

STATE OF NORTH CAROLINA  
WAKE COUNTY

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

REPUBLICAN NATIONAL  
COMMITTEE and NORTH  
CAROLINA REPUBLICAN PARTY,

*Plaintiffs,*

v.

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, ALAN HIRSCH,  
JEFF CARMON, KEVIN N. LEWIS,  
SIOBHAN O'DUFFY MILLEN,  
STACY "FOUR" EGGERS IV, in  
Official Capacity as Members of  
NCSBE, and KAREN BRINSON  
BELL, in Official Capacity as Executive  
Director of NCSBE,

*Defendants.*

**AFFIRMATIVE ACTION COALITION'S MOTION  
TO INTERVENE AS DEFENDANT AND MEMORANDUM IN SUPPORT**

Proposed Intervenor Affirmative Action Coalition moves to participate as intervening defendant in the above-captioned action under North Carolina Rule of Civil Procedure 24.

**INTRODUCTION**

With just over 30 days left before in-person voting begins, Plaintiffs seek to eliminate one of the approved forms of voter identification that University of North Carolina-Chapel Hill ("UNC") students, faculty, and staff can use to vote in-person. There is no question that Plaintiffs were aware that UNC's mobile One Card—the digital, default version of UNC's official university identification—was approved for use as a valid voter identification nearly a month ago, yet they

inexplicably sat on their hands and waited to file this lawsuit until *after* voting was set to begin in North Carolina.<sup>1</sup> Plaintiffs now ask the Court to rewrite North Carolina election law and force the State Board of Elections (“State Board”) to rescind its approval and remove the option of the mobile One Card as a form of voter identification—even though nothing in state law prohibits the use of a digital identification card for voting. And Plaintiffs’ delay threatens to disenfranchise lawful voters who have prepared for the election with the understanding that they may use their mobile One Card—voters who may not realize in time to change their plans and procure alternative acceptable identification in time to participate in the election.

Plaintiffs have sued the State Board, its individual members, and executive director. But the voters who stand to be disenfranchised if Plaintiffs succeed are the tens of thousands of UNC students and employees who currently believe they can use their mobile ID cards to vote and intend to do so. Proposed Intervenor, Affirmative Action Coalition, a registered UNC student organization made up of UNC students, seeks to intervene as a defendant to protect the ability of its members and all of the approximately 32,000 UNC undergraduate, graduate, and professional students<sup>2</sup> to vote in the state’s imminent elections, as well as its own organizational interests, which would be impaired if Plaintiffs succeed in changing the rules immediately before voting begins. Because Affirmative Action Coalition has members who intend to use their mobile One Cards to vote, removing that option would seriously harm the organization by threatening its members’ and other UNC students’ fundamental voting rights. Plaintiffs’ requested relief would also force

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<sup>1</sup> Absentee ballots were scheduled to be mailed on September 6, 2024, but this was delayed due to a court order requiring the reprinting of ballots. *Upcoming Election*, N.C. State Bd. of Elections, <https://www.ncsbe.gov/voting/upcoming-election>, (last accessed Sept. 16, 2024).

<sup>2</sup> *By the Numbers*, Univ. of N.C. at Chapel Hill, <https://www.unc.edu/about/by-the-numbers/> (last accessed Sept. 15, 2024).

Affirmative Action Coalition to divert its limited resources from its organizational priorities to attempt to ensure UNC students are not disenfranchised by the eleventh-hour elimination of the ability to use the mobile One Card to vote.

The existing defendants do not adequately represent Affirmative Action Coalition's interests here. The State Board Defendants necessarily represent the interests of the government, which has competing obligations to a wide range of constituents and general responsibilities to administer elections that may be at odds with Affirmative Action Coalition's sole focus on ensuring its members' voting rights. As other courts have found in similar cases that threaten voting rights, organizations like Affirmative Action Coalition represent different interests and should be permitted to represent those interests in such litigation. Because Affirmative Action Coalition satisfies all of the requirements for intervention as a matter of right under North Carolina Rule of Civil Procedure 24(a)(2), the Court should grant its motion to intervene. Alternatively, the motion should be granted on a permissive basis under Rule 24(b)(2).

## **BACKGROUND**

### **I. Factual and Procedural History**

The upcoming general election is the first in recent times where North Carolinians must present a voter ID to be allowed to vote in person. To comply with North Carolina law, a voter must produce one of a series of listed forms of identification. *See* N.C.G.S. § 163-166.16(a). The available options include drivers licenses, U.S. passports, military IDs, tribal enrollment cards, and others. N.C.G.S. § 163-166.16(a)(1)–(2). Student identification cards, so long as the particular card at issue is approved by the State Board, also qualify as acceptable identification for purposes of voting. *See* N.C.G.S. § 163-166.16(a)(1)(g); N.C.G.S. § 163-166.17(a). The State Board has

approved approximately 70 different student IDs across the state.<sup>3</sup>

Nearly a month ago, the State Board voted to add one more student ID to this list, approving UNC’s mobile One Card as a qualifying form of identification to vote for students and university employees. *See Verified Complaint* ¶ 59 (“Compl.”). The One Card is UNC’s official university identification, and is used by students and employees for various purposes, including to access campus buildings and make payments and purchases.<sup>4</sup> While the One Card was originally available in only physical form, in 2023, the university launched the mobile One Card, which has quickly become the default form of university identification.<sup>5</sup> Like a credit card, the mobile One Card is located on an individual’s iPhone and may be accessed through Apple Wallet.<sup>6</sup> Since the launch of the mobile One Card, the university no longer issues physical One Cards as a matter of course. Instead, “[a]ll newly issued One Cards will be mobile One Cards,” with physical cards being issued only “on a case-by-case basis.”<sup>7</sup> For full-time students, the mobile One Card is included as part of the regular student fee, whereas obtaining a physical card requires a separate charge of \$10.<sup>8</sup> Further, only one format of the card, physical or mobile, is permitted, meaning that once a student

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<sup>3</sup> Sarah Michels, *GOP May Fight Decision Letting UNC Students Use Digital ID to Vote*, Carolina Public Press (Aug. 27, 2024), <https://carolinapublicpress.org/65196/gop-may-fight-decision-letting-unc-students-use-digital-id-to-vote/>; *see also Student and Public Employee IDs Approved for Voting*, N.C. State Bd. of Elections (last modified Aug. 19, 2024), <https://www.ncsbe.gov/voting/voter-id/student-and-public-employee-ids-approved-voting>.

<sup>4</sup> *Mobile One Card*, Univ. of N.C. at Chapel Hill, <https://onecard.unc.edu/mobile-one-card/> (last accessed Sept. 16, 2024).

<sup>5</sup> *See Mobile UNC One Card for Apple Wallet Approved for Voter ID Use*, Univ. of N.C. at Chapel Hill (Aug. 23, 2024), <https://onecard.unc.edu/news/2024/08/23/mobile-unc-one-card-for-apple-wallet-approved-for-voter-id-use/>.

<sup>6</sup> *See Mobile One Card*, *supra* note 4.

<sup>7</sup> *Get My Card*, Univ. of N.C. at Chapel Hill, <https://onecard.unc.edu/get-my-card/> (last accessed Sept. 16, 2024).

<sup>8</sup> *Id.*

adds the mobile card to Apple Wallet, “the physical card will no longer work.”<sup>9</sup>

According to the State Board, prior to its approval of the mobile One Card, other North Carolina schools had unsuccessfully attempted to get other mobile ID cards approved.<sup>10</sup> In contrast, the State Board approved the mobile One Card because it “meets all of the state’s requirements for voter ID,” including because mobile One Cards are “not merely a copy or a photocopy,” but rather “issued IDs with expiration dates displayed.”<sup>11</sup>

On August 20, 2024, the same day that the State Board approved the mobile One Card, Plaintiff North Carolina Republican Party posted on X (formerly Twitter) that “[p]ermitting a ‘Digital ID’ on its face VIOLATES Voter ID requirements” and warned: “Rest assured -- we won’t stand for it.”<sup>12</sup> Plaintiffs, however, then waited nearly a month to file this lawsuit—even though absentee voting was set to begin on September 6 and in-person early voting begins in just one month, on October 17.<sup>13</sup> Despite identifying no law that prohibits digital ID cards for purposes of voting, Plaintiffs proclaim that “North Carolina law unambiguously forbids Defendants from accepting electronic voter photo identification to register and vote in-person.” Compl. ¶ 82. They ask for a declaratory judgment stating that voters may not use digital UNC student ID cards to vote, as well as for preliminary and permanent injunctive relief and a writ of mandamus. Along

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<sup>9</sup> See *Mobile One Card*, *supra* note 4.

<sup>10</sup> Gary D. Robertson, *North Carolina Elections Board OKs University ID on Phones for Voter Access This Fall*, AP (Aug. 20, 2024), <https://apnews.com/article/north-carolina-voter-identification-university-mobile-33a78f54c45a739b2c201c79dcbcd30d>.

<sup>11</sup> Kyle Ingram & Luciana Perez Uribe Guinassi, *First-Ever Digital ID for Voting Approved by NC Elections Board, as GOP Members Object*, The News & Observer (Aug. 20, 2024), <https://www.newsobserver.com/news/politics-government/article291217655.html>.

<sup>12</sup> @NCGOP, X.com (Aug. 20, 2024, 12:54 p.m.), <https://x.com/NCGOP/status/1825939594405466418/> [https://perma.cc/VWM5-SDD4].

<sup>13</sup> *Upcoming Election*, N.C. State Bd. of Elections (last accessed Sept. 15, 2024), <https://www.ncsbe.gov/voting/upcoming-election>.

with their complaint, Plaintiffs also filed a motion for a temporary restraining order, or alternatively a motion for an expedited preliminary injunction. *See generally* Mot. for TRO or, in the Alternative, Expedited Preliminary Inj. (“Mot. for TRO”).

## II. Proposed Intervenor

Affirmative Action Coalition is a registered student organization at UNC-Chapel Hill. It was formed amid the U.S. Supreme Court’s consideration of cases stemming from both UNC and Harvard related to the use of race in college admissions. Declaration of Alexander Denza ¶ 5 (“Denza Decl.”) (attached as Exhibit 1). Affirmative Action Coalition’s mission is to “work[] toward securing equal access to education for all students,” and the organization is “committed to maintaining diversity at [UNC] despite the outcome of the Supreme Court.”<sup>14</sup>

One of Affirmative Action Coalition’s signature initiatives is a project called “TransparUNCy.” TransparUNCy exists to educate students about the organization and workings of the UNC System. Denza Decl. ¶ 7. The UNC System is governed by a Board of Governors, which is made of 24 voting members chosen by the North Carolina legislature and, among other powers, appoints the chancellors of all 17 UNC institutions.<sup>15</sup> In recent years, the UNC System has experienced interference from its state overseers, including through the elimination of diversity, equity, and inclusion offices and policies.<sup>16</sup> Affirmative Action Coalition and

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<sup>14</sup> Affirmative Action Coal., *Constitution for Affirmative Action Coalition at UNC-Chapel Hill* at 1, Heel Life (Aug. 7, 2024), <https://heellife.unc.edu/organization/uncaffaxn/documents/view/2353968>; *Affirmative Action Coalition*, Heel Life (last visited Sept. 16, 2024), <https://heellife.unc.edu/organization/uncaffaxn>.

<sup>15</sup> *About the Board of Governors*, Univ. of N.C. System (last visited Sept. 16, 2024), <https://www.northcarolina.edu/leadership-and-governance/board-of-governors/>.

<sup>16</sup> Liam Knox, *UNC System Board Votes to Eliminate DEI Offices*, Inside Higher Ed (May 24, 2024), <https://www.insidehighered.com/news/quick-takes/2024/05/24/unc-system-board-votes-eliminate-dei-policy-cut-spending>.

TransparUNCy have worked to expose and publicize these and other issues.<sup>17</sup>

Central to Affirmative Action Coalition’s mission is a strategy of student engagement. Affirmative Action Coalition seeks to harness the collective voices and activism of UNC students to advocate for fair education and against efforts to interfere in university governance and education policy. Denza Decl. ¶ 8. As a result, the voting rights of UNC students, including Affirmative Action Coalition’s members, are of paramount importance to the organization. *Id.* ¶ 9. Affirmative Action Coalition is deeply invested in its own members’ voting rights and encourages all of its members to vote. *Id.* ¶ 11. As a result, when the State Board was considering whether to allow the mobile One Card as a form of identification for voting, Affirmative Action Coalition strongly supported approval and continues to support the availability of the mobile One Card for voting. *Id.* ¶ 10. Affirmative Action Coalition’s members themselves have mobile One Cards and plan to rely on them for purposes of voting in the upcoming November election. *Id.* ¶ 13.

## ARGUMENT

### **I. Affirmative Action Coalition is entitled to intervene as of right under Rule 24(a).**

Upon a timely motion, Rule 24(a) permits intervention “where (1) the movant has an interest relating to the property or transaction; (2) denying intervention would result in a practical impairment of the protection of that interest; and (3) there is inadequate representation of that interest by existing parties.” *Alford v. Davis*, 131 N.C. App. 214, 218, 505 S.E.2d 917, 920 (1998) (citing N.C.G.S. § 1A-1, Rule 24(a)(2)). North Carolina’s Rule 24 “is virtually identical to Rule 24 of the Federal Rules of Civil Procedure,” and North Carolina courts “look to the federal court decisions for guidance.” *Nicholson v. F. Hoffmann Laroche, Ltd.*, 156 N.C. App. 206, 208, 576

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<sup>17</sup> See, e.g., Alexander Denza et al., *Op-ed: “Nonpartisan” Lee Roberts Receives Income from Far-Right Megadonor’s Company*, Daily Tar Heel (Feb. 20, 2024), <https://www.dailytarheel.com/article/2024/02/opinion-oped-lee-roberts-follow-up>.

S.E.2d 363, 365 (2003) (quotations omitted). The Fourth Circuit has stated that “liberal intervention is desirable to dispose of as much of a controversy ‘involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Affirmative Action Coalition satisfies the requirements of Rule 24(a)(2) and is thus entitled to intervene.

**A. The motion to intervene is timely.**

Affirmative Action Coalition’s motion is unquestionably timely, filed just two business days after Plaintiffs initiated this lawsuit. While Plaintiffs moved for a temporary restraining order along with their Verified Complaint, no responses to the motion or any other substantive filings have been made. Affirmative Action Coalition also filed this motion in advance of the initial hearing the Court set on September 16. Because there has been no delay, Affirmative Action Coalition has met the timeliness requirement. *See State Emps.’ Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264, 330 S.E.2d 645, 648 (1985) (noting “motions to intervene made prior to trial are seldom denied” due to lack of timeliness); *see also Moore v. Circosta*, Nos. 1:20CV911 & 1:20CV912, 2020 WL 6597291, at \*1 (M.D.N.C. Oct. 8, 2020) (finding motion timely when filed “between four and six days after Plaintiffs filed their Complaints”); *Carcaño v. McCrory*, 315 F.R.D. 176, 178 (M.D.N.C. 2016) (finding motion timely when made “just nine days after Plaintiffs” filed preliminary injunction motion and “before any of the original Defendants made any filings”).

**B. The disposition of this case will impair Affirmative Action Coalition’s ability to protect its interests.**

Affirmative Action Coalition has significant protectable interests that stand to be impaired by Plaintiffs’ lawsuit. A proposed intervenor’s interest is sufficient for purposes of intervention if



it is of “such direct and immediate character that he will either gain or lose by the direct operation and effect of the judgment.” *Wichnoski v. Piedmont Fire Prot. Sys., LLC*, 251 N.C. App. 385, 394, 796 S.E.2d 29, 36 (2016) (quotation omitted). Here, “a favorable decision for plaintiffs could impede or impair” at least two of Affirmative Action Coalition’s “protectable interests.” *N.C. Green Party v. N.C. State Bd. of Elections*, 619 F. Supp. 3d 547, 562 (E.D.N.C. 2022) (granting intervention).

*First*, Affirmative Action Coalition has a direct and immediate interest in protecting the right of its members to vote. If Plaintiffs prevail in this suit, all UNC students and employees—including all of Affirmative Action Coalition’s members—will be unable to use their mobile One UNC cards to vote, making it more difficult for them to cast ballots. Denza Decl. ¶ 14. Courts have regularly recognized interests in the fundamental right to vote as a proper basis for intervention in cases where, as here, plaintiffs have sued government entities and sought relief that threatens individuals’ voting rights, including those of an organization’s members. *See Bellitto v. Snipes*, No. 16-cv-61474-BLOOM/Valle, 2016 WL 5118568, at \*2 (S.D. Fla. Sept. 21, 2016) (granting labor union intervention of right in suit seeking court-ordered “voter list maintenance”); *see also, e.g., League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434–35 (5th Cir. 2011) (reversing denial of intervention and holding that seeking to protect right to vote was “a sufficient interest to satisfy Rule 24(a)(2)”). In *Bellitto*, for instance, the court permitted a union to intervene because “the interests of its members would be threatened by [any] court-ordered ‘voter list maintenance’ sought by Plaintiffs”—a harm that was “particularly great in light of the upcoming . . . General Election,” just as it is here. 2016 WL 5118568, at \*2.

Courts have consistently held that an organization’s interest in protecting its members’ voting rights satisfies even the “more stringent” requirement of Article III standing, which

“compels the conclusion that they have an adequate interest” for purposes of Rule 24. *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991); *see also, e.g., Voto Latino v. Hirsch*, Nos. 1:23-CV-861 & 1:23-CV-862, 2024 WL 230931, at \*10 (M.D.N.C. Jan. 21, 2024) (holding organization had standing based on injury to members’ voting rights); *March for Our Lives Idaho v. McGrane*, No. 1:23-CV-00107-AKB, 2023 WL 6623631, at \*7 (D. Idaho Oct. 11, 2023) (holding organization had standing to challenge amendments to voter ID laws to protect constituents’ voting rights). Here, Affirmative Action Coalition’s interests are clear—it represents the UNC students whose voting rights are directly threatened by Plaintiffs’ lawsuit, which seeks to eliminate use of the most accessible form of voter ID that UNC students have. *See Denza Decl.* ¶ 14. UNC students are likely to carry a mobile One Card and to have it with them on their phones at all times. *See id.* ¶ 12. And Mr. Denza and other Affirmative Action Coalition members not only possess mobile One Cards but plan to use them to vote in this year’s elections. *See id.* ¶ 13.

If this lawsuit succeeds, it will make it more difficult for those and other UNC students to vote. Indeed, students who had been planning to use the mobile One Card may not learn in time that their mobile One Cards will not be accepted and that they need to use some other form of identification to vote. And obtaining a physical One Card (or other qualifying identification) requires both time and money—it may simply be too late, particularly if students show up at the polls expecting to be able to vote with their mobile One Cards, only to be turned away.<sup>18</sup> Other forms of identification could take weeks, if not months, to obtain. Affirmative Action Coalition thus has a direct and immediate interest in ensuring the mobile One Card remains an option for voting to protect the fundamental voting rights of its members that are threatened by Plaintiffs’

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<sup>18</sup> *See Get My Card, supra* note 7.

lawsuit.

*Second*, Affirmative Action Coalition, as an organization, also stands to “gain or lose” based on the outcome of this litigation, which will have a direct and immediate impact on its limited resources. *Wichnoski*, 251 N.C. App. at 394, 796 S.E.2d at 36 (quotation omitted). If Plaintiffs are successful in disallowing the mobile One Card as a form of voter identification, Affirmative Action Coalition would be required to take a number of steps in response to attempt to minimize the harm to its members and other students. Specifically, it would conduct a teach-in explaining the change to the law and other ways students can vote, as well as by attempting to publicize the decision through its email list and Instagram page, as well as TransparUNCy’s publication. Denza Decl. ¶ 15. Affirmative Action Coalition would further commit its time and resources to advocate that UNC change its policies and provide free, physical One Cards for all UNC students, all before in-person early voting starts in a few weeks. *Id.* ¶ 16. These efforts would inevitably distract from the organization’s other priorities and force it to take resources away from its other work, such as publicizing interference in university governance and education policy. *Id.*

In short, if Plaintiffs succeed, Affirmative Action Coalition would have to divert its limited resources toward assisting UNC students, including its members, to ensure they can vote. Again, courts have consistently found that such diversion of resources satisfies even the higher burden of establishing Article III standing. *See, e.g., Action NC v. Strach*, 216 F. Supp. 3d 597, 617–18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); *N.C. State Conf. of NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 402–03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat “en masse voter challenge[s]”). The threatened impairment of Affirmative Action Coalition’s

organizational resources alone supplies a more than sufficient basis to grant intervention.<sup>19</sup>

**C. Defendants do not adequately represent Affirmative Action Coalition’s interests.**

Affirmative Action Coalition’s interests are not adequately represented by the existing parties. As the U.S. Supreme Court has long made clear in the context of the federal Rule 24, the requirement of a lack of adequate representation “is satisfied if the applicant shows that representation of his interest ‘*may be*’ inadequate” and “the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (citation omitted). Plaintiffs, who seek to eliminate an identification for voting available to UNC students and that Affirmative Action Coalition seeks to protect, obviously do not represent the organization’s interests.

As for Defendants, as a public body, the State Board’s “sole litigation interests are to protect the ‘public welfare’ and the interests of [the] ‘general citizenry.’” *Letendre v. Currituck County*, 261 N.C. App. 537, 817 S.E.2d 920, 2018 WL 4440587, at \*4 (2018) (unpublished table decision) (attached as Exhibit 2). Accordingly, “there are many decisions it might make which would not be aligned with the interests” of Affirmative Action Coalition. *Id.* at \*4–5 (concluding county did “not have the same interests” as private parties).

The U.S. Supreme Court’s decision in *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022), confirms the point. That case, like this one, involved the North Carolina State Board of Elections as a defendant. *Id.* at 2198. Several civil rights groups

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<sup>19</sup> Because Affirmative Action Coalition has several interests that would be directly affected by Plaintiffs’ requested declaratory relief, the Declaratory Judgment Act also gives it a statutory right to intervene. *See* N.C.G.S. § 1-260 (“When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings.”); *see also* N.C.G.S. § 1A-1, Rule 24(a)(1).

sued the State Board to challenge a voter-identification law adopted by the legislature and adopted over the Governor's veto. *Id.* Although the State Board was represented by the North Carolina Attorney General's office, several state legislators sought to intervene alongside the State Board to defend the law. *Id.* The Fourth Circuit concluded *en banc* that the legislators could not intervene because their interests were adequately represented by the State Board. *Id.* at 2200. The Supreme Court reversed. It reiterated at the outset that this requirement "presents proposed intervenors with only a minimal challenge." *Id.* at 2195; *see also Trbovich*, 404 U.S. 528, 538 n.10 (1972) (similar); *Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (similar). The Supreme Court explained that while state agents may pursue "related" interests to political actors, those interests are not "identical." *Berger*, 142 S. Ct. at 2204 (quoting *Trbovich*, 404 U.S. at 538–39). In particular, the Court noted that state agencies like the State Board must "bear in mind broader public-policy implications" than those with more partisan or private interests. *Id.*

The same is true here. Although both Affirmative Action Coalition and the State Board believe that the mobile One Card qualifies as a form of acceptable identification under North Carolina law, their interests are not "identical." *Id.*; *Texas v. United States*, 805 F.3d 653, 662 (5th Cir. 2015) (discussing why an intervenor's interests may not be protected by a "governmental entity"). The State Board's "position is defined by the public interest," *Feller*, 802 F.2d at 730; *accord Letendre*, 2018 WL 4440587, at \*4, while Affirmative Action Coalition's parochial interests are defined solely by advancing its members' ability to vote to the maximum extent possible and the resources it invests to achieve its organizational mission. *See Denza Decl.* ¶¶ 6, 11, 15–16. As such, though Defendants and Affirmative Action Coalition "fall on the same side of the dispute," their interests differ from each other because, where the Board is concerned with its "responsibility to properly administer election laws," Affirmative Action Coalition's focus is

on ensuring that its members have the unfettered “opportunity to vote in the upcoming federal [and state] election[s].” *Issa v. Newsom*, No. 2:20-CV-01044-MCE-CKD, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020) (granting intervention as of right); *N.C. Green Party*, 619 F. Supp. 3d at 562 (granting intervention as defendant alongside the State Board because even where public body and private party “shared a closely aligned interest,” such parties “did not share identical interests”).

For all of these reasons, Affirmative Action Coalition satisfies each of the requirements for intervention as of right, and the Court should find that it is entitled to intervene in this matter.

## **II. In the alternative, the Court should permit intervention under Rule 24(b).**

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

“Upon timely application anyone may be permitted to intervene in an action . . . [w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” N.C.G.S. § 1A-1, Rule 24(b)(2). “Permissive intervention under the rule ‘rests within the discretion of the trial court.’” *Alford*, 131 N.C. App. at 219, 505 S.E.2d at 921 (quoting *State ex rel. Long v. Interstate Cas. Ins. Co.*, 106 N.C. App. 470, 474, 417 S.E.2d 296, 299 (1992)). When exercising that discretion, the court must “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” N.C.G.S. § 1A-1, Rule 24(b)(2). Under the analogous Federal Rule 24(b), permissive intervention is liberally construed in favor of intervention. *Thomas v. Andino*, 335 F.R.D. 364, 369 (D.S.C. 2020); *see also Dowdy v. City of Durham*, 689 F. Supp. 3d 143, 147 (M.D.N.C. 2023) (noting that this rule “is to be liberally

construed to dispose of as much of a controversy involving as many concerned persons as is consistent with due process and efficiency”).

As explained, this motion is timely and will not unduly delay or prejudice the adjudication of the rights of the original parties. Affirmative Action Coalition has moved expeditiously to intervene, just two business days after Plaintiffs filed their case. Affirmative Action Coalition also agrees to abide by any schedule the Court may set in this matter. Further, Affirmative Action Coalition’s position—which is that the State Board did not violate North Carolina law in allowing the mobile One Card to be used to vote, and that reversing this decision now would harm UNC students, including Affirmative Action Coalition’s members—raises common questions of law and fact with the issues presented in the Complaint. *See Moore*, 2020 WL 6597291, at \*2 (finding this criterion met and allowing permissive intervention where intervenors sought “to assert defenses to Plaintiffs’ claims for relief”).

Significant prudential considerations also counsel in favor of granting permissive intervention. Because Affirmative Action Coalition represents actual UNC students who stand to be most harmed by the relief Plaintiffs seek, its presence will aid the Court in developing a full record of the relevant considerations—including the impact of this litigation and any last-minute change to voting requirements on UNC students. Because no other party offers this important perspective, Affirmative Action Coalition’s participation will aid the Court in its analysis. Indeed, the complaint makes *no* mention of the impact of this litigation on UNC students—despite seeking a TRO, which Plaintiffs acknowledge requires “a careful balancing of the equities.” Mot. for TRO ¶ 21 (quoting *Nat’l Surgery Ctr. Holdings, Inc. v. Surgical Inst. of Viewmont, LLC*, No. 16 CVS 1003, 2016 WL 2757972, at \*3 (Catawba Cnty. Super. Ct. May 12, 2016)). Nor do Defendants adequately represent UNC students, not only because they must represent the general public and

prioritize their responsibility to administer elections, but also because they simply are not UNC students who intend to rely on the voter ID and thus stand to be directly harmed by the relief Plaintiffs seek. As such, Affirmative Action Coalition is uniquely situated to provide the Court with information related to, for example, the prevalence of mobile One Cards on campus, the likelihood that individuals plan to use them to vote, and the difficulty of obtaining physical One Cards. *See supra* Background § II; Argument § I.B. Such information will ensure the full development of the important legal issues in this suit and will “assist the Court in reaching its decision.” *Kobach v. U.S. Election Assistance Comm’n*, No. 13-cv-4095-EFM-DJW, 2013 WL 6511874, at \*4 (D. Kan. Dec. 12, 2013) (granting motions for permissive intervention where “Applicants’ experience, views, and expertise, particularly as to the effects of the state voting registration requirements at issue on voter registration efforts, will help to clarify, rather than clutter the issues in the action”).

### **CONCLUSION**

For the reasons stated above, Affirmative Action Coalition respectfully requests that this Court grant its motion to intervene as a matter of right under North Carolina Rule of Civil Procedure 24(a)(2) or, alternatively, permit Affirmative Action Coalition to permissively intervene under Rule 24(b)(2).<sup>20</sup>

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<sup>20</sup> If Affirmative Action Coalition’s motion is granted, it intends to file a motion to dismiss the Verified Complaint under Rule 12(b). Because Rule 24(c) requires putative intervenors to attach a proposed pleading to their motion, however, Affirmative Action Coalition attaches a proposed answer hereto as Exhibit 3.



Dated: September 16, 2024

Respectfully submitted,

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/s/ Narendra K. Ghosh  
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\*Motion for admission *pro hac vice*  
forthcoming

STATE OF NORTH CAROLINA  
WAKE COUNTY

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

REPUBLICAN NATIONAL  
COMMITTEE,

*Plaintiffs,*

v.

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

*Defendants.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he e-filed with the Court and served a copy of the MOTION TO INTERVENE in the above-captioned matter (filed on September 16, 2024) on counsel for Plaintiffs and Defendants by electronic mail at:

W. Ellis Boyle, docket@wardandsmith.com, weboyle@wardandsmith.com

*Counsel for Plaintiffs*

Mary Carla Babb, mcbabb@ncdoj.gov

Terence Patrick Steed, tsteed@ncdoj.gov

*Counsel for Defendants*

RESPECTFULLY SUBMITTED, the 16th day of September, 2024.

/s/ Narendra K. Ghosh

Narendra K. Ghosh, NC Bar No. 37649

**PATTERSON HARKAVY LLP**

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Chapel Hill, NC 27517

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nghosh@pathlaw.com

# **Exhibit 1**

STATE OF NORTH CAROLINA  
WAKE COUNTY

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

REPUBLICAN NATIONAL  
COMMITTEE and NORTH  
CAROLINA REPUBLICAN PARTY,

*Plaintiffs,*

v.

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, ALAN HIRSCH,  
JEFF CARMON, KEVIN N. LEWIS,  
SIOBHAN O'DUFFY MILLEN,  
STACY "FOUR" EGGERS IV, in  
Official Capacity as Members of  
NCSBE, and KAREN BRINSON  
BELL, in Official Capacity as Executive  
Director of NCSBE,

*Defendants.*

**DECLARATION OF ALEXANDER DENZA IN SUPPORT OF AFFIRMATIVE  
ACTION COALITION'S MOTION TO INTERVENE AS DEFENDANT**

I, Alexander Denza, hereby declare as follows:

1. I am over eighteen years of age. I have personal knowledge of the facts set forth herein. If called upon to testify before this Court, I would do so to the same effect.
2. I am a resident of Moore County, North Carolina. I am registered to vote in North Carolina and I vote in Moore County. I am a student at the University of North Carolina-Chapel Hill ("UNC") and thus also reside part-time in Orange County, North Carolina.
3. I am a member of the executive board of Affirmative Action Coalition at UNC.

4. Affirmative Action Coalition is a registered student membership organization at UNC. Only currently enrolled UNC students are permitted to be active members of Affirmative Action Coalition and hold office in the organization.

5. Affirmative Action Coalition was founded amid the U.S. Supreme Court's consideration of cases stemming from both UNC and Harvard related to the use of race in college admissions.

6. Affirmative Action Coalition's mission is to work toward securing equal access to education for all students, and the organization is committed to maintaining diversity at UNC, despite the outcome of the Supreme Court's decision in *Students for Fair Admissions v. UNC* and *Students for Fair Admissions v. Harvard*.

7. One of Affirmative Action Coalition's core initiatives is a project called "TransparUNCy." TransparUNCy exists to educate students about the organization and workings of the UNC System. As part of this initiative, we have led teach-ins, published opinion pieces, and engaged in other efforts to oppose outside political interference in the UNC System.

8. Particularly important to Affirmative Action Coalition's approach is a strategy of student civic engagement. As students who are directly affected by the actions of our state government and of the state-appointed Board of Governors of the UNC System, we seek to harness the collective voices and activism of UNC students in order to advocate for fair education and against efforts to interfere in university governance and education policy.

9. As a result, the voting rights of UNC students, including in particular Affirmative Action Coalition's own members, are of substantial importance for Affirmative Action Coalition. Affirmative Action Coalition supports efforts to make it as easy and efficient as possible for UNC students to vote.

10. When UNC applied to the North Carolina State Board of Elections to allow the mobile One Card to be allowed to be used as a form of voter identification in North Carolina, Affirmative Action Coalition strongly supported those efforts, and continues to support the availability of the mobile One Card as acceptable identification for purposes of voting.

11. We support the availability of the mobile One Card as voter identification because we are invested in the voting rights of all UNC students, including Affirmative Action Coalition's own members. We thus encourage all of our members to vote, and support efforts to make voting as accessible and straightforward for UNC students as possible.

12. I have a mobile One Card, and carry it with me at all times simply by virtue of having my phone on me. I can say from my own experience, too, that most UNC students I encounter have the mobile One Card and carry it as a matter of course. It is also my experience that most students carry only one form of the One Card, either physical or mobile, but not both, in part because once a student activates the mobile version, his or her physical card will cease to work. In addition, while the mobile version is now included in the student fee, the physical version takes additional time and a \$10 fee to obtain.

13. I understand that, in this lawsuit, the Plaintiffs seek to disallow the mobile One Card as a form of voter identification. Such a decision would have direct, immediate, and negative consequences for UNC students and for Affirmative Action Coalition in particular. For instance, I plan to personally use the mobile One Card in order to vote in the upcoming election. Other members of Affirmative Action Coalition also have the mobile One Card and plan to use it to vote in this upcoming election.

14. If the mobile One Card were no longer an option, it would be more difficult for UNC students, including our members, to vote, because it would deprive them of their simplest

and most straightforward option for voting. It would also cause significant confusion, because students currently expect to be able to use the mobile One Card.

15. If Plaintiffs' lawsuit were to succeed, and the mobile One Card could not be used to vote, Affirmative Action Coalition would take several steps in response. For one, the organization would seek to educate its members and UNC students that the mobile One Card has been rescinded as a valid voter identification and that students must obtain a different identification to be able to vote. It would do so by conducting a teach-in that would address this topic, as well as by publicizing the decision on its email list and Instagram page. It would also write about the decision in TransparUNCy's publication, TransparUNCy Press.

16. In addition, Affirmative Action Coalition would also commit its time and resources to advocate that UNC print physical One Cards for all UNC students at no cost to students and distribute them to students before early voting starts. All of this would distract from Affirmative Action Coalition's other priorities. Resources would necessarily be taken from our other work, such as publicizing interference in university governance and education policy. This would frustrate Affirmative Action Coalition's mission of securing equal access to education for all students and opposing outside political interference in university governance and education policy.

I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct.

Executed on September 15, 2024.



---

Alexander Denza

# **Exhibit 2**



261 N.C.App. 537

Unpublished Disposition

NOTE: THIS OPINION WILL NOT APPEAR  
IN A PRINTED VOLUME. THE DISPOSITION  
WILL APPEAR IN THE REPORTER.

An unpublished opinion of the North Carolina Court  
of Appeals does not constitute controlling legal  
authority. Citation is disfavored, but may be permitted  
in accordance with the provisions of Rule 30(e)(3)  
of the North Carolina Rules of Appellate Procedure.  
Court of Appeals of North Carolina.

Elizabeth E. LETENDRE, Plaintiff,

v.

CURRITUCK COUNTY, North Carolina, Defendant.

No. COA18-163

|

Filed: September 18, 2018

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

#### Attorneys and Law Firms

George B. Currin, Raleigh, for proposed intervenor-  
appellants.

Parker Poe Adams & Bernstein LLP, Raleigh, by Jonathan E.  
Hall and Michael J. Crook, for plaintiff-appellee.

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

#### Opinion

STROUD, Judge.

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

#### I. Background

The background of this case may be found in two prior  
opinions from this Court. See *Letendre v. Currituck County*,

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

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

*Id.* at —, 787 S.E.2d at 841.

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

## II. Interlocutory Order

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

An order is either interlocutory or the final determination of the rights of the parties. An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.... As a general proposition, only final judgments, as opposed to interlocutory orders, may be appealed to the appellate courts. Appeals from interlocutory orders are only available in exceptional cases. Interlocutory orders are, however, subject to appellate review:

if (1) the order is final as to some claims or parties, and the trial court certifies pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) that there is no just reason to delay the appeal, or (2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.

The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature.

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

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

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

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

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

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

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

### III. Motion to Intervene

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

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

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

N.C.G.S. § 1A–1, Rule 24(a) (2001). To satisfy the requirements of Rule 24(a)(2), our Supreme Court has recently stated that an intervening party must show that (1) it has a direct and immediate interest relating to the property

or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.

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

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

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

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

this Court is whether “there is inadequate representation of [the Longs’] interest by existing parties.” *Id.*

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

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

[T]he County’s defenses, and its interests in upholding its ordinance, have *nothing* to do with the purely “parochial” or “personal” interests of any particular landowner—like the Longs—in the SFR District. Rather, the County’s sole litigation interests are to protect the “public welfare” and the interests of its “general citizenry” to enact reasonable zoning restrictions on behalf of the common good of the County.

In contrast, the Longs, as an adjacent neighbor of Plaintiff’s property, have different interests from the County in the instant litigation. Their interests are entirely “parochial” and “personal,” which have nothing to do with the interests of the overall “public welfare” and “general citizenry” sought to be vindicated by the County as a “sovereign” for the benefit of its citizens are large. For the Longs, they allege “special damages” to their property if Plaintiff is adjudicated as exempt from the single-family detached

dwelling requirement due to adverse secondary effects on the Longs’ property in the form of: (i) increased noise; (ii) increased lighting; (iii) increased traffic; (iv) negative impacts on aesthetics, including partial blocking of ocean views; (v) potential fire hazards; (vi) potential adverse effects on water supply; and (vii) overall negative impacts on the quiet use and reasonable enjoyment of the Longs’ property.

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

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

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

Plaintiff Letendre also contends that "lack of participation in this case does not impede [the Longs] ability to protect whatever speculative or indirect interests they may have" as they have by "means other than intervention." Plaintiff Letendre contends "[a]ny issues the Longs may face with noise, lighting, safety, traffic, or aesthetics are addressed in the County's ordinances, through law enforcement, or with claims for damages and nuisance." First, as discussed above, the trial court determined the Longs' interests are not "speculative or indirect" and that issue is not before us on appeal. Furthermore, if the trial court should ultimately make a final ruling adverse to defendant Currituck County in this case, it is likely that any effort by the Longs to seek relief may then be foreclosed. Considering the contentious history

of the project and plaintiff Letendre's multiple attempts to not comply with the UDO, intervention in this action is likely the only way the Longs can seek to protect their interests. We also do not agree that the Longs should be required to file yet another lawsuit after this one is resolved to try to protect their interests. "The interests of judicial economy and efficiency weigh in favor of suits that will settle all of the issues in the underlying controversy." *Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 578, 541 S.E.2d 157, 163 (2000). Because defendant Currituck County admittedly cannot provide adequate representation of the Longs' interests, we conclude the Longs should have been allowed to intervene as a matter of right under Rule 24(a)(2). We therefore will not address their arguments for intervention under Rule 24(b).

#### IV. Conclusion

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

REVERSED and REMANDED.

Report per Rule 30(e).

Judges ZACHARY and MURPHY concur.

#### All Citations

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

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#### Footnotes

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

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# **Exhibit 3**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

REPUBLICAN NATIONAL COMMITTEE  
and NORTH CAROLINA REPUBLICAN  
PARTY,

NO. 24CV028888-910

Plaintiffs,

v.

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

Defendants.

**[PROPOSED] ANSWER**

Proposed Intervenor Affirmative Action Coalition AAC, by and through its attorneys, submit the following Answer to Plaintiffs' Complaint. Proposed Intervenor responds to the allegations in the Complaint as follows:

**INTRODUCTION**

1. The General Assembly enacted a detailed statute aimed at preventing electoral fraud by presentation of valid photo voter identification for in-person voting, as required by the Constitution. N.C. Gen. Stat. § 163-166.16(a). The law describes several physical photo voter identification items that a voter can produce to comply. Nowhere in that law, or related ones like N.C. Gen. Stat. §§ 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, or 20-7, did the General



Assembly directly describe or indirectly permit the use of electronic forms of photo identification “to confirm the person presenting to vote is the registered voter on the voter registration records.” N.C. Gen. Stat. § 163-166.16(g). The NCSBE knew the law up until August 19, 2024. It promulgated Numbered Memo 2023-03 (“NM23-03”)<sup>1</sup> on September 14, 2023, and updated it on February 23, 2024. Indeed, the NCSBE stated the law simply:

#### Acceptable Forms of Photo ID

The types of photo ID that are acceptable for voting purposes are listed in N.C.G.S. 163-166.16(a) and 08 NCAC 17 .0101(a)(1).

Is photocopy of voter's photo ID, or picture of their photo ID stored electronically on mobile device, an acceptable form of photo ID for in-person voting?

**No.** Under N.C.G.S. 163-166.16, voter presenting to vote in person must “produce” one of the listed “forms of identification.” **An image of photo ID, either as photocopy or photo on mobile device, is not one of the permitted forms of photo ID when voting in person.** [emphasis added]

In spite of this obvious application of the law for almost year, the three Democrat members of the NCSBE abruptly reversed course, less than three months before the November presidential election. On August 20, 2024, by three-two Democrat majority vote, the NCSBE approved allowing precinct workers to rely upon the University of North Carolina Chapel Hill’s digital student and employee identification.<sup>2</sup> This UNC digital identification exists as an electronic record on computer device. According to the NCSBE, on August 19, an image of photo ID on computer

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<sup>1</sup> Numbered Memo 2023-03 Photo ID and In-Person Voting.pdf  
[https://www.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo0%2023-03-03%20Photo%20ID%20and%20In-Person<sup>TM</sup>o20Voting.pdf](https://www.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo0%2023-03-03%20Photo%20ID%20and%20In-Person%20Voting.pdf) (Last visited September 9, 2024.)

<sup>2</sup> [s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-08-20/State Board of Elections Meeting-20240820.mp4](https://www.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-08-20/State Board of Elections Meeting-20240820.mp4) (seven to 23 minute. Last visited September 9, 2024.)

device did NOT satisfy the law requiring “a voter shall produce any of the following forms of identification that contain photograph” to satisfy the voting procedures and vote. But on August 20, that somehow met the specific requirements of the law. The law never changed. The Court should, respectfully, curb the NCSBE from acting outside its statutory authority.

**ANSWER:** Paragraph 1 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that on August 20, 2024, the NCSBE voted to allow precinct workers to recognize the University of North Carolina Chapel Hill’s digital student and employee identification card as an acceptable form of voter identification; Proposed Intervenor otherwise denies the allegations.

### **PARTIES, JURISDICTION & VENUE**

2. The Republican National Committee (“RNC”) is the national committee for the Republican Party, representing all registered Republicans across both the state and nation. It 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 political party, as defined in Article of Chapter 163 of the North Carolina General Statutes, to include N.C. Gen. Stat. § 163-96.

**ANSWER:** Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the RNC is the national committee for the Republican Party; Proposed Intervenor is otherwise without information or knowledge with which to form a belief as to the truth or falsity of the allegations.

3. Part of 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, the party, and, truly, all eligible voters who vote regardless of party or affiliation, are not silenced or diluted in any way. Preventing unqualified persons from 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 requirements of state law.

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

4. The NCGOP is state committee of the Republican Party, as defined by 52 U.S.C. § 30101(15), and political party, as defined in Article of Chapter 163 of the North Carolina General Statutes to include by N.C. Gen. Stat. § 163-96. The NCGOP represents the interests of registered Republican voters across North Carolina, residing in all 100 counties. The NCGOP also advocates for the interests of thousands, if not millions, of non-affiliated voters who align with various aspects of the Republican Party platform

**ANSWER:** Paragraph 4 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor is without information or knowledge with which to form a belief as to the truth or falsity of the allegations.

5. The NCGOP's mission and platform overlap with that of the RNC, including an emphasis on election integrity and security. The NCGOP's core mission ranges from counseling interested voters and volunteers on election participation, hosting candidate and voter registration events, staffing voting protection hotlines, investigating reports of voter fraud and disenfranchisement, and providing election day volunteers in all 100 counties across North Carolina. The NCGOP spends much time and effort advocating for its members throughout all levels of state government, working to ensure they are heard at the ballot box and beyond.

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

6. Plaintiffs RNC and NCGOP have organizational standing to bring this action. Defendants' actions and inaction directly impact their core organizational missions of election security and providing services aimed at promoting Republican voter engagement and electing Republican candidates to office. These Plaintiffs have a strong interest in a legally structured competitive campaign environment in which their candidates compete for votes and their voters cast ballots.

**ANSWER:** Paragraph 6 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

7. Defendants' violations of state law have forced these Plaintiffs to divert significant attention and resources into combatting election fraud in North Carolina. Plaintiffs' organizational and voter outreach efforts have been, and will continue to be, significantly frustrated by Defendants' ongoing violations. As a result, Plaintiffs have no choice but to expend otherwise focused time and money, beyond what they should need to spend under normal circumstances, 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 activity and responding to instances of potential voter fraud in upcoming elections, tasks Defendants should already perform under state and federal law.

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

8. 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 North Carolina, including, as a matter of public record, at least one registered Republican voter in all 100 counties. These unlawful voter identification processes and state law violations harm NCGOP's members. Defendants' statutory violations dilute these members' votes when any one ineligible voter votes illegally in an election. Additionally, these members' rights to participate in 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 central to the NCGOP's organizational mission.

**ANSWER:** Paragraph 8 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

9. Defendants' refusal to ensure legal voting procedures risks allowing fraudulent votes and inaccurate election results, causing Plaintiffs and their members harm in their ability to effectively compete in elections across the State. Considering the fact that North Carolina is two party-based system, this harm is especially profound. Recently, a state-wide election came down to about 400 votes separating one party's candidate from the other. Many local elections have been even closer. Verifying the accuracy of each vote is crucial.

**ANSWER:** Paragraph 9 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that some recent elections in North Carolina have been close, but there is no evidence that the results of North Carolina elections represent anything other than the accurate count of lawful, eligible voters; as a result, Proposed Intervenor otherwise denies the allegations.

10. The North Carolina State Board of Elections (“NCSBE”) is the state agency tasked with “general supervision over primaries and elections of the state...so long as they do not conflict with any provisions of this Chapter. N.C. Gen. Stat. § 163-22(a)(emphasis added.). NCSBE should ensure that North Carolina elections comply with all relevant state and federal laws and, in its own words, “works in conjunction with county boards of elections offices to ensure that elections are conducted lawfully and fairly.”<sup>3</sup>

**ANSWER:** Paragraph 10 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited website contains the quoted text; Proposed Intervenor otherwise denies the allegations.

11. Karen Brinson Bell is Executive Director of NCSBE and “Chief Election Official,” as defined by N.C. Gen. Stat. § 163-82.2. She oversees every election in all 100 counties. See N.C. Gen. Stat. § 163-27(d). Director Bell resides in North Carolina and is sued in her official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Director Bell’s residence; Proposed Intervenor otherwise admits the allegations.

12. Alan Hirsch is the Chairman of NCSBE, resides in Chapel Hill, North Carolina, and is sued in his official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Chairman Hirsch’s residence; Proposed Intervenor otherwise admits the allegations.

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<sup>3</sup> <https://www.ncsbe.gov/about> (Last visited September 9, 2024.)

13. Jeff Carmon is the Secretary of NCSBE, resides in Snow Hill, North Carolina, and is sued in his official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Secretary Carmon's residence; Proposed Intervenor otherwise admits the allegations.

14. Stacy Eggers, IV is member of NCSBE, resides in Boone, North Carolina, and is sued in his official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Mr. Eggers's residence; Proposed Intervenor otherwise admits the allegations.

15. Kevin Lewis is member of NCSBE, resides in Rocky Mount, North Carolina, and is sued in his official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Mr. Lewis's residence; Proposed Intervenor otherwise admits the allegations.

16. Siobhan Millen is member of NCSBE, resides in Raleigh, North Carolina, and is sued in her official capacity.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding Ms. Miller's residence; Proposed Intervenor otherwise admits the allegations.

#### **JURISDICTION AND VENUE**

17. This Court has jurisdiction over the claims asserted pursuant to N.C. Gen. Stat. §§ 1-253, et seq., N.C. Gen. Stat. § 7A-245, and N.C. Gen. Stat. §§ 150B-43, et seq.

**ANSWER:** Paragraph 17 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

18. This Court has personal jurisdiction over NCSBE, as it is state agency in North Carolina and over Director Bell, Chairman Hirsch, Secretary Carmon, Mr. Eggers, Mr. Lewis, and Mrs. Millen, as each is sued in their official capacities and are citizens residing in North Carolina.

**ANSWER:** Paragraph 18 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

19. Venue is proper in this court pursuant to N.C. Gen. Stat. §§ 163-22(1) and 1-82.

**ANSWER:** Paragraph 19 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the allegations.

### **FACTUAL ALLEGATIONS**

20. The General Assembly passes the laws in North Carolina. State agencies must follow, but not amend or deviate from those laws.

**ANSWER:** Paragraph 20 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the General Assembly passes laws in North Carolina, although that is not the end of the lawmaking process. Moreover, as Proposed Intervenor admits elsewhere, the General Assembly expressly empowered the State Board with the duty of evaluating and “approv[ing] the use of student identification cards issued by a constituent institution of The University of North Carolina.” N.C. Gen. Stat. § 163-166.17(a)(1)(b).



21. Since at least 2020, the laws of North Carolina have codified the Constitution to require that “When a registered voter presents to vote in person, the registered voter shall produce any of the following forms of identification that contain a photograph of the registered voter” and then describes several physical items that satisfy the requirement. N.C. Gen. Stat. § 163-166.16(a).

**ANSWER:** Paragraph 21 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

22. These physical, tangible items include passports, drivers licenses, photo identification cards for non drivers, registered voter identification cards, military identification cards, veterans identification cards, and tribal enrollment cards, amongst other items:

- 1) Any of the following that is valid and unexpired, or has been expired for one year or less:
  - a. A North Carolina **drivers license**.
  - b. A special identification **card** for nonoperators issued under G.S. 20-37.7 or other form of nontemporary identification issued by the Division of Motor Vehicles of the Department of Transportation.
  - c. A United States **passport**.
  - d. A North Carolina voter photo identification **card** of the registered voter issued pursuant to G.S. 163-82.8A.
  - e. Recodified as sub-subdivision (a)(2)c. of this section by Session Laws 2019-22, s. 1, effective June 3, 2019.
  - f. Reserved.
  - g. A student identification **card** issued by constituent institution of The University of North Carolina, community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in GS. 116-280(3), provided that card is issued in accordance with G.S. 163-166.17.

- h. An employee identification **card** issued by state or local government entity, including charter school, provided that card is issued in accordance with G.S. 163-166.18.
  - i. A **drivers license** or special identification **card** for nonoperators issue by another state, the District of Columbia, or territory or commonwealth of the United States, but only of the voter's voter registration was within 90 days of the election.
- 2) Any of the following, regardless of whether the identification contains printed expiration or issuance date:
- a. A military identification card issued by the United States government.
  - b. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities.
  - c. A tribal enrollment card issued by a State or federal recognized tribe.
  - d. An identification card issued by a department, agency, or entity of the United States government or this State for government program of public assistance.
- 3) Any expired form of identification allowed in this subsection presented by registered voter having attained the age of 65 years at the time of presentation at the voting place, provided that the identification was unexpired on the registered voter's sixty-fifth birthday.

N.C. Gen. Stat. § 163-166.16(a) (emphasis added).

**ANSWER:** Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited statute sets forth the list of acceptable forms of voter identification set forth in Paragraph 22; Proposed Intervenor otherwise denies the allegations.

23. Defendants are required to enact rules and procedures that comply with this law. Every single item in subsections (a)(1-3) are physical, tangible cards, drivers licenses, or passports. All of them can be held in person's hand and examined for what it is physically.

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

24. Another law requires a voter to present photo identification in accordance with N.C. Gen. Stat. § 163-166.16 when the voter enters the voting enclosure, and the precinct official examines the voter to ensure that the voter is registered and eligible to vote. N.C. Gen. Stat. § 163-166.7(a).

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

25. “After presentation of the required identification described in subsection (a) of this section, the precinct officials assigned to check registration shall compare the photograph contained on the required identification with the person presenting to vote. The precinct official shall verify that the photograph is that of the person seeking to vote.” N.C. Gen. Stat. § 163-166.16(b).

**ANSWER:** Paragraph 25 contains mere legal contentions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text.

26. “The purpose of the identification required pursuant to subsection (a) of this section is to confirm the person presenting to vote is the registered voter on the voter registration records.” N.C. Gen. Stat. § 163-166.16(g). The law on this topic is not superfluous or subject to creative interpretation by the NCSBE. It is deliberate, comprehensive, and clear.

**ANSWER:** Paragraph 26 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

27. A North Carolina drivers license, as described as an acceptable form of voter identification in N.C. Gen. Stat. § 163-166.16(a)(1)(a), is a physical object as described by law:

(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information: (1) An identification of this State as the issuer of the license. (2) The license holder's full name. (3) The license holder's residence address. (4) A color photograph of the license holder applied to material that is measured by the industry standard of security and durability and is resistant to tampering and reproduction. (5) A physical description of the license holder, including sex, height, eye color, and hair color. (6) The license holder's date of birth. (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply. (9) The license holder's signature. (10) The date the license was issued and the date the license expires. The Commissioner shall ensure that applicants 21 years old or older are issued drivers licenses and special identification cards that are printed in a horizontal format. The Commissioner shall ensure that applicants under the age of 21 are issued drivers licenses and special identification cards that are printed in a vertical format, that distinguishes them from the horizontal format, for ease of identification of individuals under age 21 by members of industries that regulate controlled products that are sale restricted by age and law enforcement officers enforcing these laws. At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race, which shall be designated with the letters "AI" for an applicant who is American Indian.

NC Gen. Stat. s 20-7(n). It is produced as a physical card made of plastic in a centralized location and that actual piece of plastic is mailed out to the citizens:

License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 60 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes and shall not be valid for identification purposes, except when conducting business with the Division and not otherwise prohibited by federal law. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant, unless the applicant is ineligible for mail delivery by the United States Postal Service at the applicant's residence. If the United States Postal

Service documents that it does not deliver to the residential address provided by the applicant, and the Division has verified the applicant's residential address by other means, the Division may mail the drivers license to the post office box provided by the applicant. Applicants whose only mailing address prior to July 1, 2008, was a post office box in this State may continue to receive their license at that post office box, provided the applicant's residential address has been verified by the Division.

NC Gen. Stat. § 20-7(f)(3b)(5).

**ANSWER:** Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits N.C. Gen. Stat. s 20-7(n) contains the quoted text; Proposed Intervenor otherwise denies the allegations.

28. A United States passport, as described as an acceptable form of voter identification in N.C. Gen. Stat. § 163-166.16(c), is a physical object that can be held in a person's hands.

**ANSWER:** Paragraph 28 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that presently, a United States passport can be held in one's hands; Proposed Intervenor otherwise denies the allegations.

29. As defined in the relevant part by Merriam-Websters Dictionary, a "card" is: "a flat stiff usually small and rectangular piece of material (such as paper, cardboard, or plastic) usually bearing information." See [www.merriam-webster.com/dictionary/card](http://www.merriam-webster.com/dictionary/card) (Last visited September 9, 2024.)

**ANSWER:** The source cited in Paragraph 29 speaks for itself. To the extent a response is required, Proposed Intervenor denies the allegations.

30. The first definition of "card" on Dictionary.com is: "a usually rectangular piece of stiff paper, thin pasteboard, or plastic for various uses, as to write information on or printed as a

means of identifying the holder.” See [www.dictionary.com/browse/card](http://www.dictionary.com/browse/card) (Last visited September 9, 2024.)

**ANSWER:** The source cited in Paragraph 30 speaks for itself. To the extent a response is required, Proposed Intervenor admits the allegations.

31. The first definition of “card” on the Cambridge online dictionary is: “a small, rectangular piece of card or plastic, often with your signature, photograph, or other information proving who you are, that allows you to do something, such as make a payment, get money from a bank, or enter a particular place.” See <https://dictionary.cambridge.org/dictionary/english/card> (Last visited September 9, 2024.)

**ANSWER:** The source cited in Paragraph 31 speaks for itself. To the extent a response is required, Proposed Intervenor admits the allegations.

32. By all appreciable normal definition and parlance of the day, a card means a physical, tangible item that can be held in a person’s hands and inspected.

**ANSWER:** Proposed Intervenor denies the allegations.

33. A special identification card, as described as an acceptable form of voter identification in N.C. Gen. Stat. § 163-166.16(b), is a physical object as described by law: “A special identification card shall include a color photograph of the special identification card holder and shall be similar in size, shape, and design to a drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.” N.C. Gen. Stat. § 20-37.7(c). It is basically the same as a physical, tangible drivers license, just without the permission to drive a vehicle.

**ANSWER:** Paragraph 33 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits N.C. Gen. Stat. § 20-37.7(c) contains the quoted text; Proposed Intervenor otherwise denies the allegations.

34. A voter photo identification card, as described as an acceptable form of voter identification in N.C. Gen. Stat. § 163-166.16(d), is a physical object as described by law: “The county board of elections shall,... issue without charge voter photo identification cards upon request to registered voters. The voter photo identification cards shall contain a photograph of the registered voter.” N.C. Gen. Stat. § 163-82.8A(a).

**ANSWER:** Paragraph 34 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits N.C. Gen. Stat. § 163-82.8A(a) contains the quoted text; Proposed Intervenor otherwise denies the allegations.

35. The law specifically contemplates that these cards will be printed physically: “The State Board shall make available to county boards of elections the equipment necessary to print voter photo identification cards. County boards of elections shall operate and maintain the equipment necessary to print voter photo identification cards.” N.C. Gen. Stat. § 163-82.8A(b). The General Assembly’s intent is clear; an electronic identification photo that is stored on a computer device is not printed.

**ANSWER:** Paragraph 35 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

36. Indeed, the statute later describes instances where the voter can get a replacement card: “[i]f the registered voter loses or defaces the voter’s photo identification card, the registered voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, or by telephone or mail.” N.C. Gen. Stat. § 163-82.8A(d)(3). The General Assembly’s intent is clear: nobody replaces a lost or defaced digitally stored electronic identification that is stored on a computer device. The General Assembly intended photo identification cards to be physical, tangible items.

**ANSWER:** Paragraph 36 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

37. A bit further along, the statute allows that “[i]f a registered voter has a change of name and has updated his or her voter registration to reflect the new name, the registered voter may request and obtain a replacement card from the registered voter's county board of elections.” N.C. Gen. Stat. § 163-82.8A(d)(4). If that is handled electronically with the voter’s online electronic profile, kept on file at any board of elections office, nobody needs to issue a replacement card. Instead, it would just reflect an updated electronic version on the computer device. Yet again, this shows that the General Assembly intended photo identification cards to be physical, tangible items.

**ANSWER:** Paragraph 37 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

38. Upon information and belief, all of the other forms of photo identification allowed by law under N.C. Gen. Stat. § 163-166.16(a) are physical, tangible items, too, including:



- a. A drivers license or special identification card for nonoperators issued by another state, N.C. Gen. Stat. § 163-166.16(a)(1)(i);
- b. A military identification card issued by the United States government, N.C. Gen. Stat. § 163-166.16(a)(2)(a);
- c. A Veterans Identification Card issued by the United States Department of Veterans Affairs, N.C. Gen. Stat. § 163-166.16(a)(2)(b);
- d. A tribal enrollment card issued by a State or federal recognized tribe, N.C. Gen. Stat. § 163-166.16(a)(2)(c); or
- e. An identification card issued by a department, agency, or entity of the United States government or this State for a government program of public assistance, N.C. Gen. Stat. § 163-166.16(a)(2)(d).

**ANSWER:** Paragraph 38 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

39. That leaves the final two types of cards the General Assembly described as the only acceptable forms of photo identification: student identification card, N.C. Gen. Stat. § 163-166.16(a)(2)(g), and an employee identification card, N.C. Gen. Stat. § 163-166.16(a)(2)(h).

**ANSWER:** Paragraph 39 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

40. “The State Board shall approve the use of student identification cards issued by a constituent institution of The University of North Carolina... The identification cards are issued after an enrollment or other process that includes one or more methods of confirming the identity of the student...” N.C. Gen. Stat. § 163-166.17(a)(1)(b).

**ANSWER:** Paragraph 40 contains mere legal contentions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text.

41. The definition of “card” in this section of the statute must have the same definition of “card” in other sections of the statute. “Ordinarily it is reasonable to presume that words used in one place in the statute have the same meaning in every other place in the statute.” Campbell v. First Baptist Church of City of Durham, 298 N.C. 476, 483 (1979). Thus, the requirement of physical, tangible card applies to student identification cards.

**ANSWER:** Paragraph 41 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited case contains the quoted text; Proposed Intervenor otherwise denies the allegations.

42. Moreover, as with other permissible identification cards, the law contemplates that UNC will have equipment for printing the identification cards and will protect that equipment to prevent misuse of it. N.C. Gen. Stat. § 163-166.17(a)(1)(c, d, e). Again, the need for equipment implies the production or creation of physical, tangible identification card, handed or delivered to the student, rather than an electronic or digital image stored on computer system.

**ANSWER:** Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

43. Finally, the law requires UNC to provide students with either hard “copy” or an “electronic link” to voting information. N.C. Gen. Stat. § 163-166.17(a)(1)(h). This shows how the General Assembly well knew how to distinguish between an electronic version versus tangible, physical version of document.

**ANSWER:** Paragraph 43 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

44. Accordingly, the law does not allow the NCSBE to expand the circumstances of what is an acceptable student identification card, beyond a tangible, physical item, to something only found on a computer system.

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

45. The same basic principles apply to the use of an electronic identification document for government employees. “The State Board shall approve the use of employee identification cards issued by a state or local government entity,... The identification cards are issued after an employment application or other process that includes one or more methods of confirming the identity of the employee using information...” N.C. Gen. Stat. § 163-166.18(a)(1)(b). The law requires that an employee identification card is issued, implying that there is a physical, tangible item created and sent to the employee, similar to a drivers license or voter photo identification card.

**ANSWER:** Paragraph 45 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited statute contains the quoted text; Proposed Intervenor otherwise denies the allegations.

46. The law contemplates that the employer, in this instance UNC, will have equipment for producing the identification cards and will protect that equipment to prevent misuse of it. N.C. Gen. Stat. § 163-166.17(a)(1)(c, d, & e). Again, the need for equipment necessarily implies the

production or creation of a physical, tangible identification card, handed or delivered by mail to the employee. Equipment does not produce a card if it is simply an electronic or digital image stored on a computer system.

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

47. In the regulations promulgated by the NCSBE under the North Carolina Administrative Code about Verification of Photo Identification During In-Person Voting, the NCSBE required: “(1) The photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.16(a). A valid United States passport book or passport card is acceptable pursuant to G.S. 163-166.16(a)(1)(c). (2) The photograph appearing on the photo identification bears reasonable resemblance to the person presenting to vote.” 08 NCAC 17 .0101(a)(1, 2).

**ANSWER:** Paragraph 47 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited regulation contains the quoted text; Proposed Intervenor otherwise denies the allegations.

48. Again, the normal use of the words “photograph appearing on the photo identification” implies that it is physical, tangible item that can be held in the precinct official’s hands and inspected.

**ANSWER:** Paragraph 48 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

49. All of these statutory and regulatory definitions and word choices, read *in pari materia*, lead to the inescapable conclusion that electronically stored documents accessed on computer devices do not satisfy the statutory requirements of N.C. Gen. Stat. § 163-166.16(a).

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

50. Card does not mean an electronically stored document accessed on computer device using computer system. Card means card.

**ANSWER:** Proposed Intervenor denies the allegations.

51. For about year, the NCSBE did not escape that conclusion. It understood and agreed with the plain language of the law and all of the different components when read together. When it first promulgated NM23-03 on September 14, 2023, and even when it updated NM23-03 on February 23, 2024, the NCSBE understood that electronic identification violated the law as stated on page three:

#### Acceptable Forms of Photo ID

The types of photo ID that are acceptable for voting purposes are listed in N.C.G.S. 163-166.16(a) and 08 NCAC 17 .0101(a)(1).

Is photocopy of voter's photo ID, or picture of their photo ID stored electronically on mobile device, an acceptable form of photo ID for in-person voting?

**No.** Under N.C.G.S. 163-166.16, voter presenting to vote in person must "produce" one of the listed "forms of identification." **An image of photo ID, either as photocopy or photo on mobile device, is not one of the permitted forms of photo ID when voting in person.** [emphasis added]

**ANSWER:** Paragraph 51 contains mere characterizations, legal contentions, and conclusions to which no response is required. NM23-03 speaks for itself. To the extent a response is required,

Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to NCSBE's understanding; Proposed Intervenor denies the remaining allegations.

52. Director Bell promulgated that memo under the limited authority delegated by the NCSBE to the executive director pursuant to G.S. § 163-22(p).

**ANSWER:** Paragraph 52 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that NM23-03 was issued pursuant to G.S. § 162-22(p).

53. Director Bell noted that on page one: "the voter will be asked to show photo ID during the check-in process. The photo ID shown by the voter must meet certain legal requirements: (1) the ID must be an acceptable type of photo ID." As discussed above, no laws permit an electronic photo identification: card, license, passport, or otherwise.

**ANSWER:** Paragraph 53 contains mere characterizations, legal contentions, and conclusions to which no response is required. NM23-03 speaks for itself. To the extent a response is required, Proposed Intervenor denies the allegations.

54. Last modified in 2019, N.C. Gen. Stat. §§ 163-166.17 & 166.18 had been on the books for at least three, if not four, years before Director Bell promulgated NM23-03.

**ANSWER:** Proposed Intervenor admits the allegations.

55. The NCSBE and Director Bell had specific knowledge about N.C. Gen. Stat. §§ 163-166.17 166.18 when they promulgated NM23-03. On page four, she wrote:

When a student or government-employee ID card is approved by the State Board, does that mean that only those ID cards that are identical to the one submitted with the institution's application for approval can be used for voting?

No. Once an institution's ID has been approved, that institution's ID is acceptable, including ID cards that were issued before the ID was approved, even if those previously issued ID cards differ from the latest

version. **Both N.C.G.S. §§ 163-166.17 and 163-166.18 permit the State Board to approve “the use of . . . cards issued by” an institution** if "cards issued during the approval period" comply with the requirements outlined in the statute, including the requirement that the card contain an expiration date. In short, the legislature’s intent was to permit an institution’s ID card to be used for voting if that institution commits to issuing compliant cards during the approval period. The law is not meant to permit only those cards issued during the approval period to be accepted for voting, thus requiring an institution to replace the already issued ID cards in circulation, in order for their students or employees to be able to use their IDs to vote. Instead, once an institution's ID meets the requirement with respect to the IDs that are to be issued during the approval period, the institution's ID, including cards already issued, are acceptable.

**ANSWER:** Paragraph 55 contains mere characterizations, legal contentions, and conclusions to which no response is required. NM23-03 speaks for itself. To the extent a response is required, Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to NCSBE or Director Bell’s knowledge; Proposed Intervenor denies the remaining allegations.

56. Again, the words “**ID cards,**” “**issued,**” and “**differing from latest versions**” all show that the NCSBE understood it was talking about physical, tangible item that person could hold in her hands and inspect. Indeed, NM23-03 never mentions anything about an electronic version of photo identification “card” for students or government employees.

**ANSWER:** Paragraph 56 contains mere characterizations, legal contentions, and conclusions to which no response is required. NM23-03 speaks for itself. To the extent a response is required, Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to NCSBE’s understanding.

57. Later in NM23-03, the NCSBE repeatedly refers to “the photo on the ID,” the judge “examining the photo ID presented,” and the “photo ID card issued.” Again, this shows that Defendants understood the law precisely as it was unambiguously meant to be applied: physical, tangible item that person could hold in her hands and inspect.

**ANSWER:** Paragraph 57 contains mere characterizations, legal contentions, and conclusions to which no response is required. NM23-03 speaks for itself. To the extent a response is required, Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to Defendants' understanding.

58. While the North Carolina General Assembly delegated certain limited powers to the NCSBE in N.C. Gen. Stat. § 163-22(a), weakening or ignoring voter-fraud and photo identification laws contained in Chapter 163 of the General Statutes was not one of those powers:

The State Board shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable *so long as they do not conflict with any provisions of this Chapter.*

(Emphasis added.)

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

59. Despite that limited delegation to the NCSBE to enforce the laws as written, at the August 20, 2024, meeting, the NCSBE escaped from its prior, obvious conclusions about the law. The NCSBE voted to change their established position and accept electronic student and employee identification documents from UNC as saved on computer system and produced to precinct official on computer device.

**ANSWER:** Paragraph 59 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that on August 20, 2024, NCSBE voted to accept electronic student and employee identification documents from UNC; Proposed Intervenor otherwise denies the allegations.



60. Upon information and belief, the NCSBE has taken no action to request or even attempted to have the General Assembly change any of these relevant laws to add an electronic version of photo identification as an acceptable method under N.C. Gen. Stat. §§ 163-166.16, 163-166.17, or 166.18. Nor has it tried to change or add any other law on point, for that matter.

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

61. Instead, three board members decided that, in their opinion, it would be a good policy to allow precinct officials to use UNC's student and employee electronic identification documents to satisfy the existing terms of N.C. Gen. Stat. §§ 163-166.16, 163-166.17, or 166.18. Those three board members stated, amongst other things, that this law is formalistic and that the dissenting board members raised merely technical issues.

**ANSWER:** Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the basis of board members' decisions; Proposed Intervenor otherwise denies the allegations.

62. Statutory mandates regarding voting processes are, quite literally, technical and meant to be strictly construed, formalistically. "Under no circumstances will the courts follow an administrative interpretation in direct conflict with the clear intent and purpose of the act under consideration." *High Rock Lake Partners, LLC v. N.C. Dep't of Transp.*, 366 N.C. 315, 319, 735 S.E.2d 300, 303 (2012) (citation, quotation marks, and alteration omitted); *see also Riddle v. Cumberland County*, 180 N.C. 321, 326 (1920).

**ANSWER:** Paragraph 62 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits the cited case contains the quoted text; Proposed Intervenor otherwise denies the allegations.

63. Mr. Eggers and Mr. Lewis, the two dissenting board members in the minority, expressed their disagreement with the lawless acts of the NCSBE when it purported to change and expand the law, untethered to the unambiguous words enacted by the General Assembly.

**ANSWER:** Paragraph 63 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that Mr. Eggers and Mr. Lewis voted against the Board's decision; Proposed Intervenor otherwise denies the allegations.

64. While they both voted against the measure, the other three board members voted to enact their opinions about what the law should say, regardless of the existing statutes and the limitations on the NCSBE's statutory authority. Those three board members are welcome to their opinions, and even to take action to change these laws, as permitted by law. But they are not allowed to defy the law as it currently exists and substitute their opinions about what the law should be. If those three board members want to vote in a legislative body to change the laws, they should run for office, get elected, and serve in the General Assembly. However, until the General Assembly passes a law that is enacted and becomes effective, the NCSBE must limit itself to applying the existing law, as it is unambiguously written.

**ANSWER:** Paragraph 64 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

65. There exist many possibilities why using electronically stored voter photo identification may not be good idea, such as:

- a. It may be easy, or at least easier, to alter an electronic document than physical, tangible item that precinct official can hold in her hands and inspect;
- b. It may be difficult for precinct official to be able to see a screen;

- c. It may be difficult to use if there are network or hardware problems that preclude viewing the electronically stored document;
- d. Can a voter bring in an iPad or laptop to show the precinct official?; or
- e. What happens if there is a dispute about the reliability or authenticity of the electronic document? Does the voter have to leave the device with precinct officials or elections workers to ensure security of it after it is implicated in potential voter irregularity?

**ANSWER:** Paragraph 64 contains mere speculation and characterizations to which no response is required. To the extent a response is required Proposed Intervenor denies the allegations.

66. The list of potential problems is vast, unknown, and yet to be explored. The answers are best left to the General Assembly to consider, deliberate, and enact.

**ANSWER:** Proposed Intervenor denies the allegations.

67. Many states, including North Carolina, confront issues relating to non-citizens and other ineligible persons attempting to register to vote. *See, e.g.,* N.C. Gen. Stat. § 163-82.14(c1).<sup>4</sup>

**ANSWER:** The source cited in Paragraph 67, footnote 4, speaks for itself. Proposed Intervenor otherwise deny the allegations.

68. Defendants' unilateral expansion of photo identification before registering and accepting voters at in-person poll sites in contravention of the law could allow hundreds or thousands of ineligible voters to vote in the upcoming November 5, 2024, election and beyond.

**ANSWER:** Paragraph 68 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

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<sup>4</sup> "On Wednesday, August 21, 2024, Ohio announced that it had identified at least 597 non-citizens who registered or voted in recent elections or both. A comprehensive statewide audit identified 154,995 ineligible registrants on Ohio's voter rolls. See <https://apnews.com/article/ohio-voters-citizenship-referrals-42799a379bdda8bca720d6c42f99c65> (Last visited September 9, 2024.)

69. Upon information and belief, Defendants' violations will allow non-eligible voters to vote in North Carolina, in direct contravention of both state law and the North Carolina Constitution. *See, e.g.*, N.C. Const. art. VI § 2(4). (Photo identification for voting in person. Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.)

**ANSWER:** Paragraph 69 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

70. By allowing ineligible voters to vote, Defendants have brought the integrity and validity of the State's elections into question.

**ANSWER:** Proposed Intervenor denies the allegation.

71. Even worse, by refusing to correct their errors, Defendants are willfully ignoring their statutory responsibilities.

**ANSWER:** Paragraph 71 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

72. If Defendants do not require all eligible voters to present statutorily required adequate photo identification pursuant to N.C. Gen. Stat. §§ 163-166(a) and 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, or 20-7, then the legitimate votes of qualified voters will be diluted and disenfranchised in upcoming elections.

**ANSWER:** Paragraph 72 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

73. This reality will, in turn, have substantial chilling effect on North Carolinians' right to vote in free and fair elections with equal protection under the law. See N.C. Const. art. §§ 10 19.

**ANSWER:** Paragraph 73 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

74. Defendants already maintain processes for seeking out additional information from voters who fail to provide necessary photo identification information.

**ANSWER:** Paragraph 74 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

75. Upon information and belief, Defendants' position in NM23-03 remains in effect.

**ANSWER:** NM23-03 speaks for itself. Proposed Intervenor is otherwise without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations.

76. Indeed, upon information and belief, no training on accepting UNC student or employee electronic voter identification has occurred in any local precinct or county board of elections, less than two months away from presidential election.

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

77. Thus, any burden on Defendants in terms of time required to correct the erroneous expansion beyond the statutory confines is mitigated by the fact that the NCSBE has done practically nothing to implement their changed position, beyond voting to abrogate the law.

**ANSWER:** Paragraph 77 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

78. Unlike the minimal burden Defendants would face when required to comply with state law, the burden placed on Plaintiffs is palpable. Absent immediate corrective action by Defendants, the significant harm faced by Plaintiffs will only increase. Not only will Plaintiffs' members, and all voters, votes be diluted and disenfranchised, but Plaintiffs' mission of advocating for Republican voters, causes, and candidates will be impeded by illegal votes of potentially ineligible voters.

**ANSWER:** Paragraph 78 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

79. With the November 5, 2024, election less than two months away, early voting starting in less than month, and ballots soon to be mailed out for voting by mail, it is of utmost importance that Defendants take immediate actions to correct their wrongs, guarantee that only qualified voters vote, and prevent ineligible persons from voting.

**ANSWER:** Paragraph 79 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that election day is less than two months away, early voting starts in less than a month, and that absentee ballots will soon be mailed out. Proposed Intervenor otherwise denies the allegations

**CLAIM FOR RELIEF**

**COUNT ONE: VIOLATION OF N.C.G.S. §§ 163-116, 163-117, 163-118  
(DECLARATORY JUDGMENT, JUDICIAL REVIEW, WRIT OF MANDAMUS)**

80. Plaintiffs incorporate the paragraphs above by reference as if fully set forth again.

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

81. Plaintiffs bring this claim for declaratory judgment pursuant to N.C. R. Civ. P. 57 and N.C. Gen. Stat. §§ 1- 253, et seq., as to the rights, status, or other legal relations between Plaintiffs and Defendants and for judicial review and reversal of the NCSBE's ruling at the August 20, 2024, meeting pursuant to N.C. Gen. Stat. §§ 150B-43, et seq.

**ANSWER:** Paragraph 81 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

82. North Carolina law unambiguously forbids Defendants from accepting electronic voter photo identification to register and vote in-person. N.C. Gen. Stat. §§ 163-166(a), 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, 20-7.

**ANSWER:** Paragraph 82 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

83. The NCSBE provided guidance at their August 20, 2024, board meeting that directly conflicts with those laws, the applicable regulations, and its own current NM23-03 which remains in effect.

**ANSWER:** Paragraph 83 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

84. Upon information and belief, Defendants intend to instruct and force local precinct officials and County Board of Elections to allow the use of unlawful electronic voter photo identification in the upcoming presidential election on November 5, 2024.

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

85. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiffs and Defendants in regard to, among other things, the NCSBE's erroneous interpretation of the laws concerning electronic voter photo identification and the NCSBE's issuance of flawed guidance to the county boards of elections that directly conflicts with Chapter 163 of the General Statutes.

**ANSWER:** Paragraph 85 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

86. Defendants' actions have harmed Plaintiffs. Unless and until the Court enters declaratory and injunctive relief in Plaintiffs' favor, Defendants' actions will continue to irreparably harm Plaintiffs by improperly directing and forcing local precinct officials and County Board of Elections to allow the use of unlawful electronic voter photo identification in the upcoming presidential election on November 5, 2024.



**ANSWER:** Paragraph 86 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

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

- a. The only type of voter photo identification that qualifies under North Carolina law is a voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
- b. To be allowed to vote, a voter must produce acceptable voter photo identification which cannot, under the law, be a UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.

**ANSWER:** Paragraph 87 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

91. Plaintiffs are also entitled to preliminary and permanent injunctive relief requiring Defendants to:<sup>5</sup>

- a. Immediately notify all County Boards of Elections in writing that:
  - i. The only type of voter photo identification that qualifies under North Carolina law is voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
  - ii. To be allowed to vote, voter must produce acceptable voter photo identification which cannot, under the law, be UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.
- b. Rescind or delete all parts of any Numbered Memo or board meeting that state or in any way imply that County Board of Elections or precinct official may accept UNC student or employee electronic photo identification under either

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<sup>5</sup> Although this appears to be the 88th allegation, the Complaint lists this as paragraph 91. Proposed Intervenor adopts the Complaint's numbering for ease of reference.

N.C. Gen. Stat. §§ 163-117 or 163-118 when voter must produce acceptable voter photo identification.

**ANSWER:** Paragraph 91 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Issue declaratory judgment declaring that:
  - a. The only type of voter photo identification that qualifies under North Carolina law is voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
  - b. To be allowed to vote, voter must produce acceptable voter photo identification which cannot, under the law, be UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.

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

2. Issue an expedited writ of mandamus and preliminary and permanent injunction ordering Defendants to comply with North Carolina laws to include specifically N.C. Gen. Stat. §§ 163-166(a), 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, 20-7, and requiring Defendants to:

- a. Immediately notify all County Boards of Elections in writing that:
  - i. The only type of voter photo identification that qualifies under North Carolina law is voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
  - ii. To be allowed to vote, voter must produce acceptable voter photo identification which cannot, under the law, be UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.

- b. Rescind or delete all parts of any Numbered Memo or board meeting that state or in any way imply that County Board of Elections or precinct official may accept UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118 when voter must produce acceptable voter photo identification.

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

3. Promptly set date for hearing this dispute pursuant to N.C. R. Civ. P. 57 and 65;

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

4. Award Plaintiffs attorney's fees, expenses, and costs as permitted by law;

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

5. Retain jurisdiction over this matter to ensure Defendants comply with any Orders issued by this Court; and;

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

6. Grant such additional relief as the Court deems just and proper.

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

## **GENERAL DENIAL**

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

## **AFFIRMATIVE DEFENSES**

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

### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to bring their claims.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by laches.

### **THIRD AFFIRMATIVE DEFENSE**

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

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs fail to demonstrate entitlement to equitable relief.

**WHEREFORE**, Proposed Intervenor respectfully requests that this Court:

1. Denies that Plaintiffs are entitled to any relief;
2. Dismiss the Complaint in its entirety, with prejudice; and
3. Grant such other and further relief as the Court may deem just and proper,

including, but not limited to, an award of Proposed Intervenor's reasonable costs and attorneys' fees.

Dated: September 16, 2024

Respectfully submitted,

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