 163-23l(a)(3), § 163-23l(b), and § 163-230.1(d). Those provisions provide in part, that an absentee ballot must, among other things, be received by the appropriate county board of elections in a sealed container-return envelope to be counted by that board.

ANSWER: Paragraph 56 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

57. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiffs and Defendants in regard to, among other things, the NCSBE's erroneous interpretation of the General Statutes' provisions concerning container-return envelopes and the NCSBE's issuance of flawed guidance to the county boards of elections that directly conflicts with Chapter 163 of the General Statutes.

ANSWER: Paragraph 57 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

58. The NCSBE's actions have harmed, and unless and until the Court enters

declaratory and injunctive relief in Plaintiffs' favor, will continue to irreparably harm, Plaintiffs by improperly directing the county boards of elections to take actions that directly conflict with Chapter 163 of the North Carolina General Statutes.

ANSWER: Paragraph 58 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

59. The NCSBE's ruling, as alleged above, exceeded the NCSBE's statutory authority and jurisdiction and is affected by errors in law, as also alleged above, and therefore should be reversed.

ANSWER: Paragraph 59 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

60. Accordingly, Plaintiffs are entitled to a ruling from the Court reversing the NCSBE's declaratory ruling and/or a declaratory judgment declaring that:

a. The only type of envelope that qualifies as a container-return envelope under the North Carolina General Statutes is an envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements; and

b. To be counted, an absentee ballot must (i) be received by a county board of elections in a sealed container-return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements and (ii) meet all other requirements imposed by the North Carolina General Statutes for valid absentee ballots.

ANSWER: Paragraph 60 contains mere characterizations, legal contentions, and conclusions to

which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

61. Plaintiffs are also entitled to preliminary and permanent injunctive relief requiring Defendants to take the following steps:

a. Immediately notify North Carolina's county boards of elections in writing that:

i. The only type of envelope that qualifies as a container-return envelope under the North Carolina General Statutes is an envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements; and

ii. To be counted, an absentee ballot must (A) be received by a county board of elections in a sealed container-return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements and (B) meet all other requirements imposed by the North Carolina General Statutes for valid absentee ballots; and

b. Rescind or delete all parts of the Numbered Memo that state or in any way imply that an absentee ballot received by a county board of elections may be counted even if the absentee ballot is not contained in a sealed container- return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements.

ANSWER: Paragraph 61 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Enter a ruling reversing the NCSBE's declaratory ruling concerning container-return envelopes and/or enter a declaratory judgment declaring as follows:

1. The only type of envelope that qualifies as a container-return envelope under the North Carolina General Statutes is an envelope that satisfies all of N.C. Gen. Stat.§ 163-229(b)'s requirements; and

2. To be counted, an absentee ballot must (a) be received by a county board of elections in a sealed container-return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements and (b) meet all other requirements imposed by the North Carolina General Statutes for valid absentee ballots.

ANSWER: This paragraph constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

B. Award injunctive relief to Plaintiffs preliminarily and permanently requiring Defendants to:

1. Immediately notify North Carolina's county boards of elections in writing that:

a. The only type of envelope that qualifies as a container-return envelope under the North Carolina General Statutes is an envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements; and

b. To be counted, an absentee ballot must (i) be received by a county board of elections in a sealed container-return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements and (ii) meet all other requirements imposed by the North Carolina General Statutes for valid absentee ballots; and

2. Rescind or delete all parts of the Numbered Memo that state or in any way imply that an absentee ballot received by a county board of elections may be counted even if the absentee ballot is not contained in a sealed container-return envelope that satisfies all of N.C. Gen. Stat. § 163-229(b)'s requirements.

ANSWER: This paragraph constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

C. Promptly set a date for this dispute pursuant to N.C. R. Civ. P. 57;

ANSWER: This paragraph constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

D. Tax the costs of this action to a party or parties other than Plaintiffs; and

ANSWER: This paragraph constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

E. Award such other and further relief in Plaintiff's favor as the Court deems just and proper.

ANSWER: This paragraph constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

GENERAL DENIAL

Proposed Intervenor denies every allegation in the Complaint that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

Proposed Intervenor sets forth its affirmative defenses below. Proposed Intervenor sets forth its affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Moreover, nothing stated here is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the allegations in the Complaint. Proposed Intervenor reserves the right to amend or supplement their affirmative defenses as additional facts concerning defenses become known. Proposed Intervenor alleges as follow:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs lack standing to bring their claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by laches.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim on which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs fail to demonstrate entitlement to equitable relief.

WHEREFORE, Proposed Intervenor respectfully requests that this Court:

1. Deny that Plaintiffs are entitled to any relief;

2. Dismiss the Complaint in its entirety, with prejudice; and

3. Grant such other and further relief as the Court may deem just and proper, including, but not limited to, an award of Proposed Intervenor's reasonable costs and attorneys' fees.

Dated: September 24, 2024

Respectfully submitted,

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