

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 24CV028888-910

REPUBLICAN NATIONAL COMMITTEE
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; ALAN HIRSCH, JEFF
CARMON, KEVIN N. LEWIS, SIOBHAN
O'DUFFY MILLEN, and STACY EGGERS
IV, in their official capacity as 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,

and

AFFIRMATIVE ACTION COALITION and
DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Defendants.

INTERVENOR-DEFENDANT AFFIRMATIVE ACTION COALITION'S
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

This case presents a textbook example of mootness and should be dismissed. In August 2024, the North Carolina State Board of Elections (“State Board”) approved the University of North Carolina-Chapel Hill’s (“UNC”) mobile One Card—UNC’s digital, default official university identification—for use as a valid voter identification in the 2024 general election. The next month, Plaintiffs Republican National Committee and the North Carolina Republican Party brought this action, seeking a declaration that the State Board violated state law in doing so. The North Carolina Court of Appeals enjoined the State Board from accepting the mobile One Card as valid voter identification for the 2024 general election. As a result, the mobile One Card was not used by any voter in that election. Since then, the State Board’s approval of the mobile One Card expired, and it is no longer an approved voter identification.

There is thus no live question or controversy that remains before this Court to decide; the case has unquestionably become moot under well-established principles of North Carolina law. Plaintiffs have already received the relief they sought, and the State Board’s approval of the mobile One Card is no longer in force. Any decision this Court might issue now would be an improper advisory opinion, and there is no applicable exception to the mootness doctrine that would allow Plaintiffs to escape that conclusion. This case should accordingly be dismissed as moot.

BACKGROUND

I. Statutory Framework

North Carolina law requires a voter to provide identification when casting a ballot. *See* N.C.G.S. § 163.166.16(a). Permissible forms of ID include a driver’s license, a U.S. passport, a military ID, or a tribal enrollment card, among others. *Id.* § 163-166.16(a)(1)–(2). Postsecondary student IDs are also permitted so long as three conditions are met. First, the ID and issuing institution must satisfy a list of statutory criteria; for example, the ID must include a frontal

photograph of the student’s face and must contain an expiration date. *See id.* § 163-166.17(a)(1). Second, the issuing institution must comply with any “reasonable security measures determined by the State Board to be necessary for the protection and security of the student identification process.” *Id.* § 163-166.17(a)(2). Third, the State Board must approve the ID’s use as voter ID. *See id.* § 163-166.17(a). Analogous rules govern approval of public employee IDs. *See id.* § 163-166.18(a).

II. Factual Background

The One Card is UNC’s official student and employee identification.¹ The State Board first approved the One Card as a form of voter ID for the 2020 elections.² In 2023, UNC launched the mobile One Card.³ The mobile One Card is a cryptographically secured card housed in Apple Wallet—similar to a digital credit card stored in the same application that can be used to make payments by tapping the phone on a credit card reader.⁴ The mobile One Card is now the default form of university identification at UNC; “[a]ll newly issued One Cards [are] mobile One Cards,” with physical cards being issued only “on a case-by-case basis.”⁵

In June 2024, UNC submitted a request to the State Board asking it to approve the mobile One Card as a form of voter identification for students and employees. *See* Defs.’ Br. in Opp’n to Pls.’ Mot. for a TRO, Ex. A at 1–8. Following the State Board’s review of that application, it approved the use of the mobile One Card as identification for the November 2024 general election

¹ *See Mobile One Card*, Univ. of N.C. at Chapel Hill, <https://perma.cc/AT9K-TDSD> (last accessed July 17, 2025).

² *One Cards Approved as 2020 Voting ID for Employees, Students*, Univ. of N.C. at Chapel Hill (Dec. 10, 2019), <https://perma.cc/7SAR-49M8>.

³ *See Mobile One Card Launches on Campus*, Univ. of N.C. at Chapel Hill (Aug. 15, 2023), <https://perma.cc/EVE7-FN9C>.

⁴ *See Mobile One Card*, *supra* n.1.

⁵ *Get My Card*, Univ. of N.C. at Chapel Hill, <https://perma.cc/3UJ4-XHJZ> (last accessed July 17, 2025).

on August 20, 2024, by a 3-2 vote.⁶ Prior to that vote, Karen Brinson Bell, then the State Board's executive director, informed the State Board that although multiple universities had requested approval of digital IDs, the Board's staff was recommending approval of only UNC's digital ID, as it was the only such submission that satisfied all statutory criteria.⁷

III. Procedural History

On September 12, 2024, Plaintiffs filed their Complaint, asking this Court to declare that the State Board violated North Carolina law in approving the mobile One Card as a form of voter identification for the 2024 general election. *See generally* Compl. Plaintiffs simultaneously moved for a temporary restraining order. *See generally* Mot. for TRO or, in the Alt., Expedited Prelim. Inj. Affirmative Action Coalition ("AAC")—a registered UNC student organization—and the Democratic National Committee ("DNC") each separately moved to intervene as a defendant, and this Court granted both of those motions. *See* Unopposed Order on Mot. to Intervene by DNC; Order Granting AAC's Mot. to Intervene as Def.

This Court held a hearing on Plaintiffs' motion for a temporary restraining order on September 19, 2024, and issued a written order denying the motion the following day. Plaintiffs immediately appealed that decision and filed a petition for a writ of supersedeas with the North Carolina Court of Appeals. The Court of Appeals allowed the petition on September 27, 2024, and enjoined the State Board from accepting the UNC mobile One Card for the purpose of casting a ballot in the 2024 general election. The mobile One Card was not used by any voter in the 2024 general election.

⁶ *August 20, 2024 Meeting of the N.C. State Board of Elections* at 22:39–23:29, N.C. State Bd. of Elections (Aug. 20, 2024), https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-08-20/State%20Board%20of%20Elections%20Meeting-20240820.mp4.

⁷ *Id.* at 15:30–16:33.

On January 9, 2025, Plaintiffs filed a motion to dismiss their appeal with the consent of all parties. The Court of Appeals allowed the motion and dismissed the appeal that same day. Since the Court of Appeals allowed Plaintiffs' petition for supersedeas, Plaintiffs have taken no action to move this matter forward in this Court. However, two other relevant developments have taken place. *First*, all State Board approvals for the use of student and employee IDs for the 2024 election cycle expired on December 31, 2024, including for the UNC mobile One Card. *Second*, the State Board accepted applications for approvals of student and employee IDs for use as a form of voter identification for the 2025–2026 election cycle between February 1 and April 1, 2025.⁸ As the State Board's counsel informed the other parties, during this window “no institution submitted an application to the State Board seeking approval of a digital ID, including UNC.” Ex. 1.

LEGAL STANDARD

A case is considered moot when “a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” *Yeager v. Yeager*, 228 N.C. App. 562, 566, 746 S.E.2d 427, 430 (2013) (quoting *Roberts v. Madison Cnty. Realtors Ass'n*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996)).⁹ Cases that initially presented a live controversy may later become moot as a result of subsequent factual developments. In such cases, when ““during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be

⁸ *State Board Approves IDs for Use in 2025 and 2026 Elections*, N.C. State Bd. of Elections (Apr. 24, 2025), <https://perma.cc/QZB4-W29R>.

⁹ The issue of “mootness is properly raised through a motion under [North Carolina Rule of Civil Procedure] 12(b)(1).” *Yeager*, 228 N.C. App. at 565, 746 S.E.2d at 430. In “deciding a motion to dismiss under Rule 12(b)(1), the trial court ‘may consider and weigh matters outside the pleadings.’” *Id.* at 566, 746 S.E.2d at 430 (quoting *Emory v. Jackson Chapel First Missionary Baptist Church*, 165 N.C. App. 489, 491, 598 S.E.2d 667, 670 (2004)).

dismissed’ as moot.” *State ex rel. Pollino v. Shkut*, 271 N.C. App. 272, 274, 843 S.E.2d 716, 718 (2020) (quoting *Dickerson Carolina, Inc. v. Harrelson*, 114 N.C. App. 693, 697, 443 S.E.2d 127, 131 (1994)). Courts “will not entertain” moot cases because “it is not the responsibility of courts to decide abstract propositions of law.” *McAdoo v. Univ. of N.C. at Chapel Hill*, 225 N.C. App. 50, 52, 736 S.E.2d 811, 815 (2013) (citation omitted).

ARGUMENT

I. This case is moot because there is no longer any live controversy.

This case is unquestionably moot because there is no longer any live, existing controversy before the Court on which its opinion could have any practical effect. The only action by the State Board that Plaintiffs challenged as unlawful was the State Board’s approval of the UNC mobile One Card as a form of voter identification. *See generally* Compl. As a result of the Court of Appeals’ decision, the State Board was enjoined from accepting the UNC mobile One Card for the purpose of casting a ballot in the November 2024 general election, and so the card was not used for that election. Moreover, the State Board’s approval of the mobile One Card was limited to the 2024 election cycle and expired altogether on December 31, 2024. *See* N.C.G.S. §§ 163-166.17(b), 163-166.18(b) (providing that the State Board’s approval of any student or employee ID as a form of voter identification is valid only “for the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year”). Accordingly, the questions originally in controversy between the parties have been resolved and there is no longer any live legal issue before this Court. *See Pollino*, 271 N.C. App. at 274–75, 843 S.E.2d at 718–19 (dismissing appeal in action challenging an individual’s appointment to a village council as moot after that individual left office); *Yeager*, 228 N.C. App. at 566, 746 S.E.2d at 430; *see also Anderson v. N.C. State Bd. of Elections*, 248 N.C. App. 1, 7, 788 S.E.2d 179, 184 (2016) (dismissing suit against State Board

challenging State Board’s adoption of early voting plan for county for 2014 general election as moot after that election passed).

Simply put, there is nothing left for this Court to decide, and this case is moot. The relief Plaintiffs sought was specific to the UNC mobile One Card. In particular, Plaintiffs asked the Court to issue a declaratory judgment that “[t]o be allowed to vote, a voter must produce acceptable voter photo identification which cannot, under the law, be a UNC student or employee electronic photo identification” and an injunction that would prevent the mobile One Card’s use. Compl. at 23–24, Prayer for Relief ¶¶ 1(b), 2(a)(ii). Plaintiffs have already achieved this result: the mobile One Card was blocked from use in the 2024 general election, and the State Board’s approval of the mobile One Card has now expired, so it is not approved for use in any future election. As such, this Court cannot issue any further relief that would have any “practical effect” on any “existing controversy.” *Yeager*, 228 N.C. App. at 566, 746 S.E.2d at 430 (citation omitted).

What is more, *no* digital student or employee IDs have been approved for any future elections. The State Board’s prescribed window for institutions to submit applications for approval of student or employee IDs for use as a form of voter identification for the 2025–2026 election cycle ended on April 1, 2025.¹⁰ No institution, including UNC, submitted an application seeking approval of any kind of digital identification, *see* Ex. 1, and thus the State Board did not approve any digital forms of identification for use through the 2026 general election.¹¹ In other words, not only is there not a live controversy before this Court, but there is no live controversy *anywhere* regarding any issue conceivably connected to the issues in this case. Accordingly, any further order

¹⁰ *See State Board Approves IDs for Use in 2025 and 2026 Elections*, *supra* n.8.

¹¹ *See Student and Public Employee IDs Approved for Voting*, N.C. State Bd. of Elections, <https://perma.cc/J2TC-4PK2> (last visited July 17, 2025).

from this Court would necessarily constitute an impermissible advisory opinion. *See, e.g., In re M.B.*, 253 N.C. App. 437, 439–40, 800 S.E.2d 757, 759 (2017) (“It is well-established that ‘courts have no jurisdiction to determine matters purely speculative, enter anticipatory judgments, declare social status, deal with theoretical problems, give advisory opinions, answer moot questions, adjudicate academic matters, provide for contingencies which may hereafter rise, or give abstract opinions.’”). This action must therefore be dismissed as moot.

II. None of the recognized exceptions to mootness apply here.

Nor does any exception to the mootness doctrine allow this Court to issue an opinion. The North Carolina courts have recognized only a “narrow set of exceptions to the mootness doctrine,” none of which are applicable here. *Matter of A.K.G.*, 270 N.C. App. 409, 411, 841 S.E.2d 317, 319 (2020). Several of them deal with entirely different categories of situations plainly not relevant here.¹² And the only two that Plaintiffs might conceivably seek to rely on—the “capable of repetition, yet evading review” and “public interest” exceptions—cannot rescue this case from mootness.

¹² The “voluntary cessation” exception does not apply because this is not a case where Defendants voluntarily ceased a practice upon being challenged; instead, the State Board defended its decision to approve the mobile One Card before this Court and actively litigated this case through the end of the 2024 election cycle, at which point the case became moot for other reasons. *See, e.g., Shell Island Homeowners Ass’n v. Tomlinson*, 134 N.C. App. 286, 293, 517 S.E.2d 401, 405 (1999). The exception for situations where “the termination of a class representative’s claim does not moot the claims of the unnamed members of the class” does not apply because this is not a class action case. *Simeon v. Hardin*, 339 N.C. 358, 371, 451 S.E.2d 858, 867 (1994) (citation omitted). Finally, the rule that “an appeal from a judgment which creates possible collateral legal consequences for the appellant is not moot” is clearly inapplicable because this is not an appeal; there has been no judgment entered by this Court, let alone one that could possibly result in any kind of collateral legal consequences. *In re A.K.*, 360 N.C. 449, 453, 628 S.E.2d 753, 755 (2006).

A. This case is not capable of repetition yet evading review.

To begin, this is not a case that is “capable of repetition, yet evading review.” *130 of Chatham, LLC v. Rutherford Elec. Membership Corp.*, 241 N.C. App. 1, 8, 771 S.E.2d 920, 926 (2015) (citation omitted). There are two “required elements” for this exception to the mootness doctrine to apply: “(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.” *Id.* (citation omitted). This exception “applies only in exceptional situations.” *Anderson*, 248 N.C. App. at 8, 788 S.E.2d at 185–86 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). A “mere physical or theoretical possibility” of repetition is insufficient; instead, there “must be a reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party.” *Id.* at 8, 788 S.E.2d at 185 (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982)).

Neither of the required elements is present here, each of which independently suffices to rule out this exception. *First*, no time exigencies prevented adjudication of this case. Plaintiffs succeeded in enjoining the use of the mobile One Card in advance of the 2024 election, and it was never used as a form of identification. In other words, the case did not involve an action too short in its duration to allow for the courts’ review; indeed, the courts timely adjudicated the matter in Plaintiffs’ favor.

Second, there is no reasonable expectation that the same controversy will recur. To the contrary, because “a series of speculative events must occur for a similar controversy” or the “same action” to arise again here, the exception is inapplicable. *Id.* at 10, 788 S.E.2d at 187. For the same controversy to recur, at least two events would need to happen: (1) UNC would need to submit the mobile One Card to the State Board for approval as voter identification in a future election cycle; and (2) the State Board would need to approve that application. No party has put forward even an

iota of evidence to suggest that there is any reasonable expectation that either step in this chain will take place, let alone that both will. Instead, neither UNC nor any other institution has even applied for approval for any kind of digital identification for the 2025–2026 elections. *See* Ex. 1.

Moreover, since the filing of this lawsuit, the State Board’s composition has changed, and there is no reason to think that this new Board would approve UNC’s digital ID in the future. As the Court of Appeals has explained in dismissing another election-related case as moot, “the ever-changing composition of the [State] Board” is a “factor weighing against the repetition of the same action.” *Anderson*, 248 N.C. App. at 10, 788 S.E.2d at 187. In May 2025, the State Board’s partisan composition flipped, leaving Republicans—the same party as Plaintiffs—with majority control of the State Board.¹³ The State Board’s prior executive director was also replaced.¹⁴ Because Plaintiffs’ party now controls the State Board, there is no reason to think it will approve the mobile One Card as a valid form of voter ID—that is, if UNC even chooses to seek approval again. The lack of any positive indication that the same controversy will reemerge is more than enough to dismiss this case as moot—but these facts make that conclusion even more inescapable.

B. The “public interest” exception is inapplicable.

The “public interest” exception to mootness is also inapplicable here. There is again a “high standard for application of [this] exception.” *Pollino*, 271 N.C. App. at 274, 843 S.E.2d at 719. While courts may “consider a question that involves a matter of public interest, is of general importance, and deserves prompt resolution,” *Calabria v. N.C. State Bd. of Elections*, 198 N.C. App. 550, 559, 680 S.E.2d 738, 746 (N.C. App. 2009) (citation omitted), this is “a very limited

¹³ *New State Board Sworn In, Chairman Elected, Executive Director Appointed*, N.C. State Bd. of Elections (May 7, 2025), <https://perma.cc/9RH6-YULG>.

¹⁴ *Id.*

exception that our appellate courts have applied only in those cases involving clear and significant issues of public interest.” *Anderson*, 248 N.C. App. at 13, 788 S.E.2d at 188.

The present case does not come close to meeting these demanding standards. Again, the State Board’s decision here dealt with its approval of a single form of identification for a single election. The State Board receives hundreds of ID applications and makes these types of decisions on a regular basis—indeed, it “has approved nearly 100” such cards for use in the 2025 and 2026 elections.¹⁵ It similarly approved “more than 120 student and employee IDs” for voting purposes in the 2024 general election.¹⁶ UNC’s mobile One Card was the only digital ID approved in 2024, even as other applications for digital IDs were rejected, and as noted, no digital identifications have even been submitted for consideration going forward. Because of the isolated and discrete nature of the dispute in this case, it is not of such “general importance” as to allow this exception to apply. *Calabria*, 198 N.C. App. at 559, 680 S.E.2d at 746 (citation omitted). Put another way, the case “does not present anything so exceptionally important to the public interest that it should be treated as different” from all other cases. *Matter of A.K.G.*, 270 N.C. App. at 412, 841 S.E.2d at 320–21. And even if there were “grave issues of constitutional concern”—which there are not—North Carolina courts will still “not except a case from the mootness doctrine solely to render an advisory opinion.” *Alexander v. N.C. State Bd. of Elections*, 281 N.C. App. 495, 501, 869 S.E.2d 765, 770 (2022).

Finally, if there were any doubt that this issue does not require prompt resolution, Plaintiffs’ own conduct erases it. Plaintiffs have not taken a single action to move this case forward

¹⁵ *State Board Approves IDs for Use in 2025 and 2026 Elections*, *supra* n.8.

¹⁶ *State Board Approves 12 Additional IDs for Voting in 2024*, N.C. State Bd. of Elections (Aug. 13, 2024), <https://perma.cc/P883-HWJ8>.

since the Court of Appeals allowed their petition for a writ of supersedeas in September 2024. Since then, they have dismissed their appeal, and let the case sit untouched in this Court for more than nine months. Plaintiffs' complete inaction confirms that this matter has become moot and does not merit any further action. This Court should reach the same conclusion and dismiss this case.

CONCLUSION

For the reasons stated above, this matter is moot, and the Court should dismiss this action under North Carolina Rule of Civil Procedure 12(b)(1). In the alternative, this Court should enter judgment on the pleadings pursuant to Rule 12(c).

Dated: July 18, 2025

Respectfully submitted,

Lalitha D. Madduri*
Robert Golan-Vilella*
ELIAS LAW GROUP LLP
250 Massachusetts Ave, Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
Facsimile: (202) 968-4498
lmadduri@elias.law
rgolanvilella@elias.law

/s/ Narendra K. Ghosh
Narendra K. Ghosh, N.C. Bar No. 37649
Paul Smith, N.C. Bar No. 45014
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27217
Telephone: (919) 942-5200
nghosh@pathlaw.com
psmith@pathlaw.com

*Attorneys for Intervenor-Defendant
Affirmative Action Coalition*

*Motion for admission *pro hac vice* pending

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REPUBLICAN NATIONAL
COMMITTEE, *et al.*,

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Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing document in the above-captioned matter on counsel for all parties by electronic mail at:

W. Ellis Boyle, docket@wardandsmith.com, weboyle@wardandsmith.com
Counsel for Plaintiffs

Terence Steed, tsteed@ncdoj.gov
Counsel for Defendants

Jim W. Phillips, Jr., jphillips@brookspierce.com
Shana L. Fulton, sfulton@brookspierce.com
Eric M. David, edavid@brookspierce.com
William A. Robertson, wrobertson@brookspierce.com
James W. Whalen, jwhalen@brookspierce.com
Counsel for Intervenor Defendant – Democratic National Committee

This the 18th day of July, 2025.

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

Exhibit 1

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From: [Steed, Terence](#)
To: [W. Ellis Boyle](#)
Cc: [nghosh@pathlaw.com](#); [lmadduri@eilias.law](#); [Robert Golan-Vilella](#); [Samuel Ward-Packard](#); [Julie Zuckerbrod](#); [jphillips@brookspierce.com](#); [sfulton@brookspierce.com](#); [edavid@brookspierce.com](#); [wrobertson@brookspierce.com](#); [jwhalen@brookspierce.com](#); [Seth Waxman](#); [Daniel Volchok](#); [Christopher Babbitt](#); [Michelle C. Howard](#); [Alex C. Dale](#); [gary.fox@wilmerhale.com](#); [joseph.meyer@wilmerhale.com](#); [jane.kessner@wilmerhale.com](#); [nitisha.baronia@wilmerhale.com](#); [Kimberly W. Overton](#)
Subject: RNC v. NCSBE; Wake Superior; 24CV02888-910; Voluntary Dismissal
Date: Wednesday, April 9, 2025 10:40:04 AM

Ellis,

I hope you are doing well. I would like to raise again whether Petitioners will voluntarily dismiss this action.

As I noted in my email in early January when you decided to dismiss the appeal, all student and employee IDs previously approved by the State Board in the last election cycle expired on 12/31, including the digital UNC ID at issue in this case. G.S. 163-166.17(b) and -166.18(b).

On top of that, the application period for the current cycle closed at the end of last month, and I can confirm that no institution submitted an application to the State Board seeking approval of a digital ID, including UNC.

As a result, the case is moot for multiple reasons and further litigation serves no purpose.

Please let us know how you plan to proceed by the end of the week.

Thanks,



Terence Steed
Special Deputy Attorney General
North Carolina Department of Justice
Special Litigation Section
Phone: (919) 716-6567
tsteed@ncdoj.gov
114 W. Edenton St. Raleigh, NC 27603

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