

No. COAP25-30

No.

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

TELIA KIVETT; KARYN
MULLIGAN; WAKE COUNTY
REPUBLICAN PARTY;
REPUBLICAN NATIONAL
COMMITTEE; and NORTH
CAROLINA REPUBLICAN PARTY,

Plaintiffs-Appellants,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS; KAREN BRINSON
BELL, in her official capacity as
Executive Director of the North
Carolina State Board of Elections;
ALAN HIRSCH, in his official
capacity as Chair of the North
Carolina State Board of Elections;
JEFF CARMON, in his official
capacity as Secretary of the North
Carolina State Board of Elections;
STACY EGGERS IV, KEVIN N.
LEWIS, and SIOBHAN O'DUFFY
MILLEN, in their official capacities
as members of the North Carolina
State Board of Elections,

Defendants-Appellees,

and

DEMOCRATIC NATIONAL
COMMITTEE,

Intervenor-Appellees.

From Wake County
24 CVS 041789-910

**PETITION FOR WRIT OF CERTIORARI, WRIT OF SUPERSEDEAS,
MOTION FOR TEMPORARY STAY AND TEMPORARY INJUNCTION**

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MOTION FOR TEMPORARY STAY AND TEMPORARY INJUNCTION**

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS

Plaintiffs-Appellants Telia Kivett, Karyn Mulligan, Wake County Republican Party, Republican National Committee, and North Carolina Republican Party (“Petitioners” or “Plaintiffs”), through undersigned counsel, respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure to review the Order of the Honorable William R. Pittman, Superior Court Judge Presiding, Wake County Superior Court, dated January 10, 2025. Petitioners further petition this Court to issue its writ of supersedeas pursuant to Rule 23 of the North Carolina Rules of Appellate procedure, as well as enter a temporary stay during the pendency of Petitioners’ appeal, including temporary injunctive relief pursuant to this Court’s inherent authority to supervise lower courts, as set forth in Rule 62(f) of the North Carolina Rules of Civil Procedure.

INTRODUCTION

The North Carolina Constitution establishes several prerequisite qualifications for a person wishing to vote in the state’s elections. One of those requirements is that the person must be “legally registered as a voter . . . in the manner provided by law.” N.C. Const. art. VI § 3(1). In order to determine how a person becomes legally registered, the Constitution then defers to the General Assembly. *Id.* Pursuant to this grant of authority, the General Assembly enacted a comprehensive statutory scheme providing a direct delegation of power to the North Carolina State Board of Elections (“NCSBE”) to promulgate a statewide voter registration form. *See* N.C.G.S. § 163-82.3. In so delegating, the General Assembly

established clear standards for the NCSBE to follow, including enumerating all information the form is required to collect before it may be processed or the applicant deemed “registered.” *See* N.C.G.S. § 163-82.4(a). One of those critical categories of information is the applicant’s driver’s license number or, if they lack such a number, the last four digits of their social security number. *See* N.C.G.S. § 163-82.4(a)(11). If an applicant returns a registration form which lacks either number, then the NCSBE is required to follow a strict statutory procedure and timeline in order for any ballot cast by the person to count in an upcoming election. *See* N.C.G.S. § 163-82.4(f).

For over a decade the NCSBE employed a voter registration form which failed to collect the applicant’s driver’s license number or their social security number. The NCSBE recognized this failure when it changed the statewide registration form on a forward-looking basis. However, the NCSBE repeatedly refused to contact any of the individuals who returned statutorily deficient registration forms. As a result, approximately 225,000 people are erroneously deemed “registered” to vote in the state, despite each one failing to provide the driver’s license or a social security number required by law.

The NCSBE justified its refusal to act on the idea that a person who failed to provide the requisite information at registration would nevertheless provide some sort of identification at the polls, courtesy of North Carolina’s photo-identification statutes. This position is created from whole cloth. Not only is the NCSBE’s intentional inaction unsupported by law, but it is also contrary to the spirit and purpose of the state’s registration statutes. Additionally, it proved to be patently

false, as the NCSBE's own records show that at least 60,000 individuals cast ballots in the November 5, 2024 general election contests for state office, each one lacking either a driver's license number or a social security number in their registration.

The NCSBE does not seriously contest that it failed to comply with the statutory procedures for curing incomplete registrations. Instead, they argue that there is nothing that can be done about it now. That is simply incorrect. Both state law and the well-established constitutional rights of Plaintiffs demand and provide for immediate redress. The NCSBE's unlawful refusal to act cannot now become a shield from liability. Despite clear mandates, the NCSBE continues to violate the law, and Plaintiffs continue to face severe and irreparable harm.

The Superior Court substantially erred when it denied Plaintiffs the narrowly tailored but emergent relief sought. The Superior Court based its denial on its view that there was no discernable irreparable harm warranting injunctive relief. To the contrary, Plaintiffs—especially individual plaintiffs—explained how they are facing ongoing violations of both their rights to vote in free and fair elections and their rights to equal protection. Additionally, Plaintiffs illustrated for the court that the operation of state law exponentially increases the risk of irreparable harm should no injunction issue. Specifically, should this matter proceed through discovery without injunctive relief and it be uncovered that any state official was elected by virtue of unlawful votes, then additional litigation could arise. *See* N.C.G.S. § 1-515. Because of the trial court's failures to adequately account for these irreparable harms, Plaintiffs turn to this Court seeking a writ of certiorari, a writ of supersedeas, a temporary stay, and a

temporary injunction. Absent this Court issuing the writs, correcting the manifest errors of law in the trial court's order, staying the trial court's order and entering a preliminary injunction to preserve the status quo, Plaintiffs will suffer irreparable harm and be denied their right to a meaningful appeal.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

Article VI § 3 of the North Carolina Constitution expressly limits voting eligibility in North Carolina to those persons who are lawfully registered, providing: “Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law.” N.C. Const. art. VI § 3(1); *see also* App. 2, at ¶1. The Constitution further states that “The General Assembly shall enact general laws governing the registration of voters.” *Id.*

Pursuant to their mandate, the General Assembly established a statutory scheme defining how a person may be lawfully registered to vote in North Carolina's elections. App. 2, at ¶2. First, N.C.G.S. § 163-82.1 echoes the Constitution, stating that “No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.” N.C.G.S. § 163-82.1(a). From there, the General Assembly delegates the authority to establish a statewide voter registration form to the NCSBE. N.C.G.S. § 163-82.3; App. 2, at ¶ 2. The form serves several purposes, including being the vehicle for a person to change their party affiliation, change addresses, report their change of name, and, of course, register to vote. App. 9, at ¶ 35.

The NCSBE's power to promulgate a statewide voter registration form is not without important guardrails. Specifically, the General Assembly enumerated eleven types of information which the registration form "shall" request. N.C.G.S. § 163-82.4(a); App. 9-10, at ¶ 36. Of those required categories is the applicant's driver's license number or, if they do not have such a number, then the last four digits of their social security number. *Id.*; *see also* N.C.G.S. § 163-82.4(a)(11). Only if it is confirmed that the applicant has neither number is the NCSBE permitted to assign them a unique voter registration number. N.C.G.S. §163-82.4(b). App. 10, at ¶¶ 37-38. While the General Assembly did designate certain specific categories of information of which the failure to provide at registration cannot form the basis for the registration form's denial, the driver's license or social security number requirement is not one of them. N.C.G.S. § 163-82.4(a) (listing race, ethnicity, gender, and telephone number as the sole bases which the absence of cannot result in the registration's denial); App. 32, at ¶ 22.

Although the NCSBE is required to collect the listed information on the front end, the General Assembly provided a failsafe to ensure that deficient registration forms may be timely cured in order to be counted in a pending election. N.C.G.S. § 163-82.4(f); App. 11-12. However, the ability to count a ballot returned by such a voter is expressly preconditioned on the NCSBE and its county boards of election adhering to a strict set of timelines, with N.C.G.S. § 163-82.4(f) providing:

If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, *the voter shall be notified of the omission* and given the opportunity to complete the form

at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote.

N.C.G.S. §163-82.4(f) (emphasis added).

For close to a decade the NCSBE used a statewide voter registration form which failed to make clear that the applicant was required to provide their driver's license or social security number at the time of registration. App. 12, at ¶ 48. As a result, approximately 225,000 people were registered to vote in North Carolina despite failing to provide this information. *Id.* at ¶ 49. According to state law, these registration forms were statutorily deficient from the outset and should have never been accepted until the complete information was received. See N.C.G.S. § 163-82.1(a); App. 12, at ¶ 49. The NCSBE recognized this error when they corrected the state's voter registration form moving forward. App. 12, at ¶ 50. However, the NCSBE repeatedly refused to contact any of these people despite ample time to do so. App. 13, at ¶¶ 52-52.

The NCSBE reasoned its refusal on the notion that a person with a missing driver's license or social security number would still have to show some form of identification at the polls by virtue of North Carolina's voter identification statute—N.C.G.S. §163-166.12. App. 15, at ¶¶ 51-53. In the NCSBE's view, providing an acceptable identification at the polls, regardless

of the form, would cure the deficiencies in the person's registration. *Id.* This position, while unsupported by any statutory authority, also proved to be patently false. App. 15, at ¶ 54. At least 60,000 people voted in the November 5, 2024 general election contests for state and local offices despite failing to provide the information required by N.C.G.S. § 163-82.4(a)(11) at the time of registration. *Id.* To the extent a photo identification was shown at the polls—instead of some other form of identification such as a utility bill, *see* N.C.G.S. §163-166.12—the NCSBE's own records reveal that the missing information was not recorded. App. 13-14, at ¶ 55.

These failures notwithstanding, the NCSBE had every opportunity to comply with the cure procedures set forth in N.C.G.S. § 163-82.4(f), yet they failed to do so. App. 12-13, at ¶¶ 50, 52. County canvasses have since passed and the NCSBE failed to act. App. 14, at ¶ 56. The NCSBE's intentional failure to act lacks any cognizable basis for support under state law. As a result, the November 5, 2024 general election contest results for state and local offices have been infected with the prospect of potentially unlawful votes, implicating a host of concerns, each demanding immediate redress. App. 14, at ¶¶ 57-59.

II. Procedural Background

On December 31, 2024, Plaintiffs filed their Verified Complaint in Wake County Superior Court. App. 1-25. On January 2, 2025, Plaintiffs filed their Motion for an Emergency Temporary Restraining Order and Preliminary Injunction ("Motion"). App. 26-36. That same day, the NCSBE removed the matter to federal

court. App. 37-110. On January 3, 2025 Plaintiffs filed an emergency motion to remand to state court, and on January 6, 2025, Chief Judge Richard E. Myers II remanded the matter to state court. App.111-138.¹ In remanding the matter, Judge Myers observed *inter alia*, that the questions presented were novel issues of state constitutional law and principles of federalism demanded that a state court be the first to address them. *Id.* On January 7, 2025, Plaintiffs provided notice of the remand to the Wake County Superior Court and simultaneously renewed their request for a hearing on the Motion. App. 139-144.

The Motion was heard on January 10, 2025 before the Honorable Judge William R. Pittman. In their Motion, Plaintiffs asked the court to enter an order: (1) declaring that the NCSBE's registration of voters who failed to provide the information required by N.C.G.S. § 163-82.4(a)(11) violates Article VI § 3 of the North Carolina Constitution, and enjoining the NCSBE from allowing these individuals from voting in future state and local elections until the missing information is provided; (2) directing the NCSBE to immediately identify and segregate the ballots of all persons who voted in the November 5, 2024 general election for state offices despite failing to provide the information required by N.C.G.S. § 163-82.4(a)(11), and either (A) remove those votes from the final election counts, or (B) order the NCSBE to comply with a judicially established process mirroring N.C.G.S. § 163-82.4(f), such that the missing

¹ While Chief Judge Myers independently remanded the present matter, *see* App. 111, he incorporated by reference his analysis in the matter of *Griffin v. NCSBE, et al.*, 5:24-cv-00724 (E.D.N.C. 2025). *See* App. 112-138. Plaintiffs maintain that the two matters are distinct in their claims for relief.

information can be expeditiously solicited from the affected individuals and, if not timely corrected, then remove the votes from the final election counts. Plaintiffs also requested a writ of mandamus requiring the NCSBE to immediately begin complying with the processes outlined in N.C.G.S. § 163-82.4(f) to correct all deficient registrations prior to the next state or local election contests. App. 34-35, at ¶ 31.

On January 10, 2025 Judge Pittman denied the Motion, finding that Plaintiffs had failed to establish the irreparable harm necessary for the issuance of an injunction. App. 145. Notably, Judge Pittman expressly refused to make any findings on the merits of the underlying claims. *Id.*

Plaintiffs filed their Notice of Appeal with the trial court on January 14, 2025. The Order fails to prevent serious and ongoing violations of the North Carolina Constitution, all of which are readily redressable, and which the failure to address immediately will lead to severe irreparable harm to Plaintiffs. As a result, Plaintiffs filed this petition both to preserve the status quo—i.e. that only lawfully registered persons may have their vote counted in North Carolina’s state and local elections—until Plaintiffs’ full appeal may be heard, and to provide this Court with an alternate means to review the trial court’s order to ensure that appellate jurisdiction is maintained in this appeal of public consequence.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

I. Standards for the Issuance of a Writ of Certiorari

Under N.C.R. App. P. 21(a)(1), “a writ of certiorari will only be issued upon a showing of appropriate circumstances in a civil case where [*inter alia*]. . . no right to appeal from an interlocutory order exists.” *Lakins v. W. N. Carolina Conference of*

United Methodist Church, 283 N.C. App. 385, 390, 873 S.E.2d 667, 673 (2022). The driving purpose of a writ of certiorari is to allow an appellate court the opportunity to correct errors of law in a lower court's order when a traditional appeal is not available. See *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465-66, 869 S.E.2d 257, 264 (2022). Resultingly, "[i]t is an appropriate exercise of this Court's discretion to issue a writ of certiorari in an interlocutory appeal where. . . there is merit to an appellant's substantive arguments and it is in the interests of justice to treat an appeal as a petition for writ of certiorari." *Zaliagiris v. Zaliagiris*, 164 N.C. App. 602, 606, 596 S.E.2d 285, 289 (2004). This Court has been particularly inclined to grant certiorari in instances where the issues involved in the underlying litigation were of great public importance, affected a large number of people, where expeditious resolution was necessary for the "efficient administration of justice," or where a resolution of the question presented would provide lower courts with guidance on the application of a complex statutory scheme. *Stetser v. TAP Pharm. Products, Inc.*, 165 N.C. App. 1 (2004); see also *Cryan v. Nat'l Council of Young Men's Christian Associations of United States*, 280 N.C. App. 309, 315-16, 867 S.E.2d 354, 359, *aff'd*, 384 N.C. 569, 887 S.E.2d 848 (2023) (collecting cases).

Regarding the concept of extraordinary circumstances, the North Carolina Supreme Court has explained that "[t]here is no fixed list of "extraordinary circumstances" that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or "wide-reaching issues of justice and liberty at stake." *Cryan v. Nat'l Council of Young Men's*

Christian Associations of United States, 384 N.C. 569, 887 S.E.2d 848 (2023) (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1 (2020)).

Plaintiffs meet each of this Court’s well-settled criteria for the issuance of certiorari. For the following reasons it would be appropriate for this Court to exercise its discretion to reach the merits of the trial court’s erroneous ruling denying Plaintiffs’ request for injunctive relief.

II. Plaintiffs’ Claims are Likely to Succeed on the Merits and Substantial Error Was Committed Below

“Our appellate courts employ a two-factor test to determine whether a writ of certiorari should issue: (1) ‘if the petitioner can show merit or that error was probably committed below’ and (2) ‘if there are extraordinary circumstances to justify it,’ including “a showing of substantial harm’.” *Matter of K.C.*, 292 N.C. App. 231, 240, 898 S.E.2d 9, 15 (2024) (quoting *Cryan*, 384 N.C., at 572, 887 S.E.2d, at 851). Plaintiffs satisfy both factors.

Plaintiffs’ claims are likely to succeed on the merits for three reasons. First, record evidence indicates that the NCSBE violated state voter registration laws. Second, the defenses the NCSBE raises are wholly inapplicable to the situation presented. Third, the relief sought is readily ascertainable and accounts for the procedural risks the NCSBE raises.

a. Record Evidence Establishes that the NCSBE Repeatedly Violated State Voter Registration Laws

The NCSBE has never contested the fact that some population of individuals were registered to vote without providing either a driver’s license or a social security

number. While they have attempted to attack the perimeter of Plaintiffs' population estimates,² it is unquestionable that a significant number of people are implicated. When the NCSBE was repeatedly confronted with these failures, they refused to act, reasoning that North Carolina's photo identification statutes would save them. App. 12-13, at ¶¶ 49-55. This position is contrary to the purposes of the state's voter registration laws and its photo identification laws. The former confirms a person's eligibility to vote while the latter ensures the person appearing at the polls is who they claim to be. *Compare* N.C.G.S. §§ 163-82.4, 82.12, and 166.12(d) *with* 08 NCAC 17.0101, *and Holmes v. Moore*, 384 N.C. 426, 430-31 (2023); *see also* App. 13, at ¶ 51, n.3. These statutes serve distinct purposes and the NCSBE can point to no authority allowing a documents such as utility bill to supplement a missing driver's license number. *See* N.C.G.S. § 163-166.12(a)(2).

To date, the NCSBE has not cited any statutory authority legitimizing its refusal to contact individuals with deficient registration forms. Resultingly, the record evidence establishes that Plaintiffs are highly likely to succeed on the merits. Coupled with the severe and irreparable harm Plaintiffs face should relief not issue, *see* Section V, *infra*, it is patent that the trial court's failure to act constitutes the extraordinary circumstances contemplated by certiorari.

² For example, Defendants have argued that some of these individuals may have registered to vote before a driver's license or social security number was required. Assuming *arguendo* that this is accurate, such persons could readily be identified and removed from the scope of the inquiry based upon the date of their registration.

b. The Defenses Which the NCSBE Projects are Inapplicable Here

The NCSBE attempts to legitimize its decisions through a variety of citations to federal law and other statutes, none of which are implicated here. For example, in the January 10, 2025 hearing the NCSBE argued that statutes such as National Voter Registration Act, 52 U.S.C. § 20501, *et seq.* (“NVRA”), Help America Vote Act, 52 U.S.C. § 20901, *et seq.* (“HAVA”), and the Voting Rights Act prohibit them from removing individuals from the state’s voter registration lists within a certain period before an election. *See* App. 37-39. Not only is that position subject to controversy,³ but it is wholly irrelevant; Plaintiffs’ affirmatively disclaim any relief relating to the state’s voter registration list. App. 16, at ¶ 73, n.5. Similarly, it is well-settled that HAVA is only applicable to federal elections whereas here Plaintiffs only seek redress for state and local election contests. *See* App. 117-119 (collecting cases and discussing the relevant distinctions in statutory applicability across elections). The fact that state law takes inspiration from HAVA, or any other federal law in this regard, is of no consequence. States are free to establish their own registration procedures for state and local elections, and that is exactly what the North Carolina General

³ Indeed, there is an unsettled question as to whether the NVRA’s 90-day quiet provision applies to individuals who were never properly registered under state law. *Compare Virginia Coal. for Immigrant Rts. v. Beals*, No. 24-2071, 2024 WL 4601052, at *1-2 (4th Cir. Oct. 27, 2024) (declining to adopt state’s argument that a person who is not qualified to vote in the first instance cannot be covered by the NVRA’s quiet provision); *with Beals v. VA Coal. for Immigrant Rts.*, No. 24A407, 2024 WL 4608863 (U.S. Oct. 30, 2024) (granting emergency stay and allowing the state to remove non-citizens from its voter registration list). Nothing presented here turns on the answer to that question.

Assembly did here. *See* App. 119 (citing *Young v. Fordice*, 520 U.S. 273, 275 (1997) and *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 436 (E.D. Mich 2004)). Beyond their own speculation, the NCSBE cannot articulate a single tangible barrier to the relief Plaintiffs seek.

Additionally, the NCSBE argued that the trial court should abstain from ruling here under the doctrine of *Purcell v. Gonzalez* and its purported state counterpart. *See* 549 U.S. 1 (2006); *see also* *Pender County v. Bartlett*, 361, N.C. 491 (2007). This argument fails on several fronts. First, these doctrines warn against changing election laws on the eve of an election. Plaintiffs do not seek any such change, they simply ask that they laws be enforced in the manner in which they were intended. Second, this relief does not seek to strip the legal right to vote away from anyone so entitled. Instead, Plaintiffs seek this Court's assistance in ensuring that only those legally entitled to vote did so. The harm created by the NCSBE's unjustifiable refusal to act strikes at the very core of election integrity. Not only is the state's doctrine on this principle much less developed or clear than the NCSBE would like, but the questions and relief presented by this matter surpass even the doctrine's federal counterpart. Abstention on these grounds is unwarranted.

c. Plaintiffs' Requested Relief Accounts for the NCSBE's Purported Procedural Risks

In an attempt to retroactively justify their actions here, the NCSBE raises the specter of mass voter disenfranchisement, should Plaintiffs obtain the relief sought. Generalized assertions aside, this argument is toothless. Plaintiffs' first line argument is that these persons were never lawfully registered under North Carolina

law. As a result, Plaintiffs seek a declaration stating the same, as well as injunctive relief requiring the NCSBE to immediately correct their errors moving forward, including contacting the affected individuals before future elections, and removing the unlawful votes from the relevant election contests. *See* App. 22-23 at ¶¶ 2, 3. Alternatively, Plaintiffs request the implementation of a judicial process to expeditiously identify those affected individuals and solicit the missing information in a timely manner akin to what N.C.G.S. §163-82.4(f) requires. App. 22, at ¶ 2(c).

The NCSBE does not plausibly contend that they cannot contact these individuals, rather, they argue that it would somehow be a burden on them to do so. This argument defies reality. In an attempt to attack the feasibility of implementing a judicial cure process, the NCSBE broadly argues that there could be instances of a voter missing their mail or being on vacation when the NCSBE attempts to retrieve the individual's missing information. Not only are these considerations which can be accounted for should this Court grant relief, but it fails to consider the fact that the very same thing might occur had the NCSBE followed the process established in N.C.G.S. §163-82.4 in the first place. Simply put, the risk here is no greater than it would be had the NCSBE complied with the law.

Due to the publicity surrounding the NCSBE's registration failures, several third parties have established databases for interested persons to quickly search and determine if they have an incomplete registration that is potentially affected here.⁴

⁴ *See* Emily Vespa, *Under the Dome: What to know if your vote is challenged by NC Supreme Court GOP candidate*, CHARLOTTE OBSERVER, Jan. 10, 2025; *see also* Common Cause, *New Online Tool Helps NC Voters Find Out if Their Ballot is*

Similarly, the NCSBE's own website provides links for users to check their registration and to contact their county board of elections to provide any missing information.⁵ Certainly something that is as easily discernable as the click of a search button cannot constitute the burden the NCSBE portray it to be, especially when they are encouraging voters to provide the missing information the NCSBE was required to collect.

III. The Subject Matter of the Dispute is of Great Public Interest

The subject matter of this underlying litigation is undoubtedly of great public importance. Not only does the relief sought implicate tens of thousands of potentially unlawful registrations, but its impact stretches to potentially every state and local election contest across North Carolina. Indeed, the very purpose of the state's voter registration statutes is to determine one's eligibility to vote. To the extent any affected contest were decided by persons who were never eligible to vote—as opposed to individuals who are qualified but fell victims of the NCSBE's failures to comply with state law—then those contests risk *post hoc* challenges. *See, e.g.*, N.C.G.S. § 1-515. Thus, the NCSBE's inaction also risks draining judicial resources, inundating North Carolina's courts and Attorney General's office with untold numbers of legal actions.

Challenged by Jefferson Griffin (Jan. 10, 2025) <https://www.commoncause.org/north-carolina/press/new-online-tool-helps-nc-voters-find-out-if-their-ballot-is-challenged-by-jefferson-griffin/>

⁵ NCSBE, Information for Voters Challenged in Election Protest (Jan. 9, 2025) <https://www.ncsbe.gov/information-voters-challenged-election-protest>

In *Stetser v. TAP Pharm. Prods., Inc.*, this Court found that an action implicating a potential statewide class action was sufficient to warrant certiorari under the public interest inquiry. 165 N.C. App. 1, 12, 598 S.E.2d 570, 578-79 (2004). Surely if the implicated rights of a discrete group of class members creates an extraordinary circumstance, then the questions presented in this matter must as well. Indeed, much publicity has followed other actions arising from the NCSBE's failure to properly register voters. North Carolinians have a vested interest in the expeditious resolution to the questions presented here.

IV. The Case Deals With Issues of First Impression and the Efficient Administration of Justice Requires Immediate Redress

No court has interpreted or applied either the Constitution's registration requirement or the statutes promulgated thereunder in the context presented here. Thus, the questions presented by this matter are both novel and of great public importance. *See App.* 131-137. Chief Judge Myers recognized this fact when he quickly remanded the matter to state court, exhaustively discussing the principles of federalism implicated by asking a federal court to decide this issue of state law at its first impression. *Id.*

Resolution of this matter would also provide invaluable guidance to trial courts. *See Cryan* 384 N.C., at 574, 887 S.E.2d, at 851 (finding that certiorari was appropriate when the issue presented was a novel question of state law and that refusing to answer it would create a "considerable waste of judicial resources."). Specifically, the NCSBE cite to several cases which they claim prohibits reopening an election once a certificate of election has issued. In contrast, Plaintiffs point to

authority allowing the legality of a state office holder to be challenged under appropriate circumstances. *See* N.C.G.S. § 1-515. Resultingly, the answers and appropriate remedies here are far from settled, and this Court is well within its authority to dictate the necessary outcome. *See Cryan* 384 N.C., at 574, 887 S.E.2d, at 851.

Much like in *Cryan*, the answers to the questions presented will have far-reaching impacts on the interpretation of a novel issue of North Carolina law. *Id.* Relief from this Court will inject finality into this dispute once and for all. Certiorari is particularly appropriate in instances such as this one where, absent relief from this Court, the passage of time will continue to irreparably harm Plaintiffs' well-established rights.

* * * *

REASONS WHY THE WRIT OF SUPERSEDEAS SHOULD ISSUE

The purpose of a writ of supersedeas is “to preserve the status quo pending the exercise of the appellate court’s jurisdiction” and “is issued only to hold the matter in abeyance pending review.” *City of New Bern v. Walker*, 255 N.C. 355, 356, 121 S.E.2d 544, 545-46 (1961). A writ of supersedeas is available “to stay the . . . enforcement of any . . . order, or other determination of a trial tribunal which is not automatically stayed by the taking of appeal when an appeal has been taken . . .” N.C. R. App. P. 23(a)(1); *see also* N.C. Gen. Stat. § 1-269 (authorizing the writ of supersedeas). A petitioner may apply to the Court of Appeals for a writ of supersedeas after “a stay order or entry has been sought by the applicant . . . by motion in the trial tribunal and such order or entry has been denied . . . by the trial tribunal” or where “extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial tribunal for a stay order.” N.C. R. App. P. 23(a). “The writ of supersedeas may issue in the exercise of, and as ancillary to, the revising power of an appellate court,” and the writ’s purpose “is to preserve the status quo pending the exercise of appellate jurisdiction.” *Craver v. Craver*, 298 N.C. 231, 237-38, 258 S.E.2d 357, 362 (1979); *see also City of New Bern v. Walker*, 255 N.C. 355, 121 S.E.2d 544, 545-46 (1961).

I. A Stay is Necessary to Preserve the Status Quo, Avoid Irreparable Harm to Plaintiffs, and to Protect Plaintiffs’ Right to a Meaningful Appeal

In this case, a writ of supersedeas is proper because it would preserve the status quo immediately prior to the trial court’s Order. Specifically, only lawfully

registered persons may participate in the state's elections, consistent with state law. This has been the status quo in North Carolina for over a decade. The trial court's order eviscerates this long standing principle based upon little more than a vague conclusion that it could discern no irreparable harm. To the contrary, the harm faced by Plaintiffs due to the ongoing degradation of their well-established rights, as well as the harm that would come should discovery reveal state election contests decided by a margin of unlawful votes, makes immediate redress necessary. The true status quo—the one reflected in North Carolina's Constitution and codified by the General Assembly—should remain while this Court reviews the trial court's order.

By refusing to provide injunctive relief, the Order, without any justification, cancels Plaintiffs' statutory and constitutional rights, inflicting grave harm on them while potentially unlawful votes decide state and local election contests. The trial court's order fails to account for this grave risk. Plaintiffs' abilities to seek future redress is significantly stymied, should the trial court's order remain in effect.

II. Plaintiffs Are Likely to Succeed on the Merits

For all the reasons established in Plaintiffs' Petition for Writ of Certiorari, *supra*, Plaintiffs have established a high likelihood of success on the merits, sufficient to pass muster for any form of injunctive relief. *Accord A.E.P. Indus., Inc. v. McClure*, 309 N.C. 393, 402, 302 S.E.2d, 754, 760 (1983); *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979). More specifically, the record evidence reveals that the NCSBE has not and does not seriously contest that it failed to comply with the requirements of N.C.G.S. § 163-82.4 *et seq.* Instead, the NCSBE has argued that it cannot be forced

to retroactively correct its errors now that all but one certificate of election has issued. But Plaintiffs have established at least one statutory vehicle which proves that the NCSBE's position is not as insurmountable a hurdle as they believe it to be.

III. Plaintiffs Are Likely to Suffer Irreparable Harm Unless Relief is Granted, and a Temporary Injunction is Necessary to Protect Plaintiffs' Rights During the Course of Litigation

Should relief not issue, Plaintiffs will be highly prejudiced, effectively losing their right to a productive appeal. Additionally, if Plaintiffs were denied an appeal here, and discovery in the underlying litigation reveals any state or local contests decided by a margin of unlawful votes, the risk of such contests being the subject of future litigation becomes increasingly palpable. While the NCSBE has argued—and Plaintiffs vehemently disagree—that too much time has passed since the November 5, 2024 contests and now, certainly all parties can agree that future litigation at some untold point is not an efficient use of judicial resources, nor is it a desirable outcome. This reality further dictates that immediate review and relief from this Court is appropriate.

* * * *

MOTION FOR TEMPORARY STAY AND TEMPORARY INJUNCTION

Pursuant to N.C. R. App. P. 23(e) and the Court's inherent authority to supervise lower courts, as identified in N.C. R. Civ. P. 62(f), Plaintiffs respectfully moves this Court to (a) issue a temporary stay of the trial court's January 10, 2024 Order, and (b) grant a temporary injunction ordering the NCSBE to immediately instruct county boards of election to: (1) identify and segregate any ballots returned to them by individuals who were registered to vote but failed to provide the information required by N.C.G.S. § 163-82.4(a)(11); and (2) either (a) removing those ballots from the final counts for all affected state and local election contests from the November 5, 2024 general election, or (b) establishing a judicially-created process requiring the NCSBE to expeditiously request the missing information from all identified persons, establishing a deadline by which the information must be received and confirmed, or the that ballot must be discounted from the relevant contests' results. Plaintiffs further incorporate and rely on the arguments presented in the foregoing petition for writ of certiorari and petition for writ of supersedeas in support of this Motion for Temporary Stay and Temporary Injunction.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully pray that this Court:

1. Issue a Writ of Certiorari, granting review of the trial court's January 10, 2025 order and correcting its manifest errors of law;
2. Issue a Writ of Supersedeas to the Superior Court of Wake County, staying enforcement of the January 10, 2025 order pending this Court's review of the determination of Plaintiffs' appeal;

3. Issue an Order granting Plaintiffs' Motion for a Temporary Stay and Temporary Injunction pending this Court's consideration of the foregoing Petition for Writs of Certiorari and Supersedeas; and
4. Grant such other relief deemed just and proper.

Respectfully submitted this, the 14th day of January, 2025.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach

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VERIFICATION

The undersigned attorney for Plaintiffs, after being duly sworn, says:

The contents of the foregoing petition are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

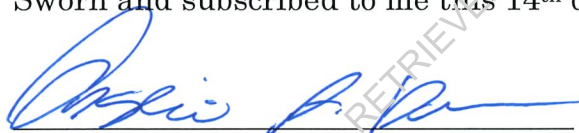
Pursuant to Appellate Rule 23, I also hereby certify that the documents attached to this Petition for Writ of Certiorari and Petition for Writ of Supersedeas are true and correct copies of the pleadings and other documents filed in Wake County Superior Court, including documents that were served or submitted for consideration as contemplated by Appellate Rule 11.



Jordan A. Koonts

Wake County, North Carolina

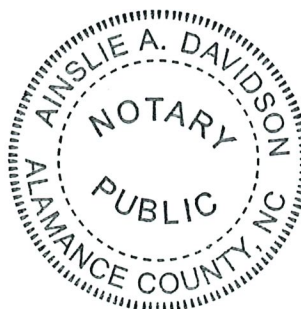
Sworn and subscribed to me this 14th day of January, 2025.



Ainslie A. Davidson
Notary's Printed Name, Notary Public

My Commission Expires: 12-01-2025

[Notary Seal]



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition for Writ of Certiorari, Petition for Writ of Supersedeas and Motion for Temporary Stay and Temporary Injunction was served upon the persons indicated below via electronic mail addressed as follows:

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Counsel for Intervenor-Defendant-Appellee

This, the 14th day of January, 2025.

/s/ Phillip J. Strach

Phillip J. Strach

No.

TENTH JUDICIAL DISTRICT

 NORTH CAROLINA COURT OF APPEALS

TELIA KIVETT, *et al.*

Plaintiffs-Appellants,

v.

NORTH CAROLINA STATE BOARD
 OF ELECTIONS, *et al.*,

Defendants-Appellees,

and

DEMOCRATIC NATIONAL
 COMMITTEE,

Intervenor-Appellees.

From Wake County
 24 CVS 041789-910

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI AND WRIT OF
 SUPERSEDEAS**

Appendix Pages

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Order Denying Temporary Restraining Order
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Plaintiffs' Notice of Appeal, *Telia Kivett, et al. v.
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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

NO. _____

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants.

VERIFIED COMPLAINT

NOW COMES Plaintiffs Telia Kivett, Karyn Mulligan, the Wake County Republican Party ("Wake GOP"), the Republican National Committee ("RNC"), and the North Carolina Republican Party ("NCGOP"), by and through undersigned counsel and, pursuant to Rules 7 of the North Carolina Rules of Civil Procedure file this Verified Complaint seeking certain injunctive and declaratory relief, as well as a Writ of Mandamus compelling the North Carolina State Board of Elections ("NCSBE") and its members, Alan Hirsch, Jeff Carmon, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE's Executive Director

Karen Brinson Bell (collectively “Defendants”) to fulfill their duties set forth in N.C. Gen. Stat. § 163-82.4 *et seq.* In support, Plaintiffs allege as follows:

INTRODUCTION

1. The North Carolina Constitution provides several preconditions for a person wishing to vote in the state’s elections. One of those requirements is that each voter must be registered. *See* N.C. Const. art. VI § 3.

2. Pursuant to this mandate, the NCSBE is statutorily empowered with the duty to create voter registration application forms. *See* N.C. Gen. Stat. § 163-82.3. These forms are the vehicle through which certain required information regarding North Carolina’s electoral populace is maintained, ensuring that every person attempting to vote in the state’s elections is qualified under all relevant laws. *See, e.g., id.* at §§ 163-82.4 and 82.11.

3. Importantly, North Carolina’s voter registration form is required to collect, *inter alia*, the applicant’s driver’s license number or social security number. *See* N.C. Gen. Stat. § 163-82.4(a)(11). Only if the applicant does not have either number does state law allow the NCSBE to assign the applicant a unique voter registration number. *Id.* at § 82.4(b). And if a voter has the required information but fails to provide it on the registration form, then the NCSBE and its County Boards of Election (“County Boards”) must follow a set of statutory procedures and timelines in order to determine if the affected person’s vote may be counted. *Id.* at § 82.4(f).

4. For over a decade the NCSBE employed a statewide voter registration form which failed to collect certain statutorily required identification information, including the applicant’s driver’s license number and social security number, resulting in approximately 225,000 voter registration applications being processed and accepted despite the forms’ noncompliance with state law.

5. Now, in the aftermath of the November 5, 2024 general election contests for state offices, the NCSBE has not only failed to collect this required information from at least 60,000 voters with incomplete registration forms and counted their votes in violation of state law, but the NCSBE has made it abundantly clear that, absent an order from this court, they will fail to uphold state law and will, in fact, do everything in their power to resist compliance with their duties thereunder.

6. Not only do these actions threaten the very integrity of North Carolina's elections, but they fly in the face of the NCSBE's and the County Boards' statutory duties. This dereliction has stained the state's November 5, 2024 election results, directly undermining North Carolinians' trust in the same.

7. In refusing to cure their ongoing violations of state law, the NCSBE has affirmatively ignored potential statutory cure processes created by the General Assembly. *See* N.C. Gen. Stat. § 163-82.4(f). Instead, the NCSBE has elected to expend tremendous time, energy, and taxpayer resources to resist compliance with what state law requires of them. Nevertheless, it is not too late to afford Plaintiffs—and the qualified voting populace of North Carolina—the relief sought, creating finality in the state's elections and restoring trust in its results. However, time is of the essence.

PARTIES

8. Telia Kivett is a resident of Salemburg, North Carolina. She is a registered Republican voter in Sampson County. Ms. Kivett has voted in previous state and local elections, and she intends to vote in future elections. As a concerned citizen and a registered voter in North Carolina, Ms. Kivett has an interest in protecting her vote from being diluted by votes cast by individuals who were unlawfully registered as a result of Defendants' unconstitutional actions.

9. Karyn Mulligan is a resident of Holly Springs, North Carolina. She is a registered Republican voter in Wake County. Ms. Mulligan has voted in previous state and local elections, and she intends to vote in future elections.

10. Ms. Mulligan also serves as chair of the Wake County Republican Party. She brings this suit in both her individual capacity and in her capacity as chair of Wake GOP.

11. The Wake County Republican Party is the county party affiliate of the North Carolina Republican Party and is a political committee as defined by N.C. Gen. Stat. § 163-278.6(74) and 52 U.S.C. § 30101(4). Wake GOP's membership includes all registered Republicans in Wake County, and it exists to elect Republicans to state and local offices in North Carolina. Wake GOP's principal place of business is 1401 Sunday Dr., Suite 105, Raleigh, NC 27607.

12. The Republican National Committee is the national committee for the Republican Party; representing all registered Republicans across both the state and nation, as well as the values they stand for. The RNC serves as the collective voice for the Republican Party's platform. It is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14) and a political party as defined by N.C. Gen. Stat. § 163-96. The RNC's principal place of business is 310 First Street SE, Washington, D.C.

13. The RNC's core mission involves organizing lawful voters and encouraging them to support Republican candidates at all levels of government, including throughout North Carolina. The RNC expends significant time and resources fighting for election security and voting integrity across the nation, including in North Carolina. These efforts are intended to ensure that the votes and voices of its members, its candidates, and the party are not silenced or diluted in any way. Recent rises in non-citizens and other unqualified persons voting or seeking to vote in elections

has forced the RNC to divert its efforts and funds in order to hold elections officials accountable to what both federal and state laws require.

14. The North Carolina Republican Party is a state committee of the Republican Party, as defined by 52 U.S.C. § 30101(15), and a political party as defined by N.C. Gen. Stat. § 163-96. The NCGOP represents the interests of registered Republicans across North Carolina. Its headquarters and principal place of business is 1506 Hillsborough St, Raleigh, NC 27605. The NCGOP represents the interests of registered Republican voters, residing across all one hundred counties in the state. The NCGOP also advocates for the interests of tens of thousands of non-affiliated voters who align with various aspects of the Republican Party platform.

15. The NCGOP's mission and platform largely mirror that of the RNC, including an emphasis on election integrity and security. The NCGOP's core mission includes counseling interested voters and volunteers on election participation including hosting candidate and voter registration events, staffing voting protection hotlines, investigating reports of voter fraud and disenfranchisement, and providing election day volunteers in all one hundred counties across North Carolina. The NCGOP spends tremendous time and effort advocating for its members throughout all levels of state government, working to make sure they are heard both at the ballot box and beyond.

16. Plaintiffs have organizational standing to bring this action. Defendants' actions and inaction directly impact Plaintiffs' core organizational missions of election security and providing services aimed at promoting Republican voter engagement and electing Republican candidates for office. Defendants' violations of statewide voter registration laws and the subsequent refusal to remedy their wrongdoings, in accordance with what state law requires, has forced Plaintiffs to divert significantly more of their resources into combatting election fraud in North Carolina.

Plaintiffs' organizational and voter outreach efforts have been and will continue to be significantly stymied due to Defendants' ongoing failures. As a result, Plaintiffs will have no choice but to expend increased amounts of time and money, beyond what they would have already spent, in order to combat this unwarranted interference with their central activities. For example, because of Defendants' violations of state law, Plaintiffs will need to commit added time and resources into monitoring North Carolina's voter rolls, voter activity, and responding to instances of potential voter fraud in upcoming elections, tasks required of Defendants under state law.

17. Additionally, NCGOP has associational standing because its members have standing in their own right to challenge Defendants' actions here. NCGOP represents millions of registered Republican voters across the state of North Carolina, including at least one registered Republican voter in every one of the state's one hundred counties, which is a matter of public record. NCGOP's members are harmed by Defendants' ongoing state law violations. These members' votes are undoubtedly diluted due to ineligible voters participating in elections due to Defendants' statutory violations. Additionally, these members' rights to participate in a fair and secure electoral process, free from voter fraud, will be significantly hindered. Ensuring such freedom and security in all elections throughout North Carolina is germane to the NCGOP's organizational mission.

18. Plaintiffs are further harmed in their ability to effectively compete in elections across the state as Defendants' refusal to collect accurate voter registration information risks opening the door to potentially fraudulent votes and inaccurate election results. This harm is especially palpable considering North Carolina's party-based primary system which makes verifying the accuracy of each voter registration form that much more crucial.

19. The North Carolina State Board of Elections is the state agency tasked with “general supervision over primaries and elections of the state.” *See* N.C. Gen. Stat. § 163-22. The NCSBE is tasked with ensuring that elections in North Carolina comply with all laws and, in the NCSBE’s own words, “ensur[ing] that elections are conducted lawfully and fairly.”¹ Further, the NCSBE is tasked with overseeing, advising, and directing all 100 county boards of election across the state. *See* N.C. Gen. Stat. § 163-22 *et seq.*

20. Karen Brinson Bell is the Executive Director of the NCSBE. In this capacity, Ms. Brinson Bell oversees elections in all one hundred counties in North Carolina and administering all elections occurring therein. *See* N.C. Gen. Stat. § 163-27(d). Ms. Brinson Bell is sued in her official capacity.

21. Alan Hirsch is the Chair of the NCSBE. He resides in Chapel Hill, North Carolina. Mr. Hirsch is sued in his official capacity.

22. Jeff Carmon is the Secretary of the NCSBE. He resides in Snow Hill, North Carolina. Mr. Carmon is sued in his official capacity.

23. Stacy Eggers, IV is a member of the NCSBE. He resides in Boone, North Carolina. Mr. Eggers, IV is sued in his official capacity.

24. Kevin N. Lewis is a member of the NCSBE. He resides in Rocky Mount, North Carolina. Mr. Lewis is sued in his official capacity.

25. Siobhan O’Duffy Millen is a member of the NCSBE. She resides in Raleigh, North Carolina. Ms. Millen is sued in her official capacity.

¹ <https://www.ncsbe.gov/about>

JURISDICTION AND VENUE

26. This Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. § 7A-245. Further, this Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. § 7A-240 as all claims are of a civil nature, arising exclusively under the General Statutes of North Carolina.

27. This Court has personal jurisdiction over the NCSBE as it is a state agency in North Carolina.

28. This Court has personal jurisdiction over Executive Director Karen Brinson Bell, Chair Alan Hirsch, Secretary Jeff Carmon, Stacy Eggers IV, Kevin Lewis, and Siobhan O'Duffy Millen as each is sued in their official capacities as appointed officials in North Carolina. Each is a citizen of North Carolina and each resides in the state.

29. Venue is proper in this court pursuant to N.C. Gen. Stat. § 1-82.

FACTUAL ALLEGATIONS

30. As alleged above, the North Carolina Constitution establishes several prerequisite qualifications for voting eligibility, including that any person wishing to vote must be registered. *See* N.C. Const. art. VI, § 3.

31. In order to ensure compliance with other applicable voter qualification laws, North Carolina General Statute § 163-82.3 establishes and empowers the NCSBE to promulgate a registration form, while § 82.4(a) enumerates certain required information which must be collected on the form before it may be processed and the applicant deemed “registered.”

32. Further, the North Carolina General Assembly clearly delineated which of these categories of information were non-negotiable when they specifically carved out certain ones which the absence of “shall not” be the basis for a registration form’s denial. *See* N.C. Gen. Stat.

§ 82.4(a) (listing race, ethnicity, gender, or telephone number as the sole required items which cannot cause a registration form to be denied if omitted from the applicant's submission).

33. Setting these specific categories aside, the remaining items are absolutely necessary for a person to be deemed a "registered" voter under North Carolina law. And if an applicant fails to provide this required information, the General Assembly places the onus on the NCSBE to collect it in a timely manner in order for any ballots cast by the applicant to count in future elections.

I. *The Purpose and Function of North Carolina's Voter Registration Form*

34. North Carolina General Statute § 163-82.3 assigns the NCSBE with the duty to develop a statewide voter registration form.

35. The statute also identifies the purposes of North Carolina's voter registration form, providing that a person may use it to:

- “(1) Register to voter.
- (2) Change party affiliation or unaffiliated status.
- (3) Report a change of address within a county.
- (4) Report a change of name.”

See N.C. Gen. Stat. § 163-82.4(a)(1)-(4).

36. Pursuant to the NCSBE's duty to develop and maintain a statewide voter registration form, North Carolina General Statute § 163-82.4 provides a set of identifying information which the form must collect, including the registrant's:

- “(1) Name,
- (2) Date of Birth,
- (3) Residence address,

- (4) County of residence,
- (5) Date of Application
- (6) Gender,
- (7) Race,
- (8) Ethnicity,
- (9) Political party affiliation [. . .],
- (10) Telephone number [. . .],
- (11) **Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number [. . .].**

See N.C. Gen. Stat. § 163-82.4(a) (emphasis added).

37. Only if a registrant does not have either a driver's license number or a social security number may the NCSBE assign the person a unique voter identification number. *See* N.C. Gen. Stat. § 163-82.4(b).

38. Critically, the statute does not contemplate or provide the NCSBE the authority to unilaterally assign such an identification number to a registrant who first fails to provide either a driver's license or social security number in the first instance and then the NCSBE fails to inquire into such a number's existence, as required by state law. Simply put, the unique voter identification number provision of N.C. Gen. Stat. § 163-82.4(b) does not absolve the NCSBE of its failure to collect or inquire into the existence of the information required by § 82.4(a)(11).

39. By specifically enumerating this required information which must be collected via the registration form—and creating a backup option if a registrant does not have specific information—the General Assembly unambiguously conveyed that this information is absolutely necessary before a registration may be processed and accepted.

40. In fact, many of the listed items specifically determine if the registrant meets other constitutional voting eligibility requirements. *See, e.g.*, N.C. Const. art VI § 2 (a person voting in North Carolina must be a resident of the state).

41. Thus, both the statute and common sense make clear that the purpose of the state's voter registration form is multifaceted. Not only does the registration form ensure the accurate collection and verification of certain identifying information from the registrant, but it is the essential item upon which compliance with several state constitutional and state statutory demands are measured.

II. *North Carolina Law Establishes a Process Through Which the NCSBE Must Endeavor to Collect Missing Registration Information and Conditions By Which the Registrant's Vote May Still Count.*

42. North Carolina law provides a failsafe for a registrant who does not provide any of the required identification information set forth in N.C. Gen. Stat. § 163-82.4(a) and the exclusive process by which ballots cast by persons with these incomplete registrations may be counted in a future election.

43. Should a registrant fail to complete any of the aforementioned required information, then North Carolina law provides a process by which the County Boards must contact the voter to notify them of their omission and provide them an opportunity to properly complete the registration form by 5:00 p.m. the day before the county canvass. *See* N.C. Gen. Stat. § 163-82.4(f).

44. If the voter corrects their form and provides the missing information before election day, then the person may vote. *Id.* And if the correct information is not provided by election day, then the person must vote a provisional ballot. *Id.* Finally, if the correct information is provided by 5:00 p.m. the day before the county canvass, then the County Boards must review the registration and count all portions of the provisional ballot for which the registrant is eligible to vote.

45. This process puts the initial burden on the NCSBE and the County Boards, requiring them to contact voters who fail to provide all required information on their registration form.

46. Then, assuming contact is made, the burden shifts to the voter who must provide adequate identification information prior to 5:00 p.m. the day before the county canvass.

47. Not only does this thorough process further evince legislative intent for complete voter registration applications with all required information, but it also reveals the express and exclusive conditions upon which a registrant who proffers an incomplete registration form may still have their vote counted in an election. In short, the person's vote may only count if their missing information is provided and confirmed by a date and time certain.

III. *For Over a Decade the NCSBE Employed a Voter Registration Form Which Failed to Collect Certain Statutorily-Required Identification Information From Registrants and the NCSBE Then Refused to Contact Individuals Who Provided Incomplete Registrations.*

48. Prior litigation has revealed that, for at least a decade, the NCSBE used a statewide voter registration form which failed to collect a registrant's drivers license number and/or the last four digits of their social security number. *See Republican National Committee v. North Carolina State Board of Elections*, 5:24-CV-00547-M (E.D.N.C. 2024).

49. Because of this faulty registration form, the NCSBE and the County Boards accepted and processed approximately 225,000 voter registrations despite each of the forms failing to provide the information required by North Carolina General Statute § 163-82.4(a).

50. While the NCSBE did correct their registration form on a forward-looking basis once its improprieties were brought to their attention, the record in both that litigation and a

relevant NCSBE order² makes clear that the NCSBE wholly refuses to contact any of the registrants who failed to provide a statutorily-required driver's license number and/or the last four digits of their social security number.

51. In the NCSBE's opinion, these persons will filter themselves out at the polls due to other unrelated voting requirements such as photo-ID.³

52. The NCSBE then employed this faulty logic to repeatedly reject requests for reconsideration and other relief aimed at correcting their errors.

53. Not only does this do-nothing approach miss the mark, but it is completely at odds with the confirmatory and investigatory duties set forth in N.C. Gen. Stat. § 163-82.4(f).

54. This empty promise also proved to be patently untrue, as post-election audits performed by third parties using documents provided by the NCSBE pursuant to public records requests confirmed that at least 60,000 people voted in North Carolina's November 5, 2024 state office general election contests without providing either a driver's license number or a social security number.

55. Further, to the extent this information was shown at the polls—for instance, a person showing a poll worker their driver's license number pursuant to N.C. Gen. Stat. § 163-

² See NCSBE Order (Dec. 6, 2023) (available at: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Other/2023%20HAVA%20Complaint%20-%20Snow.pdf) [last accessed Nov. 3, 2024].

³ Notably, N.C. Gen. Stat. § 163-82.4(a)(11) does not contain any exceptions for alternative forms of ID, and for good reason. The driver's license and/or social security numbers are used to confirm a person's eligibility to vote, including things such as felony and citizenship status, whereas these alternative forms identified by the NCSBE are used to confirm that the person at the polls voting is who they claim to be. *Compare* N.C. Gen. Stat. §§ 163-82.4, 82.12, and 166.12(d) (establishing the requirements, procedures, and purpose for obtaining and matching a registrant's driver's license number or social security number to confirm voting eligibility); *with* 08 NCAC 17.0101 and *Holmes v. Moore*, 384 N.C. 426, 430-31 (2023) (discussing the purpose and exceptions to North Carolina's voter identification statute in confirming a voter's identity at the polls).

166.16—it is clear that this information was not recorded by the NCSBE or the County Boards, thus leaving the person’s registration incomplete.

56. As of the date of this Complaint, the time for county canvasses has passed and the NCSBE and the County Boards failed to collect the information required by N.C. Gen. Stat. § 163-82.4(a)(11) in the manner and time demanded by § 82.4(f) for at least 60,000 persons who cast ballots in the November 5, 2024 state office general election contests.

57. Thus, the NCSBE plainly ignored the processes and requirements provided in General Statute § 163-82.4(f) and instead allow these persons to vote without any confirmation of their qualifications to do so.

58. The NCSBE’s decision to ignore its duties under North Carolina law is untenable and demands immediate correction in order to ensure the integrity of North Carolina’s elections and their results.

59. Yet instead of working towards any timely affirmative relief, the NCSBE has consistently resisted any corrective actions, including arguing that it would be “unfair” to discount the ballots of persons who previously voted in prior elections without providing the required information and (wrongly) believed they were registered.⁴ Tellingly, the NCSBE does not and cannot cite to any statutory authority allowing them to ignore what state law demands of them.

CLAIM FOR RELIEF

COUNT ONE: VIOLATION OF N.C. GEN. STAT. § 163-82.4 – WRIT OF MANDAMUS AND MANDATORY INJUNCTION

60. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

⁴ See, e.g., December 13, 2024 Order re Election Protests of Jefferson Griffin, Ashlee Adams, Frank Sossamon, and Stacie McGinn, available at: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Protest%20Appeals/Griffin-Adams-McGinn-Sossamon_2024.pdf

61. North Carolina law unambiguously requires Defendants to collect certain information from a person registering to vote before the registration is accepted or a ballot cast by that person may be counted.

62. Additionally, North Carolina law provides an unambiguous statutory procedure which Defendants must follow for contacting persons who submit incomplete voter registration forms, including those who failed to provide their driver's license number and/or social security number as identified herein.

63. Both of these statutory duties are ministerial in nature and provide no room for Defendants to deviate from their requirements. *See* N.C. Gen. Stat. § 163-82.4(a) (stating that the registration form “shall” require certain information) (emphasis added); *see id.* at 82.4(f) (stating that, upon receipt of an incomplete registration form the County Boards “shall” take certain actions in an attempt to cure it) (emphasis added).

64. Despite this clear process, Defendants affirmatively refused to contact any of the 225,000 people who failed to provide statutorily required information and whose registration forms were nevertheless processed and accepted and whose ballots were improperly counted.

65. As a result, the NCSBE violated N.C. Gen. Stat. § 163-82.4 when they allowed these registrations to be processed and accepted despite their missing certain required information.

66. Even still, state law mandates an express process for correcting these omissions. *See* N.C. Gen. Stat. § 163-82.4(f).

67. It is without dispute that the NCSBE refused to follow the process set forth in General Statute § 163-82.4(f), instead expressing their intent to “wait and see.” This position finds no support in any law.

68. Further, this approach wholly failed to collect the missing information, resulting in at least 60,000 individuals casting ballots in the November 5, 2024 state office general election contests despite each person's registration failing to provide either a driver's license number or the last four digits of their social security number.

69. Based on the directives set forth in N.C. Gen. Stat. § 163-82.4(f), these ballots should not have been counted unless the missing information was received by 5:00 p.m. the day prior to the county canvass.

70. Upon information and belief, this information was not requested from the voters or received by the NCSBE or the County Boards by this date, and the NCSBE still allowed the ballots to be counted.

71. These ballots should not have been counted as these voters were never registered under state law and the state Constitution limits voting eligibility to only those persons who are registered.

72. Unless enjoined and ordered to comply with their statutory duties, Defendants will certify and finalize election results containing votes which violate state law.

73. Defendants must be ordered to comply with their statutory duties and uphold what state law requires of them by following all procedures and deadlines established in N.C. Gen. Stat. § 163-82.4. To the extent these procedures and deadlines were not followed, Defendants must be ordered to discount these ballots from all vote totals in all state office contests in the November 5, 2024 election.⁵

⁵ For clarity, Plaintiffs do not seek the wholesale removal of these persons from the state's voter registration list as these individuals may theoretically be able to provide the missing information before a county canvass in a future election by following the procedures set forth in N.C. Gen. Stat. § 163-82.4.

74. More specifically, Defendants must be ordered to retabulate all state office election contests results from the November 5, 2024 state office general election contests, removing all ballots cast by persons who returned registration forms without the information required by N.C. Gen. Stat. § 163-82.4(a)(11) from the final election counts.

75. Alternatively, Defendants' violations may be cured through the establishment of a judicial process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state general election.

76. Additionally, Defendants must be ordered to follow the processes and procedures set forth in N.C. Gen. Stat. § 163-82.4(f) in order to request the missing information from all affected persons and confirm and complete these incomplete registrations such that they may validly vote in future elections, assuming satisfaction of all relevant qualifications to do so.

**COUNT TWO: VIOLATION OF N.C. CONST. ART. I § 10 – MANDATORY
INJUNCTION**

77. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

78. The North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const. art. I § 10.

79. Similarly, the North Carolina Constitution mandates that all persons wishing to vote in the state's elections must, among other things, be registered to vote. *See* N.C. Const. art. VI § 3.

80. Pursuant to this directive, the North Carolina General Assembly established clear processes by which a person may be properly registered and incomplete registrations may be cured

in time to be counted for an election. Specifically, N.C. Gen. Stat. § 163-82.4(f) creates an affirmative command and a duty imposed on Defendants by law.

81. Defendants wholly failed to comply with these processes for the November 5, 2024 state office general election contest when they allowed ballots to be cast and counted by persons with statutorily deficient registration forms in spite of N.C. Gen. Stat. § 163-82.4's requirements.

82. By ignoring their statutory and constitutional duties and allowing persons who are not properly registered to vote, Defendants directly diluted the votes and ability of lawfully qualified voters to select their representatives.

83. Defendants' actions similarly infringed on the rights of lawfully registered voters, such as Ms. Kivett and Ms. Mulligan, to participate in elections free from interference by unqualified persons and unlawful votes.

84. Defendants cannot offer any legitimate justification, let alone a compelling interest, for this dereliction of duty.

85. Defendants must be ordered to immediately and permanently rectify this harm in order to protect the integrity of both the November 5, 2024 state office general election contests and all future state elections in North Carolina.

COUNT THREE: VIOLATION OF N.C. CONST. ART. I § 19 – MANDATORY INJUNCTION

86. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

87. The North Carolina Constitution provides equal protection under state law for all North Carolinians. N.C. Const. art. I § 19.

88. Similarly, the North Carolina Constitution mandates that all persons wishing to vote in the state's elections must, among other things, be registered to vote. *See* N.C. Const. art. VI § 3.

89. Pursuant to this directive, the North Carolina General Assembly established clear processes by which a person may be properly registered and incomplete registrations may be cured in time to be counted for an election. Specifically, N.C. Gen. Stat. § 163-82.4(f) creates an affirmative command and a duty imposed on Defendants by law.

90. Defendants wholly failed to comply with these processes for the November 5, 2024 state office general election contest when they allowed ballots to be cast and counted by persons with statutorily deficient registration forms in spite of N.C. Gen. Stat. § 163-82.4's requirements.

91. By ignoring their statutory and constitutional duties and allowing persons who are not properly registered to vote, Defendants directly diluted the votes of lawfully qualified voters, such as Ms. Kivett and Ms. Mulligan, all of whom complied with North Carolina law in registering to vote.

92. Defendants cannot offer any legitimate justification, let alone a compelling interest, for this dereliction of duty.

93. Defendants must be ordered to immediately and permanently rectify this harm in order to protect the integrity of both the November 5, 2024 state office general election contests and all future state elections in North Carolina.

COUNT FOUR: DECLARATORY JUDGMENT

94. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

95. 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 of the NCSBE's affirmative refusal to contact any affected registrants as set forth in its December 6, 2023 Order.

96. As set forth above, North Carolina law dictates exactly how a person may become lawfully registered as required by the state Constitution.

97. The NCSBE affirmatively refused to follow this process or its cure procedures when it specifically declined to contact any of the potentially affected registrants, as set forth in its December 6, 2023 Order.

98. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiffs and Defendants regarding, among other things, whether the NCSBE's refusal to contact these persons and their justification for said refusal is supported by North Carolina law.

99. Similarly, such a controversy exists between Plaintiffs and Defendants regarding, among other things, whether a person who fails to provide the information required by N.C. Gen. Stat. § 163-82.4(a)(11) and whose information is not timely received pursuant to § 163-82.4(f) but provides a form of identification at the polls is deemed "registered" under North Carolina law.

100. Defendants' actions have harmed and will continue to irreparably harm Plaintiffs unless and until this Court enters declaratory and injunctive relief in Plaintiffs' favor.

101. The NCSBE's December 6, 2023 Order exceeded the NCSBE's statutory authority and jurisdiction and is infected by errors in law.

102. Accordingly, Plaintiffs are entitled to a ruling from the Court reversing the NCSBE's December 6, 2023 Order insofar as it claimed that providing alternative forms of identification at the polls would cure any missing information required by North Carolina law and/or a declaratory judgment declaring that:

- a. Such persons are not lawfully registered as defined and provided by North Carolina law; and

- b. To be cast a valid ballot, such persons must (i) provide the missing information in the time required by N.C. Gen. Stat. § 163-82.4(f) or affirmatively attest that they do not have such information; and (ii) meet all other requirements imposed by North Carolina law.

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

- a. Immediately identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons with voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11);
- b. Determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(b);
- c. For those persons who were not validly provided such a number, remove their votes from final election counts for all state election contests in the November 5, 2024 state office general election contests, or alternatively, comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state general election; and
- d. Order the NCSBE to immediately contact such persons and request the missing information such that all otherwise qualified voters may be properly registered in time for the next election contest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a writ of mandamus ordering Defendants to comply with the practices and procedures set forth in N.C. Gen. Stat. § 163-82.4(f), including:
 - a. Ordering Defendants to contact every person who submitted a voter registration application which was accepted and processed without providing the information required in N.C. Gen. Stat. § 163-82.4(a)(11) and requesting the person provide the missing information in a timely fashion and no later than the times set forth in N.C. Gen. Stat. § 163-82.4(f).
2. Grant injunctive relief requiring Defendants to:
 - a. Immediately identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons whose voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11);
 - b. Determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(b);
 - c. For those persons who were not validly provided such a number, remove their votes from final election counts for all state office election contests in the November 5, 2024 state general election, or alternatively, establish a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote

from the final election counts for all state office election contests in the November 5, 2024 state general election;

- d. Ordering the NCSBE to immediately contact such persons and request the missing information such that all otherwise qualified voters may be properly registered in time for the next election contest; and
 - e. Take all other steps necessary to cure the harm caused by Defendants' state statutory and state Constitutional violations.
3. Enter a declaratory judgment reversing the NCSBE's December 6, 2023 Order insofar as it claimed that providing alternative forms of identification at the polls would cure any missing information required by North Carolina law.
 4. Enter a declaratory judgment providing that persons who fail to provide the information required by N.C. Gen. Stat. § 163-82.4(a)(11) are not lawfully registered to vote as defined and provided by North Carolina law.
 5. Enter a declaratory judgment providing that to cast a valid ballot, all persons with incomplete voter registration forms which are missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11) must: (i) provide the missing information in the time required by N.C. Gen. Stat. § 163-82.4(f) or affirmatively attest that they do not have such information; and (ii) meet all other requirements imposed by North Carolina law.
 6. Award Plaintiffs their reasonable attorney's fees, litigation expenses, and associated costs incurred in connection with this action, as otherwise permitted by law;
 7. Retain jurisdiction over this matter to ensure Defendants comply with any orders issued by this Court; and
 8. Grant such additional relief deemed just and proper.

Respectfully submitted, this, the 31st day of December, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach

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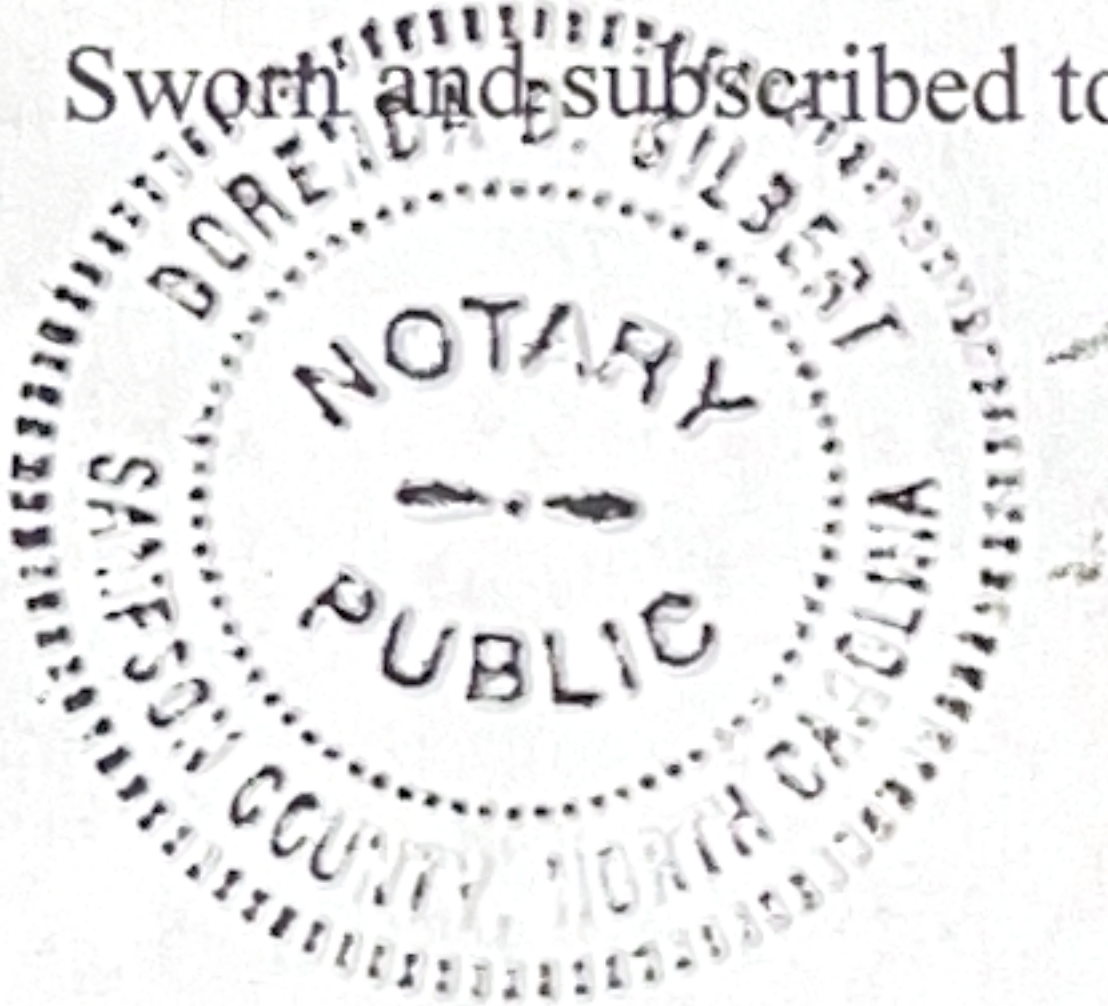
VERIFICATION

I, Telia C. Kivett, affirm under the penalty of perjury, that the foregoing representations in this Verified Complaint are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: Telia C. Kivett
Date: 12/31/2024

Sampson County
STATE OF NORTH CAROLINA

Sworn and subscribed to me on this, the 31st day of December, 2024.



Dorenda B. Gilbert
Notary Public

My Commission Expires: 11/4/2027

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV041789-910

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Emergency Relief Requested

NOW COMES Plaintiffs Telia Kivett, Karyn Mulligan, the Wake County Republican Party ("Wake GOP"), the Republican National Committee ("RNC"), and the North Carolina Republican Party ("NCGOP"), by and through undersigned counsel and pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, move this Court to issue a temporary restraining order and preliminary injunction. Specifically, this Court should order Defendants to identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons whose voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11), determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(c), and for those persons who were not validly

provided such a number, remove their votes from final election counts for all state election contests in the November 5, 2024 state office general election contests. Alternatively, Defendants should be ordered to comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state office general election. In support of this Motion, Plaintiffs show the Court as follows:

INTRODUCTION

1. North Carolina law requires that persons wishing to vote in the state's elections register following state law. *See* N.C. Const. art. VI § 3; N.C. Gen. Stat. §§ 163-82.3, .4, and .11.

2. Importantly, North Carolina requires that the voter registration form collects, among other things, an applicant's driver's license number or social security number. *See* N.C. Gen. Stat. § 163-82.4(a)(11). North Carolina law does not provide for any deviation or wholesale ignoring of this requirement,¹ yet that is exactly what the NCSBE has done.

3. Failure to collect this information on the front end means that the registration is incomplete and, by definition, the person is not "registered" under North Carolina law.

4. Nevertheless, the General Assembly established clear statutory procedures and timelines to collect the missing information and remedy these deficiencies in a timely manner to

¹ North Carolina law does have a provision for individuals who do not have either a driver's license number or a social security number, providing that that specific subset of person may be assigned a unique voter identification number. *See* N.C. Gen. Stat. § 163-82.4(b). However, this provision only applies if it is confirmed that the registrant does not have this information. It is not an alternative to the general collection requirements and procedures set forth in N.C. Gen. Stat. § 163-82.4(a)(f), nor does it absolve the NCSBE of their violations of state law here.

determine if the affected person is qualified to register to vote and if their vote may be counted.

See N.C. Gen. Stat. §163-82.4(f).

5. This statutory failsafe notwithstanding, the NCSBE willingly failed to timely collect this information from at least 60,000 voters with incomplete registration forms, and it has counted those votes in the November 5, 2024 general election for state offices. This is a plain violation of state law.

6. In the aftermath of the November 5, 2024 general election, the NCSBE's counting of unlawful votes would be outcome determinative for many state and local races, several of which currently have razor-thin margins. To allow those unlawful votes to decide the outcome of such state and local races would fundamentally undermine democracy—a democracy in which eligible voters alone should decide electoral outcomes.

7. Defendants' brazen failure to comply with state law forces Plaintiffs to turn to this Court for urgent relief.

8. Plaintiffs initiated this action by filing a Complaint for declaratory and injunctive relief on December 31, 2024. Individual Plaintiff Telia Kivett subsequently filed a verification of the Complaint soon thereafter.

9. Plaintiffs' Complaint seeks several forms of relief, including:

- a. a writ of mandamus ordering Defendants to comply with the practices and procedures set forth in N.C. Gen. Stat. § 163-82.4(f);
- b. injunctive relief requiring the identification and segregation of ballots cast by affected persons, determination of whether those persons were validly registered,

removal of all unauthorized votes, and ordering Defendants to remedy the missing information prior to the next election²; and

- c. declaratory judgments to reverse the NCSBE's unlawful course of action, declaring that persons who fail to provide information required by N.C. Gen. Stat. § 163-82.4(a)(11) are not lawfully registered to vote under North Carolina law, and that all persons with incomplete voter registration forms must provide complete information and otherwise comply with North Carolina law to be considered lawfully registered voters.

(Compl., Prayer for Relief).

FACTUAL BACKGROUND

10. Article VI, § 3 of the North Carolina Constitution requires that any person wishing to vote must be registered. (Compl. ¶¶ 1, 31).

11. The North Carolina General Assembly sets forth express authority for the NCSBE to promulgate a registration form. Express statutory authority identifies certain information that must be collected before the application can be process and an applicant deemed "registered," and likewise identifies specific categories of information that, while required, shall not be the basis for a registration form's denial. (Compl. ¶¶ 32-33). An applicant's driver's license number or social security number is one of the non-negotiable, required categories of information which must be collected before a registration form may be processed and deemed "complete."

² Alternatively, Plaintiffs seek the creation and implementation of a judicial process providing affected persons an expedited but reasonable amount of time to provide the information the NCSBE should have timely collected in the first instance and, if the information is not provided by a set date, then Defendants must be ordered to discount all impacted ballots from all state contests in the November 5, 2024 state office general election.

12. North Carolina elections law further mandates that the NCSBE collect any missing information in a timely manner for any ballots case by the applicant to count in future elections, including a driver's license or social security number. (*Id.* ¶ 34).

13. Defendants have flouted this law for at least a decade, using a statewide voter registration form that failed to collect a registrant's driver's license number and/or the last four digits of their social security number, resulting in approximately 225,000 voter registrations. (*Id.* ¶¶ 49-50). They refused to remedy their noncompliance with state law prior to the November 5, 2024 election, under the theory that the unlawfully registered voters would filter themselves out at the polls through other unrelated voting requirements. (*Id.* ¶¶ 51-54).

14. That position not only violated state law, but also turned out to be incorrect: post-election audits performed by third parties using documents provided by the NCSBE pursuant to public records requests confirmed that at least 60,000 people voted in North Carolina's November 5, 2024 state office general election contests without providing either a driver's license number or a social security number, and even if these voters provided a driver's license number pursuant to N.C. Gen. Stat. § 163-166.16, neither the NCSBE nor the County Boards made any record of such. (*Id.* ¶¶ 55-56).

15. As of the date of this Motion, the time for county canvasses has passed, and the NCSBE and the County Boards failed to collect the information required by N.C. Gen. Stat. § 163-82.4(a)(11) in the manner and time demanded by § 82.4(f) for at least 60,000 persons who cast ballots in the November 5, 2024 state office general election contests. Defendants have therefore plainly violated North Carolina law, and judicial intervention is necessary.

ARGUMENT

16. Plaintiffs seek injunctive relief because they will be seriously and irreparably harmed by Defendants' actions in permitting unlawfully registered voters to have their votes counted in the recent November 5, 2024 state elections and in future such elections.

17. Without the requested injunctive relief, Defendants have certified and will continue to certify state and local elections in which the results may have been decided by persons who are not lawfully registered voters, and Defendants will continue to facilitate ongoing violations of the North Carolina Constitution. This course of action impermissibly dilutes the votes of the Individual Plaintiffs and all other duly-registered voters across the state in state and local elections and violates their constitutional rights. Similarly, this damages the missions, election-related efforts, and electoral prospects of the organizational Plaintiffs.

I. Legal Standard

18. This court has the inherent authority to issue injunctive relief upon application from a party. *State v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357, 261 S.E.2d 908, 913, *on reh'g*, 299 N.C. 731, 265 S.E.2d 387 (1980) (stating that injunctive relief is "a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.").

19. Issuance of a preliminary injunction is appropriate when necessary to avoid immediate and irreparable injury to a party. *See* N.C. R. Civ. P. 65; *see also A.E.P. Indus., Inc. v. McClure*, 309 N.C. 393, 401, 302 S.E.2d 754, 759 (1983).

20. To demonstrate entitlement to a preliminary injunction, Plaintiffs must establish: (1) likelihood of success on the merits; and (2) that they are likely to sustain irreparable loss unless the injunction is issued, or if, in the Court's opinion, issuance is necessary for the protection of

Plaintiffs' rights during the course of the litigation. *See Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977).

21. Notably, Plaintiffs' likelihood of success on the merits means a "reasonable likelihood." *See A.E.P. Indus., Inc.*, 308 N.C. at 402, 302 S.E.2d at 760.

II. Plaintiffs Have Established a Reasonable Likelihood of Success on the Merits

22. Plaintiffs have established a reasonable likelihood of success on the merits of their claims based on undisputable evidence that Defendants have openly refused to comply with state law. Under the North Carolina Constitution and state law, only lawfully registered North Carolinians may vote in elections for state and local offices. *See* N.C. Const. art. VI, § 3. State law prescribes the information required to be requested of applicants. N.C. Gen. Stat. § 163-82.4(a). Furthermore, North Carolina's statutes specify that the failure to state certain categories of information (race, ethnicity, gender, or telephone number) shall not form the basis for denying an application. *Id.* ("[N]o application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number."). Applying the canon of statutory construction *expressio unius est exclusio alterius* (the inclusion of one is to the exclusion of all others), the General Assembly's inclusion of these categories of information it determined should not form the basis of a denial means that the other enumerated categories of information—critically, including driver's license number or social security number—should form the basis of denial of a voter registration application. *See Evans v. Diaz*, 333 N.C. 774, 780, 430 S.E.2d 244, 247 (1993) ("[W]hen a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list.") (citation omitted).

23. Based on the plain meaning of North Carolina's statutes, Plaintiffs have demonstrated a likelihood of success on the merits.

24. Moreover, based on the Defendants' own conduct and admissions, Plaintiffs have demonstrated a likelihood of success on the merits. Defendants have already acknowledged that their failure to collect driver's license or social security number information was wrong when they *prospectively* changed course. (Compl. ¶¶ 49-50). But they failed to go far enough when they repeatedly and deliberately declined to correct that same violation of law for the November 5, 2024 elections for state and local offices, all under a clearly erroneous and unsupported theory that these unlawful acts would somehow remedy themselves. (*Id.* at ¶¶ 51-55) Unfortunately for Defendants—and qualified North Carolina voters—this intentional inaction only proved to cause greater harm and inject unwarranted uncertainty into the election results for contests for state offices.

25. In light of the foregoing, Plaintiffs are reasonably likely to succeed on the merits of their claims and immediate relief is warranted.

III. Absent the Relief Sought, Plaintiffs Will Be Substantially and Irreparably Harmed

26. Plaintiffs' undeniable constitutional and statutory rights to vote in free and fair elections, where only lawfully-registered voters participate, are at immediate risk, absent an injunction. *See* N.C. Const. art. VI § 3; *see also* N.C. Const. art. I § 10.

27. Absent an injunction, organizational Plaintiffs' will be substantially and irreparably harmed in their respective missions, election-related efforts, and their electoral prospects. Further, individual Plaintiffs' constitutional rights will be substantially harmed and their votes will be impermissibly diluted. As to both sets of Plaintiffs, this harm will be exacerbated, should relief not be available before the November 5, 2024 election. Simply put, the bulk of the damage will already be done.

28. In contrast, Defendants will suffer little if any harm, should the injunction issue. Defendants can easily identify and segregate those ballots cast by voters who failed to provide the necessary information on their voter registration applications and can just as easily account for the changes in vote tallies necessary to remove the votes of any unlawfully-registered voters.

29. Similarly, and to the extent Defendants claim a supposed burden or risk of violations of principles of due process, Plaintiffs' prayer for relief accounts for the same, specifically requesting the creation of a judicial process which would solicit and collect the missing registration information in accordance with the statutory duties the NCSBE willfully chose to ignore. This alternative relief mitigates any such concerns or supposed burden on Defendants or persons who may be affected.

CONCLUSION

30. Defendants are already constitutionally prohibited from allowing the unlawfully-registered voters to vote in North Carolina's elections. Thus, to the extent Defendants claim a burden in having to ensure residency requirements of a subset of registrants, the same is already required by North Carolina law.

31. In sum, the equities favor Plaintiffs especially insofar as they are seeking to vindicate pre-established rights and protect the validity of their votes.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order:

- a. Declaring that Defendants' registration of voters who failed to provide the information required under N.C. Gen. Stat. § 163-82.4(a)(11) violates Article VI, § 3 of the North Carolina Constitution and enjoining Defendants from using the same to allow any such unlawfully registered voter to vote in North Carolina's elections for state and local offices;

- b. Directing Defendants to immediately identify and segregate those ballots cast by affected persons, determine whether those persons were validly registered, and remove all unauthorized votes in elections cast in the November 5, 2024 elections for state and local offices, or alternatively, Defendants should be ordered to comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state office general election.;
- c. Issuing a writ of mandamus requiring Defendants to immediately begin complying with the processes outlined in N.C. Gen. Stat. §§ 163-82.4(f) prior to any future election; and
- d. For any other relief deemed just and proper.

Respectfully submitted, this, the 2nd day of January, 2025.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach
Phillip J. Strach
North Carolina State Bar no. 29456
Jordan A. Koonts
North Carolina State Bar no. 59363
301 Hillsborough Street, Suite 1400
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this, the 2nd day of January, 2025, I served a true and accurate copy of the foregoing **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** upon all counsel of record by using the Odyssey e-file and serve feature, sending a copy of the same to all counsel of record via e-mail, and sending a copy via U.S. Mail, postage prepaid and addressed as follows:

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Tsteed@ncdoj.gov

Mary Carla Babb
Special Deputy Attorney General
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Raleigh, NC 27602
MCBabb@ncdoj.gov

Counsel for Defendants

/s/ Phillip J. Strach

Phillip J. Strach

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:25-cv-00003**

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants.

**NOTICE OF REMOVAL OF CIVIL
ACTION No. 24CV041789-910 FROM
WAKE COUNTY
SUPERIOR COURT**

TO: The United States District Court for the Eastern District of North Carolina

PLEASE TAKE NOTICE THAT Defendants remove Civil Action No. 24CV041789-910 from the North Carolina Superior Court for Wake County to this Honorable Court, pursuant to 28 U.S.C. §§ 1331, 1441(a), 1443(2), and 1367(a). In support of this notice, Defendants state the following:

1. On December 31, 2024, in the North Carolina Superior Court for Wake County, Plaintiffs filed a complaint challenging the votes of North Carolinians who allegedly first

registered to vote without providing either a driver's license or social security number. That complaint sought the issuance of a writ of mandamus ordering Defendants to contact every person whose voter registration application was accepted and processed without providing the information required in N.C. Gen. Stat. § 163-82.4(a)(11); requested injunctive relief requiring Defendants to segregate and remove ballots from all state office elections in the 2024 general election; and sought declaratory rulings that require interpretation of federal laws, including the Help America Vote Act (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (2002) *codified at* 52 U.S.C. § 20901, *et seq.*, and the National Voter Registration Act (NVRA), Pub. L. No. 103-31, 107 Stat. 77 (1993) *codified at* 52 U.S.C. § 20501, *et seq.*

2. The complaint directly implicates HAVA, the NVRA, the Voting Rights Act, and the Fourteenth Amendment to the United States Constitution.

3. Because the complaint is a civil action bringing claims arising under the laws of the United States, this Court has original jurisdiction over such claims. 28 U.S.C. § 1331. Removal is therefore proper. *Id.* § 1441(a).

4. The complaint further alleges that Defendants have refused to take certain actions. To the extent Defendants have indeed refused to take certain actions, their refusal was based on their obligation to comply with 52 U.S.C. § 10101(a)(2), 52 U.S.C. § 10307(a), and 52 U.S.C. § 20507(c)(2)(A).

5. Because Plaintiffs have sought relief for Defendants' refusal to do an "act on the ground that [the act] would be inconsistent" with 52 U.S.C. § 10101(a)(2), 52 U.S.C. § 10307(a), and 52 U.S.C. § 20507(c)(2)(A), removal is proper. 28 U.S.C. § 1443(2).

6. Because Plaintiffs have yet to effect service of this complaint on Defendants, this removal notice is timely. 28 U.S.C. § 1446(b).

7. Pursuant to Local Rule 5.3(a)(1), copies of all process and pleadings in Defendants' possession are attached to this petition as separate distinctly titled exhibits. Defendants are also filing in the North Carolina Superior Court for Wake County a notice of removal for each petition, as required by 28 U.S.C. § 1446(d), and have requested that a complete copy of each of those state court filings be filed in this Court. A copy of each notice is included below.

Wherefore, Defendants remove to this Court Civil Action No. 24CV041789-910 from the North Carolina Superior Court for Wake County to the United States District Court for the Eastern District of North Carolina.

Respectfully submitted, this 2nd day of January 2025.

Mary Carla Babb
Special Deputy Attorney General
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MCBabb@ncdoj.gov

Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
TSteed@ncdoj.gov

North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Fax: 919-716-6758

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Removal was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to the below listed attorneys for Plaintiffs, if registered, and I have served the document upon opposing counsel by mailing via the US Mail, first class, postage prepaid, addressed as follows:

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phil.strach@nelsonmullins.com
Jordan Koonts
jordan.koonts@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
301 Hillsborough Street
Suite 1400
Raleigh, NC 27603
(919) 329-3800

Counsel for Plaintiffs

This the 2nd day of January, 2025.

/s/ Mary Carla Babb
Mary Carla Babb
Special Deputy Attorney General

CIVIL COVER SHEET

- App. 41 -

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Telia Kivett, Karyn Mulligan; Wake Co. Republican Party;
Republican Nat'l Committee; and NC Republican Party

(b) County of Residence of First Listed Plaintiff Sampson
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SEE ATTACHMENT

DEFENDANTS

N.C. State Bd. of Elections, et al

County of Residence of First Listed Defendant Wake
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

SEE ATTACHMENT

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1441(a) and 1443(2); 52 U.S.C. §§ 10101, 10307, 20501-20511 and 20901-21145; and U.S. Const. Amend. XIV, sec. 1.

Brief description of cause:

Removal of civil action; voter registration administration and list maintenance per HAVA, NVRA, and VRA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Richard E. Myers II and Terrence Boyle

DOCKET NUMBER 5:24-cv-500, -547, -699, -724, -731.

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 2, 2025

/s/ Mary Carla Babb

FOR OFFICE USE ONLY

RECEIPT #

Case 5:25-cv-00003-M-BM Document 1-1 Filed 01/02/25 Page 1 of 3

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#)
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attorneys for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. _____

Telia Kivett, Karyn Mulligan; Wake Co. Republican
Party; Republican Nat'l Committee; and NC
Republican Party

Plaintiff(s),

v.

N.C. State Bd. of Elections, et al

Defendant(s).

**SUPPLEMENTAL REMOVAL COVER
SHEET**

The removing party must complete this Supplemental Removal Cover Sheet and comply with Local Civil Rule 5.3. Attach separate sheets as necessary to provide complete responses.

Section A—Plaintiffs

List the full name of each plaintiff from the state court action and indicate whether the plaintiff is pending (i.e., in case currently), dismissed, or otherwise terminated at the time of removal. If dismissed or terminated, indicate the date of dismissal/termination

Full Name of Plaintiff	Pending at time of removal – Yes/No?	Dismissed or terminated? Yes/No?	Date of Dismissal or Termination
Telia Kivett	Yes	No	
Karyn Mulligan;	Yes	No	
Wake County Republican Party	Yes	No	
Republican National Committee	Yes	No	
North Carolina Republican Party	Yes	No	

Section B—Defendants

List the full name of each defendant from the state court action and indicate whether the defendant is pending, dismissed or otherwise terminated at the time of removal. If dismissed or terminated, indicate the date of dismissal/termination. If known, indicate if and when each defendant was served with process and whether the defendant joins in the removal.

Full Name of Defendant	Pending at time of removal? Yes/No?	Dismissed or terminated? Yes/No? (If yes, state date of termination)	Has defendant been served with process? Yes/No/Unknown?	If served with process, date of service?	Does the defendant join in removal? Yes/No?
NC State Board of Elections	Yes	No	No		
Karen Brinson Bell, Bd. Executive Director	Yes	No	No		
Alan Hirsh, Bd. Chair	Yes	No	No		
Jeff Carmon, Bd. Secretary	Yes	No	No		
Stacy Eggers, IV, Bd. Member	Yes	No	No		
Kevin N. Lewis, Bd. Member Siobhan O'Duffy Millen, Bd. Member	Yes; Yes	No; No	No; No		

Section C—Removal pursuant to 28 U.S.C. § 1442(d)(1)

Is only part of the state court action being removed pursuant to 28 U.S.C. § 1442(d)(1)?

Yes ☐ No ☒

If “Yes,” specify what portion of the state court action is being removed, and then proceed to the signature page. If “No,” proceed to Section D.

Section D—Pending State Court Motions as of Date of Removal

Is there currently a temporary restraining order or preliminary injunction in place in this action from state court? Yes ☐ No ☒

List every known motion pending at the time of removal. Indicate the name of the filer, the date of filing, whether the motion has a supporting memorandum, and whether the motion is time sensitive, such as a motion for preliminary injunction.

Title of Pending Motion	Name of Filer	Date of Filing	Memorandum-- Yes/No?	Time sensitive? Yes/No?
Motion for TRO and Preliminary Injunction	Plaintiffs	01/02/2025	No	Yes

Section E—Scheduled State Court Hearings as of Date of Removal

Date and Time of Hearing	Hearing Type	Assigned State Court Judge

Date: 01/02/2025

/s/ Mary Carla Babb

Signature of Attorney for Removing Party or
Unrepresented Removing Party

Printed Name Mary Carla Babb

Law Firm N.C. Department of Justice

Address Post Office Box 629

Raleigh, NC 27602

Telephone Number (919) 716-6573

Fax Number _____

Email Address: mcbabb@ncdoj.gov

State Bar No. NC 25731

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INDEX TO EXHIBITS

EXHIBIT A	Complaint
EXHIBIT B	Civil Action Cover Sheet
EXHIBIT C	Summons for North Carolina State Board of Elections
EXHIBIT D	Summons for Karen Brinson Bell
EXHIBIT E	Summons for Alan Hirsch
EXHIBIT F	Summons for Jeff Carmon
EXHIBIT G	Summons for Stacy Eggers IV
EXHIBIT H	Summons for Kevin Lewis
EXHIBIT I	Summons for Siobhan O'Duffy Millen
EXHIBIT J	Motion for TRO and Preliminary Injunction

EXHIBIT A

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO. _____

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants.

VERIFIED COMPLAINT

NOW COMES Plaintiffs Telia Kivett, Karyn Mulligan, the Wake County Republican Party ("Wake GOP"), the Republican National Committee ("RNC"), and the North Carolina Republican Party ("NCGOP"), by and through undersigned counsel and, pursuant to Rules 7 of the North Carolina Rules of Civil Procedure file this Verified Complaint seeking certain injunctive and declaratory relief, as well as a Writ of Mandamus compelling the North Carolina State Board of Elections ("NCSBE") and its members, Alan Hirsch, Jeff Carmon, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE's Executive Director

Karen Brinson Bell (collectively “Defendants”) to fulfill their duties set forth in N.C. Gen. Stat. § 163-82.4 *et seq.* In support, Plaintiffs allege as follows:

INTRODUCTION

1. The North Carolina Constitution provides several preconditions for a person wishing to vote in the state’s elections. One of those requirements is that each voter must be registered. *See* N.C. Const. art. VI § 3.

2. Pursuant to this mandate, the NCSBE is statutorily empowered with the duty to create voter registration application forms. *See* N.C. Gen. Stat. § 163-82.3. These forms are the vehicle through which certain required information regarding North Carolina’s electoral populace is maintained, ensuring that every person attempting to vote in the state’s elections is qualified under all relevant laws. *See, e.g., id.* at §§ 163-82.4 and 82.11.

3. Importantly, North Carolina’s voter registration form is required to collect, *inter alia*, the applicant’s driver’s license number or social security number. *See* N.C. Gen. Stat. § 163-82.4(a)(11). Only if the applicant does not have either number does state law allow the NCSBE to assign the applicant a unique voter registration number. *Id.* at § 82.4(b). And if a voter has the required information but fails to provide it on the registration form, then the NCSBE and its County Boards of Election (“County Boards”) must follow a set of statutory procedures and timelines in order to determine if the affected person’s vote may be counted. *Id.* at § 82.4(f).

4. For over a decade the NCSBE employed a statewide voter registration form which failed to collect certain statutorily required identification information, including the applicant’s driver’s license number and social security number, resulting in approximately 225,000 voter registration applications being processed and accepted despite the forms’ noncompliance with state law.

5. Now, in the aftermath of the November 5, 2024 general election contests for state offices, the NCSBE has not only failed to collect this required information from at least 60,000 voters with incomplete registration forms and counted their votes in violation of state law, but the NCSBE has made it abundantly clear that, absent an order from this court, they will fail to uphold state law and will, in fact, do everything in their power to resist compliance with their duties thereunder.

6. Not only do these actions threaten the very integrity of North Carolina's elections, but they fly in the face of the NCSBE's and the County Boards' statutory duties. This dereliction has stained the state's November 5, 2024 election results, directly undermining North Carolinians' trust in the same.

7. In refusing to cure their ongoing violations of state law, the NCSBE has affirmatively ignored potential statutory cure processes created by the General Assembly. *See* N.C. Gen. Stat. § 163-82.4(f). Instead, the NCSBE has elected to expend tremendous time, energy, and taxpayer resources to resist compliance with what state law requires of them. Nevertheless, it is not too late to afford Plaintiffs—and the qualified voting populace of North Carolina—the relief sought, creating finality in the state's elections and restoring trust in its results. However, time is of the essence.

PARTIES

8. Telia Kivett is a resident of Salemburg, North Carolina. She is a registered Republican voter in Sampson County. Ms. Kivett has voted in previous state and local elections, and she intends to vote in future elections. As a concerned citizen and a registered voter in North Carolina, Ms. Kivett has an interest in protecting her vote from being diluted by votes cast by individuals who were unlawfully registered as a result of Defendants' unconstitutional actions.

9. Karyn Mulligan is a resident of Holly Springs, North Carolina. She is a registered Republican voter in Wake County. Ms. Mulligan has voted in previous state and local elections, and she intends to vote in future elections.

10. Ms. Mulligan also serves as chair of the Wake County Republican Party. She brings this suit in both her individual capacity and in her capacity as chair of Wake GOP.

11. The Wake County Republican Party is the county party affiliate of the North Carolina Republican Party and is a political committee as defined by N.C. Gen. Stat. § 163-278.6(74) and 52 U.S.C. § 30101(4). Wake GOP's membership includes all registered Republicans in Wake County, and it exists to elect Republicans to state and local offices in North Carolina. Wake GOP's principal place of business is 1401 Sunday Dr., Suite 105, Raleigh, NC 27607.

12. The Republican National Committee is the national committee for the Republican Party; representing all registered Republicans across both the state and nation, as well as the values they stand for. The RNC serves as the collective voice for the Republican Party's platform. It is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14) and a political party as defined by N.C. Gen. Stat. § 163-96. The RNC's principal place of business is 310 First Street SE, Washington, D.C.

13. The RNC's core mission involves organizing lawful voters and encouraging them to support Republican candidates at all levels of government, including throughout North Carolina. The RNC expends significant time and resources fighting for election security and voting integrity across the nation, including in North Carolina. These efforts are intended to ensure that the votes and voices of its members, its candidates, and the party are not silenced or diluted in any way. Recent rises in non-citizens and other unqualified persons voting or seeking to vote in elections

has forced the RNC to divert its efforts and funds in order to hold elections officials accountable to what both federal and state laws require.

14. The North Carolina Republican Party is a state committee of the Republican Party, as defined by 52 U.S.C. § 30101(15), and a political party as defined by N.C. Gen. Stat. § 163-96. The NCGOP represents the interests of registered Republicans across North Carolina. Its headquarters and principal place of business is 1506 Hillsborough St, Raleigh, NC 27605. The NCGOP represents the interests of registered Republican voters, residing across all one hundred counties in the state. The NCGOP also advocates for the interests of tens of thousands of non-affiliated voters who align with various aspects of the Republican Party platform.

15. The NCGOP's mission and platform largely mirror that of the RNC, including an emphasis on election integrity and security. The NCGOP's core mission includes counseling interested voters and volunteers on election participation including hosting candidate and voter registration events, staffing voting protection hotlines, investigating reports of voter fraud and disenfranchisement, and providing election day volunteers in all one hundred counties across North Carolina. The NCGOP spends tremendous time and effort advocating for its members throughout all levels of state government, working to make sure they are heard both at the ballot box and beyond.

16. Plaintiffs have organizational standing to bring this action. Defendants' actions and inaction directly impact Plaintiffs' core organizational missions of election security and providing services aimed at promoting Republican voter engagement and electing Republican candidates for office. Defendants' violations of statewide voter registration laws and the subsequent refusal to remedy their wrongdoings, in accordance with what state law requires, has forced Plaintiffs to divert significantly more of their resources into combatting election fraud in North Carolina.

Plaintiffs' organizational and voter outreach efforts have been and will continue to be significantly stymied due to Defendants' ongoing failures. As a result, Plaintiffs will have no choice but to expend increased amounts of time and money, beyond what they would have already spent, in order to combat this unwarranted interference with their central activities. For example, because of Defendants' violations of state law, Plaintiffs will need to commit added time and resources into monitoring North Carolina's voter rolls, voter activity, and responding to instances of potential voter fraud in upcoming elections, tasks required of Defendants under state law.

17. Additionally, NCGOP has associational standing because its members have standing in their own right to challenge Defendants' actions here. NCGOP represents millions of registered Republican voters across the state of North Carolina, including at least one registered Republican voter in every one of the state's one hundred counties, which is a matter of public record. NCGOP's members are harmed by Defendants' ongoing state law violations. These members' votes are undoubtedly diluted due to ineligible voters participating in elections due to Defendants' statutory violations. Additionally, these members' rights to participate in a fair and secure electoral process, free from voter fraud, will be significantly hindered. Ensuring such freedom and security in all elections throughout North Carolina is germane to the NCGOP's organizational mission.

18. Plaintiffs are further harmed in their ability to effectively compete in elections across the state as Defendants' refusal to collect accurate voter registration information risks opening the door to potentially fraudulent votes and inaccurate election results. This harm is especially palpable considering North Carolina's party-based primary system which makes verifying the accuracy of each voter registration form that much more crucial.

19. The North Carolina State Board of Elections is the state agency tasked with “general supervision over primaries and elections of the state.” *See* N.C. Gen. Stat. § 163-22. The NCSBE is tasked with ensuring that elections in North Carolina comply with all laws and, in the NCSBE’s own words, “ensur[ing] that elections are conducted lawfully and fairly.”¹ Further, the NCSBE is tasked with overseeing, advising, and directing all 100 county boards of election across the state. *See* N.C. Gen. Stat. § 163-22 *et seq.*

20. Karen Brinson Bell is the Executive Director of the NCSBE. In this capacity, Ms. Brinson Bell oversees elections in all one hundred counties in North Carolina and administering all elections occurring therein. *See* N.C. Gen. Stat. § 163-27(d). Ms. Brinson Bell is sued in her official capacity.

21. Alan Hirsch is the Chair of the NCSBE. He resides in Chapel Hill, North Carolina. Mr. Hirsch is sued in his official capacity.

22. Jeff Carmon is the Secretary of the NCSBE. He resides in Snow Hill, North Carolina. Mr. Carmon is sued in his official capacity.

23. Stacy Eggers, IV is a member of the NCSBE. He resides in Boone, North Carolina. Mr. Eggers, IV is sued in his official capacity.

24. Kevin N. Lewis is a member of the NCSBE. He resides in Rocky Mount, North Carolina. Mr. Lewis is sued in his official capacity.

25. Siobhan O’Duffy Millen is a member of the NCSBE. She resides in Raleigh, North Carolina. Ms. Millen is sued in her official capacity.

¹ <https://www.ncsbe.gov/about>

JURISDICTION AND VENUE

26. This Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. § 7A-245. Further, this Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. § 7A-240 as all claims are of a civil nature, arising exclusively under the General Statutes of North Carolina.

27. This Court has personal jurisdiction over the NCSBE as it is a state agency in North Carolina.

28. This Court has personal jurisdiction over Executive Director Karen Brinson Bell, Chair Alan Hirsch, Secretary Jeff Carmon, Stacy Eggers IV, Kevin Lewis, and Siobhan O'Duffy Millen as each is sued in their official capacities as appointed officials in North Carolina. Each is a citizen of North Carolina and each resides in the state.

29. Venue is proper in this court pursuant to N.C. Gen. Stat. § 1-82.

FACTUAL ALLEGATIONS

30. As alleged above, the North Carolina Constitution establishes several prerequisite qualifications for voting eligibility, including that any person wishing to vote must be registered. *See* N.C. Const. art. VI, § 3.

31. In order to ensure compliance with other applicable voter qualification laws, North Carolina General Statute § 163-82.3 establishes and empowers the NCSBE to promulgate a registration form, while § 82.4(a) enumerates certain required information which must be collected on the form before it may be processed and the applicant deemed “registered.”

32. Further, the North Carolina General Assembly clearly delineated which of these categories of information were non-negotiable when they specifically carved out certain ones which the absence of “shall not” be the basis for a registration form’s denial. *See* N.C. Gen. Stat.

§ 82.4(a) (listing race, ethnicity, gender, or telephone number as the sole required items which cannot cause a registration form to be denied if omitted from the applicant's submission).

33. Setting these specific categories aside, the remaining items are absolutely necessary for a person to be deemed a "registered" voter under North Carolina law. And if an applicant fails to provide this required information, the General Assembly places the onus on the NCSBE to collect it in a timely manner in order for any ballots cast by the applicant to count in future elections.

I. *The Purpose and Function of North Carolina's Voter Registration Form*

34. North Carolina General Statute § 163-82.3 assigns the NCSBE with the duty to develop a statewide voter registration form.

35. The statute also identifies the purposes of North Carolina's voter registration form, providing that a person may use it to:

- "(1) Register to voter.
- (2) Change party affiliation or unaffiliated status.
- (3) Report a change of address within a county.
- (4) Report a change of name."

See N.C. Gen. Stat. § 163-82.4(a)(1)-(4).

36. Pursuant to the NCSBE's duty to develop and maintain a statewide voter registration form, North Carolina General Statute § 163-82.4 provides a set of identifying information which the form must collect, including the registrant's:

- "(1) Name,
- (2) Date of Birth,
- (3) Residence address,

- (4) County of residence,
- (5) Date of Application
- (6) Gender,
- (7) Race,
- (8) Ethnicity,
- (9) Political party affiliation [. . .],
- (10) Telephone number [. . .],
- (11) **Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number [. . .].**

See N.C. Gen. Stat. § 163-82.4(a) (emphasis added).

37. Only if a registrant does not have either a driver's license number or a social security number may the NCSBE assign the person a unique voter identification number. *See* N.C. Gen. Stat. § 163-82.4(b).

38. Critically, the statute does not contemplate or provide the NCSBE the authority to unilaterally assign such an identification number to a registrant who first fails to provide either a driver's license or social security number in the first instance and then the NCSBE fails to inquire into such a number's existence, as required by state law. Simply put, the unique voter identification number provision of N.C. Gen. Stat. § 163-82.4(b) does not absolve the NCSBE of its failure to collect or inquire into the existence of the information required by § 82.4(a)(11).

39. By specifically enumerating this required information which must be collected via the registration form—and creating a backup option if a registrant does not have specific information—the General Assembly unambiguously conveyed that this information is absolutely necessary before a registration may be processed and accepted.

40. In fact, many of the listed items specifically determine if the registrant meets other constitutional voting eligibility requirements. *See, e.g.*, N.C. Const. art VI § 2 (a person voting in North Carolina must be a resident of the state).

41. Thus, both the statute and common sense make clear that the purpose of the state's voter registration form is multifaceted. Not only does the registration form ensure the accurate collection and verification of certain identifying information from the registrant, but it is the essential item upon which compliance with several state constitutional and state statutory demands are measured.

II. *North Carolina Law Establishes a Process Through Which the NCSBE Must Endeavor to Collect Missing Registration Information and Conditions By Which the Registrant's Vote May Still Count.*

42. North Carolina law provides a failsafe for a registrant who does not provide any of the required identification information set forth in N.C. Gen. Stat. § 163-82.4(a) and the exclusive process by which ballots cast by persons with these incomplete registrations may be counted in a future election.

43. Should a registrant fail to complete any of the aforementioned required information, then North Carolina law provides a process by which the County Boards must contact the voter to notify them of their omission and provide them an opportunity to properly complete the registration form by 5:00 p.m. the day before the county canvass. *See* N.C. Gen. Stat. § 163-82.4(f).

44. If the voter corrects their form and provides the missing information before election day, then the person may vote. *Id.* And if the correct information is not provided by election day, then the person must vote a provisional ballot. *Id.* Finally, if the correct information is provided by 5:00 p.m. the day before the county canvass, then the County Boards must review the registration and count all portions of the provisional ballot for which the registrant is eligible to vote.

45. This process puts the initial burden on the NCSBE and the County Boards, requiring them to contact voters who fail to provide all required information on their registration form.

46. Then, assuming contact is made, the burden shifts to the voter who must provide adequate identification information prior to 5:00 p.m. the day before the county canvass.

47. Not only does this thorough process further evince legislative intent for complete voter registration applications with all required information, but it also reveals the express and exclusive conditions upon which a registrant who proffers an incomplete registration form may still have their vote counted in an election. In short, the person's vote may only count if their missing information is provided and confirmed by a date and time certain.

III. *For Over a Decade the NCSBE Employed a Voter Registration Form Which Failed to Collect Certain Statutorily-Required Identification Information From Registrants and the NCSBE Then Refused to Contact Individuals Who Provided Incomplete Registrations.*

48. Prior litigation has revealed that, for at least a decade, the NCSBE used a statewide voter registration form which failed to collect a registrant's drivers license number and/or the last four digits of their social security number. *See Republican National Committee v. North Carolina State Board of Elections*, 5:24-CV-00547-M (E.D.N.C. 2024).

49. Because of this faulty registration form, the NCSBE and the County Boards accepted and processed approximately 225,000 voter registrations despite each of the forms failing to provide the information required by North Carolina General Statute § 163-82.4(a).

50. While the NCSBE did correct their registration form on a forward-looking basis once its improprieties were brought to their attention, the record in both that litigation and a

relevant NCSBE order² makes clear that the NCSBE wholly refuses to contact any of the registrants who failed to provide a statutorily-required driver's license number and/or the last four digits of their social security number.

51. In the NCSBE's opinion, these persons will filter themselves out at the polls due to other unrelated voting requirements such as photo-ID.³

52. The NCSBE then employed this faulty logic to repeatedly reject requests for reconsideration and other relief aimed at correcting their errors.

53. Not only does this do-nothing approach miss the mark, but it is completely at odds with the confirmatory and investigatory duties set forth in N.C. Gen. Stat. § 163-82.4(f).

54. This empty promise also proved to be patently untrue, as post-election audits performed by third parties using documents provided by the NCSBE pursuant to public records requests confirmed that at least 60,000 people voted in North Carolina's November 5, 2024 state office general election contests without providing either a driver's license number or a social security number.

55. Further, to the extent this information was shown at the polls—for instance, a person showing a poll worker their driver's license number pursuant to N.C. Gen. Stat. § 163-

² See NCSBE Order (Dec. 6, 2023) (available at: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Other/2023%20HA%20Complaint%20-%20Snow.pdf) [last accessed Nov. 3, 2024].

³ Notably, N.C. Gen. Stat. § 163-82.4(a)(11) does not contain any exceptions for alternative forms of ID, and for good reason. The driver's license and/or social security numbers are used to confirm a person's eligibility to vote, including things such as felony and citizenship status, whereas these alternative forms identified by the NCSBE are used to confirm that the person at the polls voting is who they claim to be. *Compare* N.C. Gen. Stat. §§ 163-82.4, 82.12, and 166.12(d) (establishing the requirements, procedures, and purpose for obtaining and matching a registrant's driver's license number or social security number to confirm voting eligibility); *with* 08 NCAC 17.0101 and *Holmes v. Moore*, 384 N.C. 426, 430-31 (2023) (discussing the purpose and exceptions to North Carolina's voter identification statute in confirming a voter's identity at the polls).

166.16—it is clear that this information was not recorded by the NCSBE or the County Boards, thus leaving the person’s registration incomplete.

56. As of the date of this Complaint, the time for county canvasses has passed and the NCSBE and the County Boards failed to collect the information required by N.C. Gen. Stat. § 163-82.4(a)(11) in the manner and time demanded by § 82.4(f) for at least 60,000 persons who cast ballots in the November 5, 2024 state office general election contests.

57. Thus, the NCSBE plainly ignored the processes and requirements provided in General Statute § 163-82.4(f) and instead allow these persons to vote without any confirmation of their qualifications to do so.

58. The NCSBE’s decision to ignore its duties under North Carolina law is untenable and demands immediate correction in order to ensure the integrity of North Carolina’s elections and their results.

59. Yet instead of working towards any timely affirmative relief, the NCSBE has consistently resisted any corrective actions, including arguing that it would be “unfair” to discount the ballots of persons who previously voted in prior elections without providing the required information and (wrongly) believed they were registered.⁴ Tellingly, the NCSBE does not and cannot cite to any statutory authority allowing them to ignore what state law demands of them.

CLAIM FOR RELIEF

COUNT ONE: VIOLATION OF N.C. GEN. STAT. § 163-82.4 – WRIT OF MANDAMUS AND MANDATORY INJUNCTION

60. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

⁴ See, e.g., December 13, 2024 Order re Election Protests of Jefferson Griffin, Ashlee Adams, Frank Sossamon, and Stacie McGinn, available at: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Protest%20Appeals/Griffin-Adams-McGinn-Sossamon_2024.pdf

61. North Carolina law unambiguously requires Defendants to collect certain information from a person registering to vote before the registration is accepted or a ballot cast by that person may be counted.

62. Additionally, North Carolina law provides an unambiguous statutory procedure which Defendants must follow for contacting persons who submit incomplete voter registration forms, including those who failed to provide their driver's license number and/or social security number as identified herein.

63. Both of these statutory duties are ministerial in nature and provide no room for Defendants to deviate from their requirements. *See* N.C. Gen. Stat. § 163-82.4(a) (stating that the registration form “shall” require certain information) (emphasis added); *see id.* at 82.4(f) (stating that, upon receipt of an incomplete registration form the County Boards “shall” take certain actions in an attempt to cure it) (emphasis added).

64. Despite this clear process, Defendants affirmatively refused to contact any of the 225,000 people who failed to provide statutorily required information and whose registration forms were nevertheless processed and accepted and whose ballots were improperly counted.

65. As a result, the NCSBE violated N.C. Gen. Stat. § 163-82.4 when they allowed these registrations to be processed and accepted despite their missing certain required information.

66. Even still, state law mandates an express process for correcting these omissions. *See* N.C. Gen. Stat. § 163-82.4(f).

67. It is without dispute that the NCSBE refused to follow the process set forth in General Statute § 163-82.4(f), instead expressing their intent to “wait and see.” This position finds no support in any law.

68. Further, this approach wholly failed to collect the missing information, resulting in at least 60,000 individuals casting ballots in the November 5, 2024 state office general election contests despite each person's registration failing to provide either a driver's license number or the last four digits of their social security number.

69. Based on the directives set forth in N.C. Gen. Stat. § 163-82.4(f), these ballots should not have been counted unless the missing information was received by 5:00 p.m. the day prior to the county canvass.

70. Upon information and belief, this information was not requested from the voters or received by the NCSBE or the County Boards by this date, and the NCSBE still allowed the ballots to be counted.

71. These ballots should not have been counted as these voters were never registered under state law and the state Constitution limits voting eligibility to only those persons who are registered.

72. Unless enjoined and ordered to comply with their statutory duties, Defendants will certify and finalize election results containing votes which violate state law.

73. Defendants must be ordered to comply with their statutory duties and uphold what state law requires of them by following all procedures and deadlines established in N.C. Gen. Stat. § 163-82.4. To the extent these procedures and deadlines were not followed, Defendants must be ordered to discount these ballots from all vote totals in all state office contests in the November 5, 2024 election.⁵

⁵ For clarity, Plaintiffs do not seek the wholesale removal of these persons from the state's voter registration list as these individuals may theoretically be able to provide the missing information before a county canvass in a future election by following the procedures set forth in N.C. Gen. Stat. § 163-82.4.

74. More specifically, Defendants must be ordered to retabulate all state office election contests results from the November 5, 2024 state office general election contests, removing all ballots cast by persons who returned registration forms without the information required by N.C. Gen. Stat. § 163-82.4(a)(11) from the final election counts.

75. Alternatively, Defendants' violations may be cured through the establishment of a judicial process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state general election.

76. Additionally, Defendants must be ordered to follow the processes and procedures set forth in N.C. Gen. Stat. § 163-82.4(f) in order to request the missing information from all affected persons and confirm and complete these incomplete registrations such that they may validly vote in future elections, assuming satisfaction of all relevant qualifications to do so.

**COUNT TWO: VIOLATION OF N.C. CONST. ART. I § 10 – MANDATORY
INJUNCTION**

77. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

78. The North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const. art. I § 10.

79. Similarly, the North Carolina Constitution mandates that all persons wishing to vote in the state's elections must, among other things, be registered to vote. *See* N.C. Const. art. VI § 3.

80. Pursuant to this directive, the North Carolina General Assembly established clear processes by which a person may be properly registered and incomplete registrations may be cured

in time to be counted for an election. Specifically, N.C. Gen. Stat. § 163-82.4(f) creates an affirmative command and a duty imposed on Defendants by law.

81. Defendants wholly failed to comply with these processes for the November 5, 2024 state office general election contest when they allowed ballots to be cast and counted by persons with statutorily deficient registration forms in spite of N.C. Gen. Stat. § 163-82.4's requirements.

82. By ignoring their statutory and constitutional duties and allowing persons who are not properly registered to vote, Defendants directly diluted the votes and ability of lawfully qualified voters to select their representatives.

83. Defendants' actions similarly infringed on the rights of lawfully registered voters, such as Ms. Kivett and Ms. Mulligan, to participate in elections free from interference by unqualified persons and unlawful votes.

84. Defendants cannot offer any legitimate justification, let alone a compelling interest, for this dereliction of duty.

85. Defendants must be ordered to immediately and permanently rectify this harm in order to protect the integrity of both the November 5, 2024 state office general election contests and all future state elections in North Carolina.

COUNT THREE: VIOLATION OF N.C. CONST. ART. I § 19 – MANDATORY INJUNCTION

86. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

87. The North Carolina Constitution provides equal protection under state law for all North Carolinians. N.C. Const. art. I § 19.

88. Similarly, the North Carolina Constitution mandates that all persons wishing to vote in the state's elections must, among other things, be registered to vote. *See* N.C. Const. art. VI § 3.

89. Pursuant to this directive, the North Carolina General Assembly established clear processes by which a person may be properly registered and incomplete registrations may be cured in time to be counted for an election. Specifically, N.C. Gen. Stat. § 163-82.4(f) creates an affirmative command and a duty imposed on Defendants by law.

90. Defendants wholly failed to comply with these processes for the November 5, 2024 state office general election contest when they allowed ballots to be cast and counted by persons with statutorily deficient registration forms in spite of N.C. Gen. Stat. § 163-82.4's requirements.

91. By ignoring their statutory and constitutional duties and allowing persons who are not properly registered to vote, Defendants directly diluted the votes of lawfully qualified voters, such as Ms. Kivett and Ms. Mulligan, all of whom complied with North Carolina law in registering to vote.

92. Defendants cannot offer any legitimate justification, let alone a compelling interest, for this dereliction of duty.

93. Defendants must be ordered to immediately and permanently rectify this harm in order to protect the integrity of both the November 5, 2024 state office general election contests and all future state elections in North Carolina.

COUNT FOUR: DECLARATORY JUDGMENT

94. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

95. 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 of the NCSBE's affirmative refusal to contact any affected registrants as set forth in its December 6, 2023 Order.

96. As set forth above, North Carolina law dictates exactly how a person may become lawfully registered as required by the state Constitution.

97. The NCSBE affirmatively refused to follow this process or its cure procedures when it specifically declined to contact any of the potentially affected registrants, as set forth in its December 6, 2023 Order.

98. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiffs and Defendants regarding, among other things, whether the NCSBE's refusal to contact these persons and their justification for said refusal is supported by North Carolina law.

99. Similarly, such a controversy exists between Plaintiffs and Defendants regarding, among other things, whether a person who fails to provide the information required by N.C. Gen. Stat. § 163-82.4(a)(11) and whose information is not timely received pursuant to § 163-82.4(f) but provides a form of identification at the polls is deemed "registered" under North Carolina law.

100. Defendants' actions have harmed and will continue to irreparably harm Plaintiffs unless and until this Court enters declaratory and injunctive relief in Plaintiffs' favor.

101. The NCSBE's December 6, 2023 Order exceeded the NCSBE's statutory authority and jurisdiction and is infected by errors in law.

102. Accordingly, Plaintiffs are entitled to a ruling from the Court reversing the NCSBE's December 6, 2023 Order insofar as it claimed that providing alternative forms of identification at the polls would cure any missing information required by North Carolina law and/or a declaratory judgment declaring that:

- a. Such persons are not lawfully registered as defined and provided by North Carolina law; and

- b. To be cast a valid ballot, such persons must (i) provide the missing information in the time required by N.C. Gen. Stat. § 163-82.4(f) or affirmatively attest that they do not have such information; and (ii) meet all other requirements imposed by North Carolina law.

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

- a. Immediately identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons with voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11);
- b. Determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(b);
- c. For those persons who were not validly provided such a number, remove their votes from final election counts for all state election contests in the November 5, 2024 state office general election contests, or alternatively, comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state general election; and
- d. Order the NCSBE to immediately contact such persons and request the missing information such that all otherwise qualified voters may be properly registered in time for the next election contest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a writ of mandamus ordering Defendants to comply with the practices and procedures set forth in N.C. Gen. Stat. § 163-82.4(f), including:
 - a. Ordering Defendants to contact every person who submitted a voter registration application which was accepted and processed without providing the information required in N.C. Gen. Stat. § 163-82.4(a)(11) and requesting the person provide the missing information in a timely fashion and no later than the times set forth in N.C. Gen. Stat. § 163-82.4(f).
2. Grant injunctive relief requiring Defendants to:
 - a. Immediately identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons whose voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11);
 - b. Determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(b);
 - c. For those persons who were not validly provided such a number, remove their votes from final election counts for all state office election contests in the November 5, 2024 state general election, or alternatively, establish a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have originally collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received and verified by said date, then Defendants must remove the person's vote

from the final election counts for all state office election contests in the November 5, 2024 state general election;

- d. Ordering the NCSBE to immediately contact such persons and request the missing information such that all otherwise qualified voters may be properly registered in time for the next election contest; and
 - e. Take all other steps necessary to cure the harm caused by Defendants' state statutory and state Constitutional violations.
3. Enter a declaratory judgment reversing the NCSBE's December 6, 2023 Order insofar as it claimed that providing alternative forms of identification at the polls would cure any missing information required by North Carolina law.
 4. Enter a declaratory judgment providing that persons who fail to provide the information required by N.C. Gen. Stat. § 163-82.4(a)(11) are not lawfully registered to vote as defined and provided by North Carolina law.
 5. Enter a declaratory judgment providing that to cast a valid ballot, all persons with incomplete voter registration forms which are missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11) must: (i) provide the missing information in the time required by N.C. Gen. Stat. § 163-82.4(f) or affirmatively attest that they do not have such information; and (ii) meet all other requirements imposed by North Carolina law.
 6. Award Plaintiffs their reasonable attorney's fees, litigation expenses, and associated costs incurred in connection with this action, as otherwise permitted by law;
 7. Retain jurisdiction over this matter to ensure Defendants comply with any orders issued by this Court; and
 8. Grant such additional relief deemed just and proper.

Respectfully submitted, this, the 31st day of December, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach

Phillip J. Strach

North Carolina State Bar no. 29456

Jordan A. Koonts

North Carolina State Bar no. 59363

301 Hillsborough Street, Suite 1400

Raleigh, North Carolina 27603

Ph: (919) 329-3800

phil.strach@nelsonmullins.com

jordan.koonts@nelsonmullins.com

Counsel for Plaintiffs

RETRIEVEDFROMDEMOCRACYDOCKET.COM

VERIFICATION

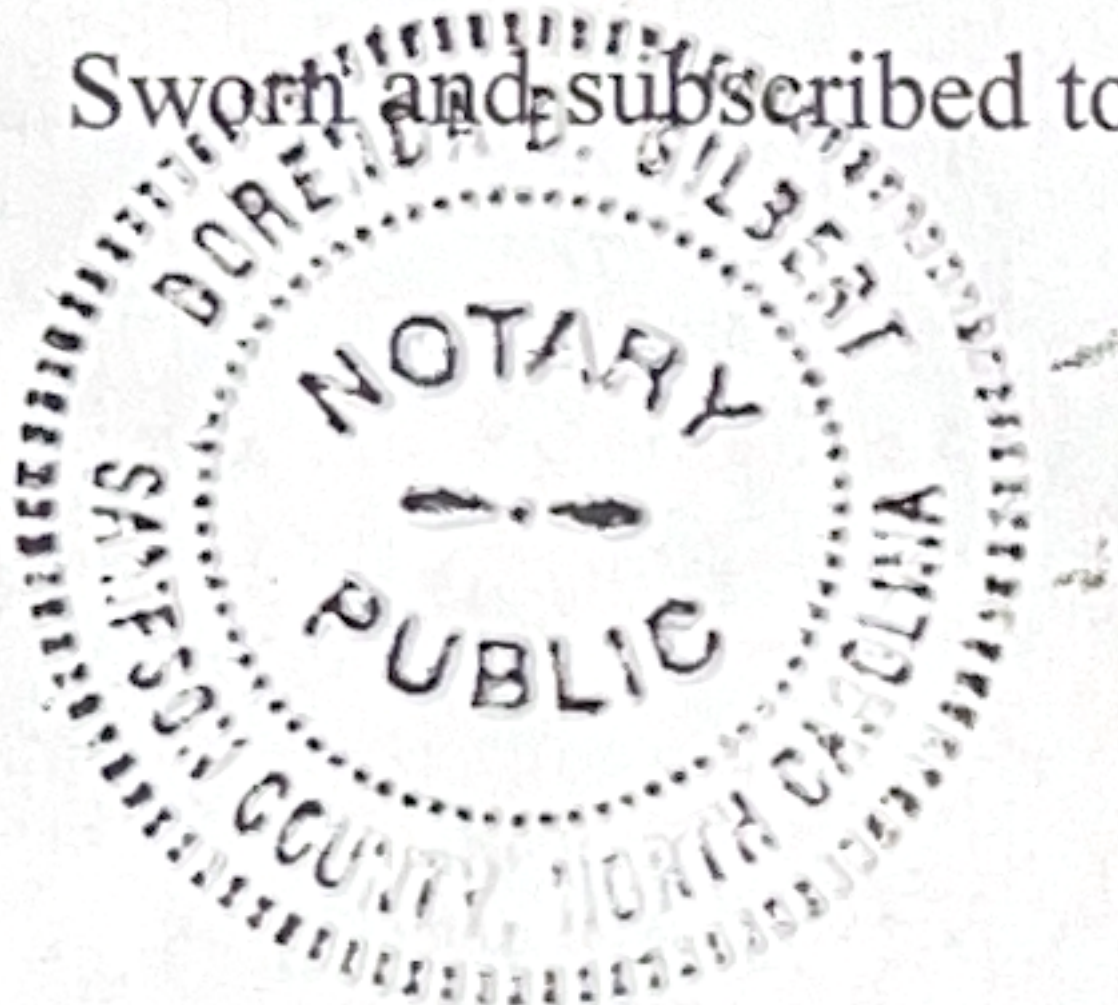
I, Telia C. Kivett, affirm under the penalty of perjury, that the foregoing representations in this Verified Complaint are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: Telia C. Kivett

Date: 12/31/2024

Sampson County
STATE OF NORTH CAROLINA

Sworn and subscribed to me on this, the 31st day of December, 2024.



Dorenda B. Gilbert
Notary Public

My Commission Expires: 11/4/2027

EXHIBIT B

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA		File No. 24CV041789-910
Wake County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name And Address Of Plaintiff 1 Telia Kivett; Karyn Mulligan; Wake County Republican Party; Republican National Committee; North Carolina Republican Party		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING
Name And Address Of Plaintiff 2		
VERSUS		Rule 5(b) of the General Rules of Practice for the Superior and District Courts
Name And Address Of Defendant 1 North Carolina State Board of Elections; Karen Brinson Bell; Alan Hirsch; Jeff Carmon; Stacy Eggers IV; Kevin Lewis; Siobhan O'Duffy Millen		Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address) Phillip J. Strach, Jordan A. Koonts Nelson Mullins Riley & Scarborough LLP 301 Hillsborough Street, Suite 1400 Raleigh NC 27603 Telephone No. 919-329-3800 Cellular Telephone No. NC Attorney Bar No. 29456 Attorney Email Address phil.strach@nelsonmullins.com
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Initial Appearance in Case <input type="checkbox"/> Change of Address
Name And Address Of Defendant 2 Dobbs Building, 3rd Floor, 430 N. Salisbury Street 6400 Mail Service Center, Raleigh, NC 27603-1362		Name Of Firm Nelson Mullins Riley & Scarborough LLP Fax No. 919-329-3799
Summons Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Counsel For <input checked="" type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only: (list party(ies) represented)
<input type="checkbox"/> Jury Demanded In Pleading <input type="checkbox"/> Complex Litigation <input type="checkbox"/> Stipulate to Arbitration		
TYPE OF PLEADING		
<small>(check all that apply)</small> <input type="checkbox"/> Amend (AMND) <input type="checkbox"/> Amended Answer/Reply (AMND-Response) <input type="checkbox"/> Amended Complaint (AMND) <input type="checkbox"/> Assess Costs (COST) <input type="checkbox"/> Answer/Reply (ANSW-Response) (see Note) <input type="checkbox"/> Change Venue (CHVN) <input checked="" type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNFJ) <input type="checkbox"/> Consent Order (CONS) <input type="checkbox"/> Consolidate (CNSL) <input type="checkbox"/> Contempt (CNTP) <input type="checkbox"/> Continue (CNTN) <input type="checkbox"/> Compel (CMPL) <input type="checkbox"/> Counterclaim (CTCL) Assess Court Costs <input type="checkbox"/> Crossclaim (list on back) (CRSS) Assess Court Costs <input type="checkbox"/> Dismiss (DISM) Assess Court Costs <input type="checkbox"/> Exempt/Waive Mediation (EXMD) <input type="checkbox"/> Extend Statute Of Limitations, Rule 9 (ESOL) <input type="checkbox"/> Extend Time For Complaint (EXCO) <input type="checkbox"/> Failure To Join Necessary Party (FJNP)		<input type="checkbox"/> Failure To State A Claim (FASC) <input type="checkbox"/> Implementation Of Wage Withholding In Non-IV-D Cases (OTHR) <input type="checkbox"/> Improper Venue/Division (IMVN) <input type="checkbox"/> Including Attorney's Fees (ATTY) <input type="checkbox"/> Intervene (INTR) <input type="checkbox"/> Interplead (OTHR) <input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN) <input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM) <input type="checkbox"/> Modification Of Child Support In IV-D Actions (MSUP) <input type="checkbox"/> Notice Of Dismissal With Or Without Prejudice (VOLD) <input type="checkbox"/> Petition To Sue As Indigent (OTHR) <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) <input type="checkbox"/> Sanctions (SANC) <input type="checkbox"/> Set Aside (OTHR) <input type="checkbox"/> Show Cause (SHOW) <input type="checkbox"/> Transfer (TRFR) <input type="checkbox"/> Third Party Complaint (list Third Party Defendants on back) (TPCL) <input type="checkbox"/> Vacate/Modify Judgment (VCMD) <input type="checkbox"/> Withdraw As Counsel (WDCN) <input type="checkbox"/> Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.


CLAIMS FOR RELIEF		
<input type="checkbox"/> Administrative Appeal (ADMA) <input type="checkbox"/> Appointment Of Receiver (APRC) <input type="checkbox"/> Attachment/Garnishment (ATTC) <input type="checkbox"/> Claim And Delivery (CLMD) <input type="checkbox"/> Collection On Account (ACCT) <input type="checkbox"/> Condemnation (CNDM) <input type="checkbox"/> Contract (CNTR) <input type="checkbox"/> Discovery Scheduling Order (DSCH) <input checked="" type="checkbox"/> Injunction (INJU)	<input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) <input type="checkbox"/> Medical Malpractice (MDML) <input type="checkbox"/> Minor Settlement (MSTL) <input type="checkbox"/> Money Owed (MNYO) <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) <input type="checkbox"/> Negligence - Other (NEGO) <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) <input type="checkbox"/> Possession Of Personal Property (POPP)	<input type="checkbox"/> Product Liability (PROD) <input type="checkbox"/> Real Property (RLPR) <input type="checkbox"/> Specific Performance (SPPR) <input checked="" type="checkbox"/> Other (<i>specify and list each separately</i>) Declaratory Judgment Writ of Mandamus
Date 12/31/2024		Signature Of Attorney/Party 
FEES IN G.S. 7A-308 APPLY Assert Right Of Access (ARAS) Substitution Of Trustee (Judicial Foreclosure) (RSOT) Supplemental Procedures (SUPR)		
PRO HAC VICE FEES APPLY Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)		
No.	<input type="checkbox"/> Additional Plaintiff(s)	
No.	<input type="checkbox"/> Additional Defendant(s) <input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
Plaintiff(s) Against Whom Counterclaim Asserted		
Defendant(s) Against Whom Crossclaim Asserted		

EXHIBIT C

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 79 -

File No. 24CV041789-910

Wake County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

North Carolina State Board of Elections
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm ☐ AM ☐ PM

Signature

/s/ Kacey Johnson

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 80
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

EXHIBIT D

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 82 -

File No.

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Karen Brinson Bell, in her official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm

☐ AM ☐ PM

Signature

/s/ Kacey Johnson

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 83
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
-------------	---	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
---	---------------	-----------

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
-------------	---	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
---	---------------	-----------

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

EXHIBIT E

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 85 -

File No.

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Alan Hirsch, in his official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm

Time

☐ AM ☐ PM

Signature

/s/ Kacey Johnson



Deputy CSC

☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 86
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
-------------	---	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
---	---------------	-----------

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
-------------	---	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
---	---------------	-----------

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

EXHIBIT F

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

VERSUS

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Jeff Carmon, in his official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued 12/31/2024 3:52:15 pm

☐ AM ☐ PM

Signature

/s/ Kacey Johnson

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 89
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
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☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: (type or print name)	Date Accepted	Signature
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☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

EXHIBIT G

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 91 -

File No.

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Stacy Eggers IV, in his official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm

☐ AM☐ PM

Signature

/s/ Kacey Johnson



Deputy CSC



Assistant CSC



Clerk Of Superior Court

☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature



Deputy CSC



Assistant CSC



Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 92
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
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☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

EXHIBIT H

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 94 -

File No.

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Kevin Lewis, in his official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm

☐ AM☐ PM

Signature

/s/ Kacey Johnson



Deputy CSC

☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 95
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
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☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

EXHIBIT I

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

- App. 97 -

File No.

24CV041789-910

Wake County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Telia Kivett, et al.,

Address

City, State, Zip

VERSUS

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

North Carolina State Board of Elections, et al.,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Siobhan O'Duffy Millen, in her official capacity
Dobbs Building, 3rd Floor, 430 N. Salisbury Street
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Phillip J. Strach and Jordan A. Koonts
Nelson Mullins Riley & Scarborough, LLP
301 Hillsborough Street, 14th Floor
Raleigh, NC 27603

Date Issued

12/31/2024 3:52:15 pm ☐ AM ☐ PM

Signature

/s/ Kacey Johnson



Deputy CSC



Assistant CSC



Clerk Of Superior Court

☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature



Deputy CSC



Assistant CSC



Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

App 98
RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: <small>(type or print name)</small>	<i>Date Accepted</i>	<i>Signature</i>
--	----------------------	------------------

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

EXHIBIT J

RETRIEVEDFROMDEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV041789-910

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Emergency Relief Requested

NOW COMES Plaintiffs Telia Kivett, Karyn Mulligan, the Wake County Republican Party ("Wake GOP"), the Republican National Committee ("RNC"), and the North Carolina Republican Party ("NCGOP"), by and through undersigned counsel and pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, move this Court to issue a temporary restraining order and preliminary injunction. Specifically, this Court should order Defendants to identify and segregate ballots cast in the November 5, 2024 state office general election contest by persons whose voter registration forms were returned missing the information required by N.C. Gen. Stat. § 163-82.4(a)(11), determine which of those persons, if any, was validly assigned a voter identification number as provided by N.C. Gen. Stat. § 163-82.4(c), and for those persons who were not validly

provided such a number, remove their votes from final election counts for all state election contests in the November 5, 2024 state office general election contests. Alternatively, Defendants should be ordered to comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state office general election. In support of this Motion, Plaintiffs show the Court as follows:

INTRODUCTION

1. North Carolina law requires that persons wishing to vote in the state's elections register following state law. *See* N.C. Const. art. VI § 3; N.C. Gen. Stat. §§ 163-82.3, .4, and .11.
2. Importantly, North Carolina requires that the voter registration form collects, among other things, an applicant's driver's license number or social security number. *See* N.C. Gen. Stat. § 163-82.4(a)(11). North Carolina law does not provide for any deviation or wholesale ignoring of this requirement,¹ yet that is exactly what the NCSBE has done.
3. Failure to collect this information on the front end means that the registration is incomplete and, by definition, the person is not "registered" under North Carolina law.
4. Nevertheless, the General Assembly established clear statutory procedures and timelines to collect the missing information and remedy these deficiencies in a timely manner to

¹ North Carolina law does have a provision for individuals who do not have either a driver's license number or a social security number, providing that that specific subset of person may be assigned a unique voter identification number. *See* N.C. Gen. Stat. § 163-82.4(b). However, this provision only applies if it is confirmed that the registrant does not have this information. It is not an alternative to the general collection requirements and procedures set forth in N.C. Gen. Stat. § 163-82.4(a)(f), nor does it absolve the NCSBE of their violations of state law here.

determine if the affected person is qualified to register to vote and if their vote may be counted. *See* N.C. Gen. Stat. §163-82.4(f).

5. This statutory failsafe notwithstanding, the NCSBE willingly failed to timely collect this information from at least 60,000 voters with incomplete registration forms, and it has counted those votes in the November 5, 2024 general election for state offices. This is a plain violation of state law.

6. In the aftermath of the November 5, 2024 general election, the NCSBE's counting of unlawful votes would be outcome determinative for many state and local races, several of which currently have razor-thin margins. To allow those unlawful votes to decide the outcome of such state and local races would fundamentally undermine democracy—a democracy in which eligible voters alone should decide electoral outcomes.

7. Defendants' brazen failure to comply with state law forces Plaintiffs to turn to this Court for urgent relief.

8. Plaintiffs initiated this action by filing a Complaint for declaratory and injunctive relief on December 31, 2024. Individual Plaintiff Telia Kivett subsequently filed a verification of the Complaint soon thereafter.

9. Plaintiffs' Complaint seeks several forms of relief, including:

- a. a writ of mandamus ordering Defendants to comply with the practices and procedures set forth in N.C. Gen. Stat. § 163-82.4(f);
- b. injunctive relief requiring the identification and segregation of ballots cast by affected persons, determination of whether those persons were validly registered,

removal of all unauthorized votes, and ordering Defendants to remedy the missing information prior to the next election²; and

- c. declaratory judgments to reverse the NCSBE's unlawful course of action, declaring that persons who fail to provide information required by N.C. Gen. Stat. § 163-82.4(a)(11) are not lawfully registered to vote under North Carolina law, and that all persons with incomplete voter registration forms must provide complete information and otherwise comply with North Carolina law to be considered lawfully registered voters.

(Compl., Prayer for Relief).

FACTUAL BACKGROUND

10. Article VI, § 3 of the North Carolina Constitution requires that any person wishing to vote must be registered. (Compl. ¶¶ 1, 31).

11. The North Carolina General Assembly sets forth express authority for the NCSBE to promulgate a registration form. Express statutory authority identifies certain information that must be collected before the application can be process and an applicant deemed “registered,” and likewise identifies specific categories of information that, while required, shall not be the basis for a registration form’s denial. (Compl. ¶¶ 32-33). An applicant’s driver’s license number or social security number is one of the non-negotiable, required categories of information which must be collected before a registration form may be processed and deemed “complete.”

² Alternatively, Plaintiffs seek the creation and implementation of a judicial process providing affected persons an expedited but reasonable amount of time to provide the information the NCSBE should have timely collected in the first instance and, if the information is not provided by a set date, then Defendants must be ordered to discount all impacted ballots from all state contests in the November 5, 2024 state office general election.

12. North Carolina elections law further mandates that the NCSBE collect any missing information in a timely manner for any ballots case by the applicant to count in future elections, including a driver's license or social security number. (*Id.* ¶ 34).

13. Defendants have flouted this law for at least a decade, using a statewide voter registration form that failed to collect a registrant's driver's license number and/or the last four digits of their social security number, resulting in approximately 225,000 voter registrations. (*Id.* ¶¶ 49-50). They refused to remedy their noncompliance with state law prior to the November 5, 2024 election, under the theory that the unlawfully registered voters would filter themselves out at the polls through other unrelated voting requirements. (*Id.* ¶¶ 51-54).

14. That position not only violated state law, but also turned out to be incorrect: post-election audits performed by third parties using documents provided by the NCSBE pursuant to public records requests confirmed that at least 60,000 people voted in North Carolina's November 5, 2024 state office general election contests without providing either a driver's license number or a social security number, and even if these voters provided a driver's license number pursuant to N.C. Gen. Stat. § 163-166.16, neither the NCSBE nor the County Boards made any record of such. (*Id.* ¶¶ 55-56).

15. As of the date of this Motion, the time for county canvasses has passed, and the NCSBE and the County Boards failed to collect the information required by N.C. Gen. Stat. § 163-82.4(a)(11) in the manner and time demanded by § 82.4(f) for at least 60,000 persons who cast ballots in the November 5, 2024 state office general election contests. Defendants have therefore plainly violated North Carolina law, and judicial intervention is necessary.

ARGUMENT

16. Plaintiffs seek injunctive relief because they will be seriously and irreparably harmed by Defendants' actions in permitting unlawfully registered voters to have their votes counted in the recent November 5, 2024 state elections and in future such elections.

17. Without the requested injunctive relief, Defendants have certified and will continue to certify state and local elections in which the results may have been decided by persons who are not lawfully registered voters, and Defendants will continue to facilitate ongoing violations of the North Carolina Constitution. This course of action impermissibly dilutes the votes of the Individual Plaintiffs and all other duly-registered voters across the state in state and local elections and violates their constitutional rights. Similarly, this damages the missions, election-related efforts, and electoral prospects of the organizational Plaintiffs.

I. Legal Standard

18. This court has the inherent authority to issue injunctive relief upon application from a party. *State v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357, 261 S.E.2d 908, 913, *on reh'g*, 299 N.C. 731, 265 S.E.2d 387 (1980) (stating that injunctive relief is "a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.").

19. Issuance of a preliminary injunction is appropriate when necessary to avoid immediate and irreparable injury to a party. *See* N.C. R. Civ. P. 65; *see also A.E.P. Indus., Inc. v. McClure*, 309 N.C. 393, 401, 302 S.E.2d 754, 759 (1983).

20. To demonstrate entitlement to a preliminary injunction, Plaintiffs must establish: (1) likelihood of success on the merits; and (2) that they are likely to sustain irreparable loss unless the injunction is issued, or if, in the Court's opinion, issuance is necessary for the protection of

Plaintiffs' rights during the course of the litigation. *See Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977).

21. Notably, Plaintiffs' likelihood of success on the merits means a "reasonable likelihood." *See A.E.P. Indus., Inc.*, 308 N.C. at 402, 302 S.E.2d at 760.

II. Plaintiffs Have Established a Reasonable Likelihood of Success on the Merits

22. Plaintiffs have established a reasonable likelihood of success on the merits of their claims based on undisputable evidence that Defendants have openly refused to comply with state law. Under the North Carolina Constitution and state law, only lawfully registered North Carolinians may vote in elections for state and local offices. *See* N.C. Const. art. VI, § 3. State law prescribes the information required to be requested of applicants. N.C. Gen. Stat. § 163-82.4(a). Furthermore, North Carolina's statutes specify that the failure to state certain categories of information (race, ethnicity, gender, or telephone number) shall not form the basis for denying an application. *Id.* ("[N]o application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number."). Applying the canon of statutory construction *expressio unius est exclusio alterius* (the inclusion of one is to the exclusion of all others), the General Assembly's inclusion of these categories of information it determined should not form the basis of a denial means that the other enumerated categories of information—critically, including driver's license number or social security number—should form the basis of denial of a voter registration application. *See Evans v. Diaz*, 333 N.C. 774, 780, 430 S.E.2d 244, 247 (1993) ("[W]hen a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list.") (citation omitted).

23. Based on the plain meaning of North Carolina's statutes, Plaintiffs have demonstrated a likelihood of success on the merits.

24. Moreover, based on the Defendants' own conduct and admissions, Plaintiffs have demonstrated a likelihood of success on the merits. Defendants have already acknowledged that their failure to collect driver's license or social security number information was wrong when they *prospectively* changed course. (Compl. ¶¶ 49-50). But they failed to go far enough when they repeatedly and deliberately declined to correct that same violation of law for the November 5, 2024 elections for state and local offices, all under a clearly erroneous and unsupported theory that these unlawful acts would somehow remedy themselves. (*Id.* at ¶¶ 51-55) Unfortunately for Defendants—and qualified North Carolina voters—this intentional inaction only proved to cause greater harm and inject unwarranted uncertainty into the election results for contests for state offices.

25. In light of the foregoing, Plaintiffs are reasonably likely to succeed on the merits of their claims and immediate relief is warranted.

III. Absent the Relief Sought, Plaintiffs Will Be Substantially and Irreparably Harmed

26. Plaintiffs' undeniable constitutional and statutory rights to vote in free and fair elections, where only lawfully-registered voters participate, are at immediate risk, absent an injunction. *See* N.C. Const. art. VI § 3; *see also* N.C. Const. art. I § 10.

27. Absent an injunction, organizational Plaintiffs' will be substantially and irreparably harmed in their respective missions, election-related efforts, and their electoral prospects. Further, individual Plaintiffs' constitutional rights will be substantially harmed and their votes will be impermissibly diluted. As to both sets of Plaintiffs, this harm will be exacerbated, should relief not be available before the November 5, 2024 election. Simply put, the bulk of the damage will already be done.

28. In contrast, Defendants will suffer little if any harm, should the injunction issue. Defendants can easily identify and segregate those ballots cast by voters who failed to provide the necessary information on their voter registration applications and can just as easily account for the changes in vote tallies necessary to remove the votes of any unlawfully-registered voters.

29. Similarly, and to the extent Defendants claim a supposed burden or risk of violations of principles of due process, Plaintiffs' prayer for relief accounts for the same, specifically requesting the creation of a judicial process which would solicit and collect the missing registration information in accordance with the statutory duties the NCSBE willfully chose to ignore. This alternative relief mitigates any such concerns or supposed burden on Defendants or persons who may be affected.

CONCLUSION

30. Defendants are already constitutionally prohibited from allowing the unlawfully-registered voters to vote in North Carolina's elections. Thus, to the extent Defendants claim a burden in having to ensure residency requirements of a subset of registrants, the same is already required by North Carolina law.

31. In sum, the equities favor Plaintiffs especially insofar as they are seeking to vindicate pre-established rights and protect the validity of their votes.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order:

- a. Declaring that Defendants' registration of voters who failed to provide the information required under N.C. Gen. Stat. § 163-82.4(a)(11) violates Article VI, § 3 of the North Carolina Constitution and enjoining Defendants from using the same to allow any such unlawfully registered voter to vote in North Carolina's elections for state and local offices;

- b. Directing Defendants to immediately identify and segregate those ballots cast by affected persons, determine whether those persons were validly registered, and remove all unauthorized votes in elections cast in the November 5, 2024 elections for state and local offices, or alternatively, Defendants should be ordered to comply with a judicially created process wherein such affected individuals may be afforded an expedited but reasonable time to provide the information which the NCSBE should have collected in accordance with N.C. Gen. Stat. § 163-82.4(f), and if such information is not received by said date, then Defendants must remove the person's vote from the final election counts for all state office election contests in the November 5, 2024 state office general election.;
- c. Issuing a writ of mandamus requiring Defendants to immediately begin complying with the processes outlined in N.C. Gen. Stat. §§ 163-82.4(f) prior to any future election; and
- d. For any other relief deemed just and proper.

Respectfully submitted, this, the 2nd day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 2nd day of January, 2025, I served a true and accurate copy of the foregoing **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** upon all counsel of record by using the Odyssey e-file and serve feature, sending a copy of the same to all counsel of record via e-mail, and sending a copy via U.S. Mail, postage prepaid and addressed as follows:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:25-CV-00003-M

TELIA KIVETT, et al.,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

ORDER

This matter comes before the court on Plaintiffs' motion for temporary restraining order and preliminary injunction [DE 1-13]. The court has reviewed the filings in this case and finds that the factual and legal subject matter of this action is substantially identical to that in *Jefferson Griffin v. North Carolina State Board of Elections, et al.*, Case No. 5:24-CV-00724-M. Having concluded in that case that abstention and remand under *Burford* and *Louisiana Power* is warranted, *see* Case No. 5:24-CV-00724-M, DE 50, the court finds that conclusion operates with equal force here. Accordingly, the court sua sponte remands this matter to the Superior Court for Wake County.

SO ORDERED this 6th day of January, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:24-CV-00724-M

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Defendant,

ALLISON RIGGS,

Intervenor-Defendant, and

NORTH CAROLINA ALLIANCE
FOR RETIRED AMERICANS et al.,

Intervenor-Defendants.

ORDER

This matter comes before the court on Plaintiff Jefferson Griffin's ("Griffin") motion for preliminary injunction [DE 31]. In this removed state action, a sitting state court judge seeks a writ of prohibition (a form of judicial relief authorized by the state constitution) from the state supreme court that would enjoin the state board of elections from counting votes for a state election contest that were cast by voters in a manner allegedly inconsistent with state law. Should a federal tribunal resolve such a dispute? This court, with due regard for state sovereignty and the independence of states to decide matters of substantial public concern, thinks not. For that reason, the court abstains from deciding Griffin's motion under *Burford*, *Louisiana Power*, and their progeny and remands this matter to North Carolina's Supreme Court. *See Burford v. Sun Oil Co.*,

319 U.S. 315, 332 (1943); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 29 (1959).

I. Introduction and Procedural History

Griffin is a Judge on North Carolina's Court of Appeals (the state's intermediate appellate court) and candidate for Seat 6 on North Carolina's Supreme Court (the state's court of last resort). DE 1-4 at 16.¹ Griffin ran in the 2024 general election as a Republican against Allison Riggs ("Riggs"), the Democratic candidate who is currently a sitting Justice on the North Carolina Supreme Court. *Id.* at 17. After a full count of votes, machine recount, and partial hand recount, the canvassed results show Riggs leading Griffin by 734 votes, but Defendant North Carolina State Board of Elections (the "State Board") has not yet certified the results. *See* DE 32 at 3; DE 39 at 7.

Griffin indicates that he "became aware of numerous irregularities with ballots cast during the election." DE 32 at 3. As a result, he "filed election protests" with county boards of election "in each of North Carolina's 100 counties." DE 1-4 at 18. Three protests are the subject of this action:

1. First, Griffin challenges the votes of over 60,000 individuals who, at some point over the past 20 years, registered to vote in North Carolina without providing either their driver's license numbers or the last four digits of their social security numbers. *Id.* at 19. According to Griffin, this past registration error contravenes state law and renders illegitimate the resulting votes from these individuals. *See id.* (citing N.C.G.S. §§ 163-82.1 & 163-82.4 for proposition that "unless someone is lawfully registered to vote, he cannot vote").

¹ All pin cites to materials in the record will refer to the page numbers that appear in the footer appended to those materials upon their docketing in the CM/ECF system, and not to any internal pagination.

2. Second, Griffin challenges absentee ballots cast by 267 individuals who admittedly have never resided in North Carolina (or anywhere in the United States). *Id.* at 20. Notwithstanding state law granting this group of individuals (whose parents are either uniformed-service or overseas voters) the right to vote in North Carolina, *see* N.C.G.S. § 163-258.2(e), Griffin asserts that counting their votes violates the North Carolina Constitution, DE 1-4 at 19-20.
3. Third, Griffin challenges the votes of approximately 5,500 overseas absentee voters who did not provide copies of their photo identification with their absentee ballots, which he contends violates state law. *Id.* at 20-21; *see also* N.C.G.S. § 163-230.1.

The State Board subsequently assumed jurisdiction over Griffin's three protests. *Id.* at 21. After a public hearing on December 11, 2024, the State Board issued a written decision that rejected Griffin's challenges on various grounds:

1. The State Board concluded that Griffin failed to properly serve potentially affected voters because, instead of serving them with copies of his protests, he mailed them postcards with the message that their "vote may be affected by one or more protests" and a QR code that linked to a website containing the hundreds of protests ongoing in North Carolina, at which point the voter would have to sift through spreadsheets of names attached to each protest to determine whether their vote had been challenged and in which protest. DE 1-5 at 46-50. The State Board found that this method of service violated a rule that it had promulgated as well as the procedural due process rights of voters. *Id.* at 50-54.
2. The State Board found that even if it credited Griffin's state law arguments in connection with his first challenge, which targets the 60,000 voters who had allegedly

registered to vote without providing their driver's license numbers or the last four digits of their social security numbers, granting him relief by discarding that group of votes would violate the voters' substantive due process rights, state law, and federal statutory law, including the Help America Vote Act ("HAVA") and the National Voter Registration Act ("NVRA"). *Id.* at 60-67.

3. The State Board also rejected each of Griffin's challenges on its merits. *Id.* at 54-60, 69-79.

North Carolina law provides that a party aggrieved by a decision of the State Board "has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service" of the State Board's decision. N.C.G.S. § 163-182.14(b). "Unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service," the election results "shall issue." *Id.* Rather than follow the appeal process provided by state law, Griffin filed this action directly in the North Carolina Supreme Court, seeking a writ of prohibition that would enjoin "the State Board [] from counting unlawful ballots cast in the 2024 general election." DE 1-4 at 14.

In his petition for a writ of prohibition, Griffin addresses his three challenges on their merits, each of which entail alleged violations of either state election law or the state Constitution. *See id.* at 33-40, 44-45, 47-50, 53-59. Griffin next argues that the State Board and Riggs' invocation of various federal laws in defense to his challenges are inapposite. *Id.* at 40-46, 50-51, 59-60, 67-74. He also responds to the procedural defects raised by the State Board. *Id.* at 60-67.

Griffin seeks various forms of relief, including the discarding of votes from voters covered by each of his three challenges and declaratory relief rejecting various conclusions of the State Board. *Id.* at 83-84. He sought this relief directly from the North Carolina Supreme Court, rather

than file an appeal in the Superior Court of Wake County, because of his concern that the State Board would “try to strip [that court] of jurisdiction to decide this case by improperly removing it to federal court.” *Id.* at 24. The day after Griffin filed his petition, the State Board removed it to this court. DE 1.

In its notice of removal, the State Board invokes this court’s subject-matter jurisdiction under 28 U.S.C. § 1441(a), which permits removal of claims arising under federal law, and 28 U.S.C. § 1443(2), which authorizes removal when a party has been sued for refusing to act on the ground that performing the act would contravene federal civil rights law. *Id.* at 1-2. The day after the State Board removed this matter to federal court, Griffin filed a motion for temporary restraining order (“TRO”), which sought a court order prohibiting the certification of the results for Seat 6. DE 13; DE 14. This court denied Griffin’s motion because the alleged harm he described was not so immediate that he required a TRO “before [the State Board could] be heard in opposition.” Text Order dated December 20, 2024.

Riggs promptly sought intervention in this matter and, after denial of the TRO, so did the North Carolina Alliance for Retired Americans, VoteVets Action Fund, Tanya Webster-Durham, Sarah Smith, and Juanita Anderson (the “NCARA parties”). DE 7; DE 8; DE 24; DE 25. The court granted both motions for intervention. *See* Text Order dated December 26, 2024.

On December 23, Griffin filed the instant motion for preliminary injunction, along with a consent motion to expedite briefing on the preliminary injunction motion. DE 31; DE 33. The court granted the consent motion and ordered expedited briefing, and additionally ordered the State Board, in responding to Griffin’s motion, to show cause why this matter should not be remanded to the North Carolina Supreme Court for lack of subject-matter jurisdiction. *See* Text Order dated

December 26, 2024. The court also offered Griffin the opportunity to respond to the State Board's arguments regarding subject-matter jurisdiction in his reply. *Id.*

All parties complied with the court's briefing schedule. DE 39; DE 40; DE 42; DE 47; DE 48; DE 49.² In addition, Former Senate Majority Leader Thomas Daschle, former House Majority Leader Richard Gephardt, and former Representatives Christopher Shays, Jim Greenwood, Robert Wexler, Wayne Gilchrest, and Steve Israel (the "Former Members of Congress") moved the court for leave to file an amicus brief, DE 37, as did the North Carolina League of Women Voters, DE 41. The court grants those motions for leave, has considered the respective briefs, and notes the extent to which they aided in the court's decisional process.

Unless this court (or another) issues an order enjoining the State Board from certifying the election for Seat 6, those results will issue on January 10, which will render moot Griffin's protests. *See* DE 39 at 2. Griffin's motion for preliminary injunction is fully briefed, the court has considered each filing, and this matter is ready for disposition.³

II. Legal Framework

This matter, which involves a state, not federal, election, involves potential practical implications but a crucial theoretical distinction, which has in turn led some of the parties (and amici) to at times conflate what precisely is at issue. In the context of a federal election, the States and Congress enjoy dual sovereignty. U.S. CONST. art 1 § 4, cl. 1. The "States have a major role to play in structuring and monitoring the [national] election process." *California Democratic Party v. Jones*, 530 U.S. 567, 572 (2000). They must "prescribe the time, place, and manner of

² In lieu of incorporating his arguments pertaining to subject-matter jurisdiction into his reply, DE 47, Griffin separately filed a motion to remand (and supporting memorandum), DE 48; DE 49. For practical purposes, the court considers these as one filing, and not a new motion to which the State Board must be offered an opportunity to respond, because the State Board has already briefed its position on subject-matter jurisdiction in response to the court's show cause order. DE 39.

³ Considering the short timeline between now and certification, as well as the lack of factual disputes presented by this matter, the court finds that a hearing is not necessary.

electing Representatives and Senators” for the national Congress. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8 (2013). But this grant of authority to States for federal elections only goes “so far as Congress declines to preempt state legislative choices.” *Foster v. Love*, 522 U.S. 67, 69 (1997).

Elections for state office are different because “the Constitution was also intended to preserve to the States the power that even the Colonies had to establish and maintain their own separate and independent governments, except insofar as the Constitution itself commands otherwise.” *Oregon v. Mitchell*, 400 U.S. 112, 124 (1970) (opinion of Black, J.). Put another way, “Article I, Section IV does not give Congress the power to directly regulate state voter registration procedures in state elections or state ballot issues.” *Dobrovolsky v. Nebraska*, 100 F. Supp. 2d 1012, 1028 (D. Neb. 2000). And “[a]bsent the invocation by Congress of its authority under the Fourteenth [or Fifteenth] Amendment[s],” the states retain “the power to fix the time, place, and manner of the election of [their own] officials.” *Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1415 (9th Cir. 1995). Due respect for States’ authority to set forth rules governing their own elections reflects the constitutional (and commonsense) principle that “[n]o function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution . . . the nature of their own machinery for filling local public offices.” *Mitchell*, 400 U.S. at 125 (opinion of Black, J.).⁴

Pursuant to its authority under the Civil War Amendments, Congress has passed laws that apply in the context of *both* state and federal elections, including the Civil Rights Act and the Voting Rights Act. 52 U.S.C. § 10101; 52 U.S.C. § 10301. Congress has also enacted a series of

⁴ Of course, state regulation of state and local elections remains subject to federal constitutional constraints. *E.g.*, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 215 (1986).

laws that govern *only* federal elections, notably here the NVRA and HAVA. 52 U.S.C. § 20501; 52 U.S.C. § 21081. “The NVRA requires States to provide simplified systems for registering to vote in *federal* elections, i.e., elections for federal officials, such as the President, congressional Representatives, and United States Senators.” *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis in original). Likewise HAVA, which seeks to establish minimum standards of election administration, “applies only to federal elections.” *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 436 (E.D. Mich. 2004); *accord Broyles v. Texas*, 381 F. App’x 370, 373 n.1 (5th Cir. 2010).

After passage of HAVA, North Carolina’s General Assembly enacted a series of laws to implement HAVA and adopt equivalent requirements in the context of state and local elections. *E.g.*, N.C.G.S. §§ 163-82.4, 162-82.11, & 163-166.12. As a result, and as a practical matter, “North Carolina has a unified registration system for both state and federal elections.” *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 401 (4th Cir. 2024) (“RNC”). But that unified system is a choice that the people of North Carolina made through their elected representatives; nothing in federal law compels North Carolina to adopt HAVA’s procedures for state and local elections. *See Mitchell*, 400 U.S. at 125; *Dobrovolny*, 100 F. Supp. 2d at 1028. Thus, to the extent North Carolina election law for state and local elections mirrors or parallels federal law, that symmetry “is state-created, not federal.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 735 (9th Cir. 2012).

III. Analysis

a. Subject-Matter Jurisdiction

As the court previously explained in a recent election-related lawsuit, “[t]here exist two possible paths to establishing subject matter jurisdiction in this action. First, the claims could raise

a federal question under 28 U.S.C. § 1331, which would permit removal under 28 U.S.C. § 1441(a). Second, the action could implicate a federal law providing for equal rights in terms of racial equality, which would authorize removal under 28 U.S.C. § 1443(2).” *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, No. 5:24-CV-00547, 2024 WL 4523912, at *2 (E.D.N.C. Oct. 17, 2024), *rev’d and remanded*, 120 F.4th 390 (4th Cir. 2024). Extensive repetition of the relevant history of subject-matter jurisdiction is unnecessary here. *See id.* at *2-7.

b. Removal under 28 U.S.C. § 1441

This court has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. If a plaintiff initiates a civil action “in a State court of which” a federal district court has “original jurisdiction,” that action “may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Where a plaintiff’s claims all arise under state law, those claims will only present a federal question over which a district court may maintain original jurisdiction “if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013); *see also Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005); *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 810 (1986); *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 13 (1983).

In assessing whether a plaintiff’s claim necessarily raises an issue of federal law, the court follows the well-pleaded complaint rule: “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In this context, *complaint* really means *claim*; a federal question is not

presented on the face of a complaint unless it is an “essential element[] of the plaintiff’s—and only the plaintiff’s—claim.” *Capitol Broad. Co., Inc. v. City of Raleigh, N. Carolina*, 104 F.4th 536, 540 (4th Cir. 2024). In other words, “[i]t is *not* enough that federal law becomes relevant by virtue of a defense.” *Burrell v. Bayer Corp.*, 918 F.3d 372, 381 (4th Cir. 2019) (emphasis in original) (internal quotation mark omitted). This is true even where a plaintiff “‘goes beyond a statement of [his] cause of action and anticipates or replies to a probable defense,’ even if that defense itself raises a federal question.” *Capitol Broadcasting*, 104 F.4th at 539–40 (quoting *Gully v. First Nat. Bank*, 299 U.S. 109, 113 (1936)).

At the outset, the court finds that Griffin’s petition in the North Carolina Supreme Court constitutes a “civil action” within the meaning of Section 1441. Review of dictionaries, both contemporaneous with passage of Section 1441 and more recent, reflect a capacious definition of the term: a civil action is a judicial proceeding in which a party seeks a decree to redress a private right. *E.g.*, *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (concluding that “action” meant “any proceeding in a court of justice”) (quoting Black’s Law Dictionary 1488, 1603 (4th ed. 1951) (internal ellipses omitted)); *In Re Teter*, 90 F.4th 493, 499 (6th Cir. 2024) (observing that civil action “is a generous term” and “encompass[es] the old categories of actions at law and suits in equity,” i.e., “all types of actions other than criminal proceedings”) (quoting Black’s Law Dictionary (5th ed. 1979)); *Black v. Black*, No. 1:22-CV-03098, 2023 WL 3976422, at *3 (D. Colo. Apr. 5, 2023) (noting that a “civil action is simply a civil judicial proceeding”) (quoting Black’s Law Dictionary (11th ed. 2019) (cleaned up)).

Griffin’s petition for a writ of prohibition squares with that definition: it is an original civil (not criminal) judicial proceeding through which he seeks to vindicate his private (not public) rights. The petition therefore qualifies as a civil action subject to removal under Section 1441.

See *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (holding that state court proceeding created by state law that entailed quasi-appellate review of administrative board decision was removable where claims in proceeding included federal constitutional challenge); *Casale v. Metro. Transp. Auth.*, No. 05-CV-4232, 2005 WL 3466405, at *7 (S.D.N.Y. Dec. 19, 2005) (explaining that “technicalities of local procedure, such as what an action or pleading is called, do not affect federal question jurisdiction and removability”).⁵

Although the court finds that the form of Griffin’s petition permits removal to federal court under Section 1441, it concludes that the substance of the petition does not, in that it could not “have been brought in federal court originally.” *Sonoco Prod. Co. v. Physicians Health Plan, Inc.*, 338 F.3d 366, 370 (4th Cir. 2003). The State Board contends that Griffin’s petition to the North Carolina Supreme Court presents a federal question, but Griffin’s “claims” (such as they are) falter at the first step of the *Gunn* test: no issue of federal law is *necessarily* raised.

Griffin seeks a writ of prohibition, a form of judicial relief authorized by the North Carolina Constitution. N.C. CONST. art. IV, § 12(1). To obtain such a writ, he must show that the State Board is poised to act in a manner “at variance with . . . the law of the land.” *State v. Allen*, 24 N.C. 183, 189 (1841).⁶ As recounted previously, Griffin’s theory is that the State Board’s

⁵ The court notes Griffin’s reliance on *Barrow v. Hunter*, 99 U.S. 80 (1878), but agrees with the Fifth Circuit that *Barrow*’s distinction between actions “tantamount to the common-law practice of moving to set aside a judgment for irregularity” and actions “tantamount to a bill in equity to set aside a decree for fraud,” *Barrow*, 99 U.S. at 83, may no longer be “good law for the purposes of 28 U.S.C. § 1441” because the basis for that distinction “relied on an interpretation of removal which may well be no longer valid” and does not reflect “the modern view of removal,” *Matter of Meyerland Co.*, 910 F.2d 1257, 1261 (5th Cir. 1990). In addition, *Barrow* on its facts does not control this scenario, where Griffin filed an original action directly in North Carolina’s Supreme Court rather than follow the appellate procedure designated by state law. See N.C.G.S. § 163-182.14(b).

⁶ This showing is necessary but not sufficient; Griffin also must show that his grievance could not be “redressed, in the ordinary course of judicial proceedings, by appeal.” *State v. Whitaker*, 114 N.C. 818, 19 S.E. 376, 376 (1894); see also *State v. Inman*, 224 N.C. 531, 542, 31 S.E.2d 641, 646–47 (1944) (explaining that state Supreme Court “uniformly denie[s]” petitions for writs of prohibition “where there is other remedy,” such as an appeal); *Mountain Retreat Ass’n v. Mt. Mitchell Dev. Co.*, 183 N.C. 43, 110 S.E. 524, 525 (1922) (emphasizing that state Supreme Court will not “allow a litigant . . . to withdraw his case from the tribunal where the statute has placed it” by filing writ when alternative remedy is available). This is a merits issue that the court need not reach at this point.

imminent certification of the election results for Seat 6 entail its disregard of the state Constitution and several state laws, which he raised in his three protests to the State Board (and which he restates in his petition for a writ of prohibition). *See generally* DE 1-4; DE 33.

First, Griffin challenges the votes of voters who initially registered to vote in North Carolina without providing their driver's license numbers or the last four digits of their social security numbers, in alleged violation of state law. *See* N.C.G.S. § 163-82.4. Next, Griffin challenges the votes of voters who have never resided in North Carolina, which involves an apparent conflict between state law and the North Carolina Constitution. N.C. CONST. art. VI, § 1; N.C.G.S. § 163-258.2(e). Lastly, he contests the votes of absentee voters who failed to include a copy of their photo ID with their absentee ballot, which he argues contravenes state law. *See* N.C.G.S. § 163-230.1.

An issue of federal law is not “a necessary element” of Griffin’s first challenge, and his right to relief does not “necessarily turn[] on some construction of federal law.” *Franchise Tax Bd.*, 463 U.S. at 9, 14. That challenge can be resolved with exclusive reference to state law. *See* N.C.G.S. § 163-82.4. The relevant provision of North Carolina law states that a voter registration form “shall request the applicant’s . . . [d]rivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant’s social security number.” N.C.G.S. § 163-82.4(a)(11). Per Griffin, if individuals do not provide one of those numbers, they have not been “lawfully registered” and therefore “cannot vote.” DE 1-4 at 19 (citing in addition N.C. CONST. art. VI, § 3(1)). This first challenge does not reference or require consultation of federal law.⁷

⁷ Section 163-82.4 is distinguishable in a key respect from the state statute at issue in *RNC*, which incorporated by express reference a federal standard. *See RNC*, 2024 WL 4523912, at *9 (evaluating N.C.G.S. § 163-82.11(c), which required State Board to “update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of [HAVA]”).

The State Board asserts that Griffin's challenge to voters' registrations would "require[] this [c]ourt to construe HAVA," DE 39 at 11, but that is incorrect. After Congress passed HAVA, North Carolina's General Assembly enacted parallel legislation, establishing a uniform system of registration for both state and federal elections. *See RNC*, 120 F.4th at 401. But that uniform system does not eliminate the legal distinction between federal elections, which Congress may regulate (*see* 52 U.S.C. § 21081), and state elections, which Congress (with limited exception) may not (*see Mitchell*, 400 U.S. at 125). And this matter involves a state election, so HAVA, even if practically relevant, is legally irrelevant.

As the Fourth Circuit observed under analogous circumstances in *Vlaming*, the fact that relevant provisions of state law may be "coextensive with [] analogous federal [] provisions" does not mean that a state law argument necessarily raises an issue of federal law. *Vlaming v. W. Point Sch. Bd.*, 10 F.4th 300, 307 (4th Cir. 2021). "Although [North Carolina] courts may rely on federal law to decide a state [law] question, there is no requirement that they must" and "[n]othing prevents [Griffin] from prevailing on his state [law arguments] on exclusively state grounds." *Id.* at 308. Thus, because North Carolina's Supreme Court "is not required to rely on federal law" to resolve Griffin's first challenge, "no federal question is necessarily raised." *Id.*

As other courts have concluded, "[t]he fact that State law may look to federal law does not mean that federal law is a necessary element," and "the fact that the same set of alleged facts could trigger federal issues [], does not mean that a substantial question of federal law is *necessarily* raised; it only points to parallel federal and state cases arising from the same set of facts." *Sage v. Tacoma Sch. Dist. No. 10*, No. 3:17-CV-5277, 2017 WL 6033015, at *2 (W.D. Wash. Dec. 6, 2017) (emphasis in original); *accord Beavers v. City of Jackson*, 439 F. Supp. 3d 824, 829 (S.D. Miss. 2020). Phrased another way, "[w]hether a state court will adopt as the meaning of the state's

[law] the federal courts' interpretation of parallel language in the United States Co[de] is a matter of state law.” *Rossello-Gonzalez v. Calderon-Serra*, 398 F.3d 1, 13 (1st Cir. 2004).

In this regard, the court appreciates but disagrees with the considered view of the amici Former Members of Congress. DE 37; DE 37-1. Amici concede that HAVA “only applies to federal elections,” but contend nonetheless that because the State Board “uses a single voter form,” the outcome of Griffin’s challenge “will also dictate whether [the 60,000 voters] can vote in federal elections.” DE 37-1 at 7-8. This contention conflates a potential practical implication with an important legal distinction. The people of North Carolina have chosen to implement a uniform system for both state and federal election registration. *RNC*, 120 F.4th at 401. But that legislative choice, itself a creature of state law, does not transform state law issues with state elections into federal questions for federal courts merely because resolution of the state law issues, by implication, could also inform litigation in the context of a federal election. Any symmetry between North Carolina law (for state elections) and HAVA (for federal elections) “is state-created, not federal,” *Crowley*, 678 F.3d at 735, and no court’s interpretation of Section 163-82.4 would *control* or *bind* future unrelated proceedings involving analogous provisions of HAVA.

A case from the Fifth Circuit is instructive. *See American Airlines, Inc. v. Sabre, Inc.*, 694 F.3d 539 (5th Cir. 2012). There, the plaintiff sued the defendant in both federal and state court. *Id.* at 541. The federal case alleged antitrust “violations of Sections 1 and 2 of the Sherman Act,” whereas the state case involved a state law antitrust claim alleging “monopolization in violation of [] the Texas Free Enterprise and Antitrust Act of 1983.” *Id.* The Texas antitrust law provided that its provisions “shall be construed to accomplish [its] purpose and shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with [its] purpose.” *Id.* at 542 (citing Tex. Bus. & Com. Code § 15.04). The defendant removed

the state case to federal court, the plaintiff sought remand, and the federal district court remanded the matter. *Id.* at 541.

In affirming the decision of the district court, the Fifth Circuit observed that, notwithstanding the plaintiff's parallel lawsuits and parallel claims under federal and state law, "nothing in the plain language of the [Texas antitrust law] requires that federal law control Texas's interpretation of its state antitrust statute." *Id.* at 542. The Fifth Circuit also rejected an argument (similar to that made by amici) about the practical implications: even if a federal court's conclusion on the Sherman Act claims suggested that the plaintiff's "parallel state antitrust case would suffer a similar fate," that does not compel the conclusion that the plaintiff somehow "g[a]ve up or alter[ed] its particular rights to pursue its state-law remedies in state court." *Id.* at 544. In sum, the Fifth Circuit agreed with the district court that "the mere fact that a federal standard is to be referenced [] in determining whether there has been a state-law violation" does not "cause[] a state-law claim to 'necessarily raise a stated federal issue.'" *Id.* at 543 (quoting *Grable*, 545 U.S. at 314).

The same is true here. Nothing in Section 163-82.4 "requires that [HAVA] control [North Carolina's] interpretation of its state [election] statute." *Id.* at 542. Further, the practical implications of a state court's interpretation of Section 163-82.4, or even its "reference[]" to HAVA in making such an interpretation, does not cause Griffin's first challenge "to necessarily raise a stated federal issue." *Id.* at 543 (internal quotation marks omitted). Because Griffin's first challenge does not require resort to HAVA, it does not necessarily raise a question of federal law. *See Grable*, 545 U.S. at 314.

Griffin's second challenge also does not raise an issue of federal law. That challenge, targeting voters who have never resided in North Carolina, involves an apparent conflict between

state law (which grants this group of individuals the right to vote) and the state Constitution (which includes a bona fide residency requirement). DE 1-4 at 44-45 (citing N.C. CONST. art. VI, § 1); *see also* N.C.G.S. § 163-258.2(e). No party (including the State Board, Riggs, the NCARA parties, or amici) have argued that Griffin's second challenge involves an issue of federal law, and the court discerns none. *See* DE 37-1; DE 39; DE 40; DE 41-1; DE 42.

That leaves Griffin's third challenge, which contests approximately 5,500 overseas absentee ballots that voters submitted without including a copy of their photo IDs. DE 1-4 at 53-57. The State Board argues that this challenge raises an issue of federal law because a state law addressing overseas absentee voting incorporates by reference a federal requirement found in a federal statute. DE 39 at 12 (citing N.C.G.S. § 163-258.6(b), which references 52 U.S.C. § 20303). But the State Board's argument represents a defense to Griffin's claim, which is that counting the votes of these voters would violate a separate state statute, which does not reference federal law. *See* DE 1-4 at 54; DE 49 at 15 (both addressing N.C.G.S. § 163-230.1).

Under the well-pleaded complaint rule, a state law claim only raises an issue of federal law if it "is a necessary element" of the state claim. *Franchise Tax Bd.*, 463 U.S. at 13; *Caterpillar*, 482 U.S. at 392. "It is *not* enough that federal law becomes relevant by virtue of a defense." *Burrell*, 918 F.3d at 381 (emphasis in original) (internal quotation mark omitted). Here, the State Board's invocation of state law (that references federal law) only becomes relevant by way of its defense, so it is not a necessary element of Griffin's third challenge.

The last argument for federal question jurisdiction, raised by the State Board and the NCARA parties, is that Griffin's petition raises a federal question because he seeks a declaration that the State Board's "arguments under the NVRA, HAVA, the VRA, and the Civil Rights Act against the relief requested by Judge Griffin are rejected." DE 1-4 at 83; *see also* DE 39 at 13; DE

42 at 35-36. This argument fails for the same reason: the State Board's arguments about federal laws were invoked as defenses to Griffin's protests. *See* DE 1-5 at 60-67. By raising those same arguments in his petition, and seeking a declaration that they "are rejected," DE 1-4 at 83, Griffin is merely "anticipat[ing] or repl[ying] to a probable defense" that the State Board would also make before the state Supreme Court. *Capitol Broadcasting*, 104 F.4th at 540. Plaintiffs may "go[] beyond a statement of the[ir] cause of action" and anticipate federal defenses in their pleadings without converting their state law claims into federal questions. *Gully*, 299 U.S. at 113.

Under the circumstances, it was understandable that Griffin would raise the State Board's federal defenses in his petition: the State Board had just cited them as bases for rejecting his protests. DE 1-5 at 60-67. By attempting to "anticipate[] and rebut[] those] defense[s]," Griffin did not inject a federal question into his petition. *Pressl v. Appalachian Power Co.*, 842 F.3d 299, 302 (4th Cir. 2016). "[E]ven if the complaint begs the assertion of [federal] defense[s] . . . that does not" transform Griffin's protests into claims "arising under federal law." *Pinney v. Nokia, Inc.*, 402 F.3d 430, 446 (4th Cir. 2005).

In sum, the court finds that none of the three challenges in Griffin's petition necessarily raise an issue of federal law, and his request for a declaration rejecting the State Board's federal law arguments is simply an anticipatory effort at rebutting predictable federal defenses. Therefore, Griffin's petition does not arise under the laws of the United States, this court would not have had original jurisdiction over it, and removal under Section 1441 was improper. *See* 28 U.S.C. § 1331; 28 U.S.C. § 1441(a).

c. 28 U.S.C. § 1443(2)

Removal is independently authorized for any civil action that involves an "act under color of authority derived from any law providing for equal rights," or the refusal "to do any act on the

ground that it would be inconsistent with such law.” 28 U.S.C. § 1443(2). The second portion of that provision is relevant here, known as the refusal clause. *Stephenson v. Bartlett*, 180 F. Supp. 2d 779, 785 (E.D.N.C. 2001) (explaining that refusal clause “provides that state officers can remove to federal court if sued for refusing to do any act on the ground that it would be inconsistent with any law providing for civil rights”) (internal brackets and quotation marks omitted).

Although the plain terms of Section 1443(2) appear to capture any number of recognized civil rights, “[t]he Supreme Court has limited the meaning of a ‘law providing for equal rights’ in § 1443 to only those concerning racial equality.” *Vlaming v. W. Point Sch. Bd.*, 10 F.4th 300, 309 (4th Cir. 2021). In *Rachel*, the Supreme Court concluded that the statutory language “must be construed to mean any law providing for specific civil rights *stated in terms of racial equality*.” *State of Ga. v. Rachel*, 384 U.S. 780, 792 (1966) (emphasis added). On the other hand, laws that “are phrased in terms of general application available to all persons or citizens,” and not in “specific language of racial equality,” do not grant removal jurisdiction under Section 1443. *Id.* Although “the plain text of the statute suggests a broader interpretation,” this court “must take the Supreme Court at its word and faithfully apply its precedent.” *Vlaming*, 10 F.4th at 310. The Fourth Circuit has recently clarified that the NVRA “provides a proper basis for removal under Section 1443(2).” *RNC*, 120 F.4th at 408.

The court first finds that, contrary Griffin’s primary argument against removal under Section 1443(2), he did seek a writ of prohibition against the State Board because of its “refus[al]” to do something: the refusal to sustain his challenges and discard the votes of tens of thousands of voters. *See* DE 49 at 26. Had the State Board adopted Griffin’s arguments and removed the in-question votes from the current tally, i.e., had the State Board taken affirmative action, Griffin would not have sought a writ of prohibition from the state Supreme Court. Thus, it is the State

Board's "inaction," not its "action," that prompted Griffin's petition. *City & Cnty. of San Francisco v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, No. 02-CV-03462, 2002 WL 1677711, at *4 (N.D. Cal. July 24, 2002); *see also id.* (noting that "the remand suit must challenge a failure to act or enforce state law").

Having concluded that the State Board refused to act within the meaning of Section 1443(2), the court turns next to whether that refusal was based on the State Board's belief that, had it acted, it would have violated federal civil rights law stated in terms of racial equality. 28 U.S.C. § 1443(2); *Rachel*, 384 U.S. at 792. The State Board rejected Griffin's challenges in part based on its position that "[r]etroactively removing these voters from the list of voters eligible to cast a ballot in the election would violate [the NVRA]." DE 1-5 at 67. The NVRA "provides a proper basis for removal under Section 1443(2)." *RNC*, 120 F.4th at 408. Accordingly, the State Board refused to "act on the ground that [action] would be inconsistent with [federal civil rights] law," and removal is permitted. 28 U.S.C. § 1443(2).

In reaching this conclusion, the court notes that it does not agree with the State Board that the NVRA precludes it from acting in the context of a state election. *See Young*, 520 U.S. at 275 (explaining that NVRA establishes procedures for federal elections). But that is ultimately a merits (not jurisdictional) issue; defendants seeking removal under Section 1443(2) must only make a "colorable claim" based on their "good faith belief" that their "conduct, if violative of state law," was required by a "federal statutory duty." *White v. Wellington*, 627 F.2d 582, 586 (2d Cir. 1980)⁸; *see also Cavanagh v. Brock*, 577 F. Supp. 176, 180 (E.D.N.C. 1983) (holding that a "colorable federal defense in the removal papers suffices to make removal—and therefore jurisdiction—proper pursuant to § 1443(2)"). And in analogous circumstances, the Fourth Circuit and Supreme

⁸ By operation of North Carolina law, the court presumes the State Board acts in good faith. *City of Raleigh v. Riley*, 64 N.C. App. 623, 636, 308 S.E.2d 464, 473 (1983).

Court have indicated that a defendant's invocation of federal law will only fail to provide a jurisdictional basis on removal if the theory is "so attenuated and unsubstantial as to be absolutely devoid of merit; wholly insubstantial; obviously frivolous; plainly unsubstantial; or no longer open to discussion." *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 206 (4th Cir. 2022) (citing *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974)); cf. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) ("It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction."). The court may not agree with the State Board as to the applicability of the NVRA, but considering North Carolina's unified system of registration and election administration, the State Board's argument in favor of removal is not absolutely devoid of merit or insubstantial. The court therefore finds that removal under Section 1443(2) is permitted on that basis and does not reach the State Board's arguments related to the Voting Rights Act or Equal Protection Clause.

d. *Burford & Louisiana Power*⁹

"Although a federal equity court does have jurisdiction of a particular proceeding, it may, in its sound discretion, . . . refuse to enforce or protect legal rights" out of "proper regard for the rightful independence of state governments in carrying out their domestic policy." *Burford v. Sun Oil Co.*, 319 U.S. 315, 317–18 (1943). This form of judicial "abstention is an exception to the general rule that federal courts must decide cases over which they have jurisdiction." *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 96 (4th Cir. 2022). The doctrine is grounded in two considerations: (1) the flexibility inherent in "traditional equity practice," but more importantly

⁹ Griffin raises *Pullman* as a basis for abstention. DE 49 at 6-8. The court finds that doctrine is relevant, but that *Burford* and *Louisiana Power* provide more compelling bases for abstention under the circumstances. Such a conclusion is fully consistent with the principle of party presentation, meaning that the court must "address only the issues raised by the parties," *Short v. Hartman*, 87 F.4th 593, 604 (4th Cir. 2023), because once "an issue [such as abstention] is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Id.* (citing *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)).

(2) “the notion of comity,” meaning the “belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.” *Erie Ins. Exch. v. Maryland Ins. Admin.*, 105 F.4th 145, 149 (4th Cir. 2024) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)).

Distilled to its essence, the doctrine of *Burford* abstention instructs that “[w]here timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.” *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989) (internal quotation marks omitted) (“*NOPSP*”).

“Another doctrine . . . allows abstention in cases raising issues intimately involved with the State’s sovereign prerogative,” *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007). In *Louisiana Power*, the Supreme Court recognized that certain “decisive issues of state law” that are “intimately involved with sovereign prerogative” should be decided in the first instance by the State’s courts. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28–29 (1959). Rather than make “a dubious and tentative forecast” on unsettled questions of state law that implicate state sovereignty, the court should abstain and defer to state courts on the question. *Id.* at 29. Such a course of action “does not constitute abnegation of judicial duty” but rather constitutes “a wise and productive discharge of it.” *Id.*

To be sure, *Burford* and *Louisiana Power* are not talismanic incantations that free a federal district court of its “virtually unflagging” obligation to exercise subject-matter jurisdiction when it has it. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Just as a court “will not take jurisdiction if it should not,” the court “must take jurisdiction if it should.” *Cohens v. State of Virginia*, 19 U.S. 264, 404 (1821). Abstention is therefore reserved for the rare and exceptional cases.

Determining whether a matter represents one of those rare cases for which abstention is warranted is no easy task. What is a *difficult* question of state law? A policy problem of *substantial* public import? How *intimately* involved must a state law issue be with considerations of sovereignty? As these nebulous terms suggest, there exists no “formulaic test for determining when dismissal [or remand] under *Burford* [or *Louisiana Power*] is appropriate.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727 (1996). And “[t]he various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 12 n.9 (1987). “Overlapping rationales motivate these doctrines and considerations that support abstaining under one will often support abstaining under another.” *Martin*, 499 F.3d at 364. With that said, abstention doctrines do not permit “*ad hoc* judicial balancing of the totality of state and federal interests in a case” and a court must tether its analysis to “specific doctrines that apply in particular classes of cases.” *Id.* (italics in original).

Considering the relevant standards, the court finds that abstention under *Burford* and *Louisiana Power* is appropriate in this case for four reasons: (1) the issues raised in Griffin’s protests reflect unsettled questions of state constitutional and statutory law and bear directly on North Carolina’s right to self-government, (2) there is an existing dispute resolution process designated by state law, which a federal court should be hesitant to disrupt, (3) Griffin’s claims

arise purely under state law, and (4) the federal interest in this case is tenuous, and a state tribunal is competent to protect federal constitutional rights. Taken together, those factors counsel in favor of abstention.

First, Griffin's protests raise unsettled questions of state law: whether individuals who registered to vote without providing either their driver's license numbers or the last four digits of their social security numbers may vote in state elections, whether state law granting the right to vote to individuals who have never resided in North Carolina (Section 163-258.2(e)) conflicts with the state Constitution's bona fide residency requirement, and whether North Carolina's voter ID law applies to absentee ballots submitted by overseas voters in state elections. *See* DE 1-4 at 19-21 (summary of three challenges). In responding to Griffin's motion for preliminary injunction, the State Board has identified one trial court-level decision addressing the same substance as Griffin's second protest. DE 39 at 27. That hardly reflects a consensus view on the issues raised by the petition. *See Wise v. Circosta*, 978 F.3d 93, 101 (4th Cir. 2020) (finding that "close issue of state law involving competing interpretations of North Carolina's statutes governing election procedures" that "state courts" have not "settled . . . conclusively" supported abstention under *Pullman*) (emphasis in original); *see also Martin*, 499 F.3d at 364 (observing that abstention doctrines often contain "[o]verlapping rationales").

In *Johnson v. Collins Entertainment*, the Fourth Circuit found that it would "contravene[] *Burford* principles" for a federal district court to attempt to answer "disputed questions of state [] law that so powerfully impact the welfare of [the State's] citizens." *Johnson v. Collins Ent. Co.*, 199 F.3d 710, 720 (4th Cir. 1999). *Johnson* involved state gambling regulations, which "lie[] at the heart of the state's police power." *Id.* This matter involves the right to vote in a state election and the outcome of a state contest for a seat on the state supreme court, which lie at the heart of

state sovereignty and right to self-government. *Mitchell*, 400 U.S. at 125. The court finds that a citizen's right to participate in electing representatives for state government and a state's right to interpret state law in that context is no less (and likely more so) inextricably intertwined with a citizenry's welfare than the gambling regulations at issue in *Johnson*.

Likewise in *Louisiana Power*, Justice Frankfurter admonished that federal judges should hesitate to make "a dubious and tentative forecast" on unsettled questions of state law that implicate state sovereignty. *Louisiana Power*, 360 U.S. at 29. That advice maps onto this case: Griffin's protests raise novel questions of state law, and the answers to those questions could sway the outcome of a state election and affect the right to vote for tens of thousands of individuals in future state elections. See *NOPSI*, 491 U.S. at 361 (where "importance" of state law issues "transcends the result in the case then at bar," *Burford* abstention may be appropriate).

Second, North Carolina law designates an appellate procedure for disputes over decisions of the State Board. N.C.G.S. § 163-182.14(b). That procedure reflects the view of the General Assembly that election disputes should, after review by the State Board, proceed to the Superior Court of Wake County. See *id.* Because in these circumstances "timely and adequate state-court review is available," this court should refrain from "interfer[ing] with the [] orders of state administrative agencies," such as the State Board. *NOPSI*, 491 U.S. at 361. As the Fourth Circuit similarly concluded in *Johnson*, "[f]ederal equitable intervention" in this case "risks the disruption of state efforts to establish a coherent policy with respect to [state elections]" and "threatens the creation of a patchwork of inconsistent" interpretations of state election law. *Johnson*, 199 F.3d at 723.

Taking the third and fourth factors together, the court further finds that the primacy of state law issues in this matter, and the relatively tenuous federal interest, militate in favor of abstention

as well. *See Johnson*, 199 F.3d at 723 (explaining that “the predominance of state law issues affecting state public policy” should “counsel[] caution on the part of federal court”). As the court summarized previously, Griffin’s challenges consist of contentions that arise exclusively under state law. *See supra* at 9-17. A federal court is poorly positioned to resolve those contentions in the first instance, particularly where such resolution (even if practically relevant) would not legally implicate federal elections. *See Moore v. Sims*, 442 U.S. 415, 429 (1979) (“State courts are the principal expositors of state law.”).

The federal interest in this action also pales in comparison with the predominance of state law issues. The State Board has cited the NVRA as a basis for removal, which the court has credited. *See supra* at 17-20. But the NVRA’s connection to this state election is somewhat dubious. *See Young*, 520 U.S. at 275. The State Board has also invoked federal constitutional concerns such as procedural and substantive due process, but a state court is competent to enforce federal constitutional rights. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609, n.21 (1975). Just as importantly, a state court could resolve Griffin’s protests on the merits of their state law arguments, obviating the need for disposition of the federal constitutional issues. That consideration also tilts the scales towards abstention. *Railroad Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941); *see also Martin*, 499 F.3d at 364 (observing that abstention doctrines often contain “[o]verlapping rationales”).¹⁰

If our system of federalism is to exist in more than name only, it means that this court should abstain in this case, under these circumstances. “As every schoolchild learns, our

¹⁰ In weighing these third and fourth factors, the court is cognizant that it may not engage in “*ad hoc* judicial balancing of the totality of state and federal interests in a case.” *Martin*, 499 F.3d at 364. Rather than engage in such *ad hoc* balancing, the court finds that those respective interests are directly relevant to answering whether the state law questions are difficult, the manner in which they transcend the case at bar, and whether they reflect substantially important state policy. *See NPSI*, 491 U.S. at 361; *Louisiana Power*, 360 U.S. at 29; *Johnson*, 199 F.3d at 723.

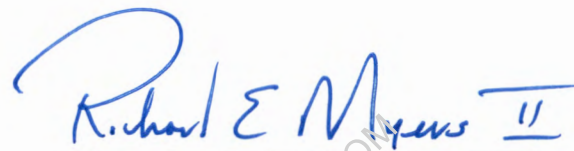
Constitution establishes a system of dual sovereignty between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). This dual-system reflects that “the perpetuity and indissolubility of the Union[] by no means implies the loss of distinct and individual existence, or of the right of self-government by the States.” *Texas v. White*, 74 U.S. 700, 725 (1868). The right of self-government must include “all the functions essential to separate and independent existence”; otherwise “there could be no such political body as the United States.” *Lane Cnty. v. State of Oregon*, 74 U.S. 71, 76 (1868).

The court ends as it began: a sitting state court judge seeks a writ of prohibition (a form of judicial relief authorized by the state constitution) from the state supreme court that would enjoin the state board of elections from counting votes for a state election contest that were cast by voters in a manner allegedly inconsistent with state law. A federal tribunal should “wise[ly] and productive[ly] discharge” its “judicial duty” by abstaining in such circumstances, *Louisiana Power*, 360 U.S. at 29, because “timely and adequate state-court review is available,” *NOPSI*, 491 U.S. at 361; N.C.G.S. § 163-182.14(b). The issues of state law raised in this action are not just difficult and “disputed,” *Johnson*, 199 F.3d at 720, they also go to the heart of North Carolina’s sovereign right “to establish and maintain [its] own separate and independent government[.],” *Mitchell*, 400 U.S. at 125. At bottom, the court finds that abstention under *Burford* and *Louisiana Power* is warranted.

IV. Conclusion

The court has removal jurisdiction under 28 U.S.C. § 1443(2) but abstains from reaching the merits of Griffin's motion for preliminary injunction and remands this matter to the North Carolina Supreme Court.

SO ORDERED this 6th day of January, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

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STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV041789-910

TELIA KIVETT, *et al.*,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

NOTICE OF REMAND

Plaintiffs hereby provide notice that the above-captioned matter, which Defendants previously removed to the Eastern District of North Carolina (5:25-cv-00003-M), has been remanded to this Court pursuant to an Order entered on January 6, 2025, by Chief Judge Richard E. Myers II. A true and accurate copy of the Order is attached hereto as **Exhibit A**. A true and accurate copy of the letter remanding the case to this Court is attached hereto as **Exhibit B**.

Respectfully submitted this, the 7th day of January, 2025.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Jordan A. Koonts

Phillip J. Strach

North Carolina State Bar no. 29456

Jordan A. Koonts

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phil.strach@nelsonmullins.com

jordan.koonts@nelsonmullins.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this, the 7th day of January, 2025, I served a true and accurate copy of the foregoing **NOTICE OF REMAND** upon all counsel of record by using the Odyssey e-file and serve feature, sending a copy of the same to all counsel of record via e-mail, and sending a copy via U.S. Mail, postage prepaid and addressed as follows:

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Tsteed@ncdoj.gov

Mary Carla Babb
Special Deputy Attorney General
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Post Office Box 629
Raleigh, NC 27602
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Counsel for Defendants

/s/ Jordan A. Koonts

Jordan A. Koonts

EXHIBIT A

Court Order Granting Remand to Wake County Superior Court
5:25-cv-00003-M – Dkt. no. 19

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:25-CV-00003-M

TELIA KIVETT, et al.,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

ORDER

This matter comes before the court on Plaintiffs' motion for temporary restraining order and preliminary injunction [DE 1-13]. The court has reviewed the filings in this case and finds that the factual and legal subject matter of this action is substantially identical to that in *Jefferson Griffin v. North Carolina State Board of Elections, et al.*, Case No. 5:24-CV-00724-M. Having concluded in that case that abstention and remand under *Burford* and *Louisiana Power* is warranted, *see* Case No. 5:24-CV-00724-M, DE 50, the court finds that conclusion operates with equal force here. Accordingly, the court sua sponte remands this matter to the Superior Court for Wake County.

SO ORDERED this 6th day of January, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B

Letter from Clerk of Court for the Eastern District of North
Carolina, Transmitting Order to Remand
5:25-cv-00003-M – Dkt. no. 20

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United States District Court
Eastern District of North Carolina
Office of the Clerk
Post Office Box 25670
Raleigh, North Carolina 27611

Phone: (919) 645-1700
Fax: (919) 645-1750

Peter A. Moore, Jr.
Clerk of Court

January 6, 2025

Wake County Courthouse
Attn: Clerk of Court
PO Box 351
Raleigh, NC 27602

Re: 5:25-cv-3-M-BM; Kivett et al v. NC State Board of Elections, et al
Wake County Superior Court Case No.: 24CVS41789-910


Dear Clerk:

Pursuant to the order entered by the Honorable Chief United States District Judge Richard E. Myers II on January 6, 2025, this case is remanded to Wake County Superior Court. In accordance with 28 U.S.C. §1447(c), enclosed is a certified copy of the order of remand.

If you have any questions regarding this order, please do not hesitate to call.

Sincerely,

PETER A. MOORE, JR., CLERK


By: Kimberly McNally, Deputy Clerk

STATE OF NORTH CAROLINA BY S. Smallwood IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION
24CV041789-910

TELIA KIVETT, *et.al.*)
Plaintiffs,)
v.) ORDER DENYING MOTION
NORTH CAROLINA STATE)
BOARD OF ELECTIONS, *et. al.*)
Defendants.)

THIS MATTER WAS HEARD by the undersigned at the January 10, 2025 session of Wake County Superior Court upon Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, and the Court having carefully considered the written and oral arguments of counsel as well as the proffered and other relevant authority, the Court, after a careful balancing of the equities, cannot conclude by the greater weight of the evidence that a preliminary injunction is necessary to prevent immediate and irreparable harm. The Court makes no findings on the merits and therefore did not consider the late-filed briefs on the merits by the Defendants and Intervenors.

NOW, THEREFORE, in the Court's discretion, the Motion for a Temporary Restraining Order and Preliminary Injunction is denied.

1/10/2025 8:10:37 PM

IT IS SO ORDERED this the 10th day of January, 2025.


William R. Pittman
Superior Court Judge

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV041789-910

TELIA KIVETT; KARYN MULLIGAN;
WAKE COUNTY REPUBLICAN PARTY;
REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Election; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS,
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants,

and

DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Defendant.

PLAINTIFFS' NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs Telia Kivett, Karyn Mulligan, Wake County Republican Party, Republican
National Committee, and North Carolina Republican Party ("Plaintiffs"), by and through

undersigned counsel, hereby give notice of appeal to the North Carolina Court of Appeals pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure from the Order denying Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction, entered on January 10, 2025 by Superior Court Judge William R. Pittman.

Respectfully submitted this, the 14th day of January, 2025.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Jordan A. Koonts

Phillip J. Strach

North Carolina State Bar no. 29456

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North Carolina State Bar no. 59363

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jordan.koonts@nelsonmullins.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of January, 2025, I served a true and accurate copy of the foregoing **NOTICE OF APPEAL** upon all counsel of record by using the Odyssey e-file and serve feature, sending a copy of the same to all counsel of record via e-mail, addressed as follows:

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Counsel for Intervenor-Defendant

/s/ Jordan A. Koonts
Jordan A. Koonts