

No. COAP24-624

No.

TENTH JUDICIAL DISTRICT

\*\*\*\*\*  
NORTH CAROLINA COURT OF APPEALS  
\*\*\*\*\*

ROBERT F. KENNEDY, JR.,

Plaintiff,

vs.

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

Defendants.

From Wake County  
24 CVS 27757-910

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**PETITION FOR WRIT OF SUPERSEDEAS  
AND MOTIONS FOR TEMPORARY STAY**  
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**PETITION FOR WRIT OF SUPERSEDEAS  
AND MOTION FOR TEMPORARY STAY AND TEMPORARY INJUNCTION**  
\*\*\*\*\*

**TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:**

Plaintiff Robert F. Kennedy, Jr. ("Kennedy"), pursuant to N.C. R. App. P. 23,  
respectfully petitions this Court to issue its writ of supersedeas and, pursuant to N.C.  
R. App. P. 23(e), move the Court to enter a temporary stay during the pendency of

Plaintiff's appeal, including temporary injunctive relief pursuant to Court's inherent authority to supervise lower courts, as identified in N.C. R. Civ. P. 62(f).

### **INTRODUCTION**

In this action, Kennedy timely complied with all requirements set forth under state law in order to remove his name from North Carolina's general election ballot prior to September 6, 2024. This statutory compliance notwithstanding, the North Carolina State Board of Elections ("NCSBE") declined to remove Kennedy from the ballot, relying on their own indeterminate, subjective "practicality" standard. Kennedy brought suit, and the trial court has now denied Kennedy injunctive relief which would halt the printing and mailing of ballots with his name on them while this issue is decided. But once ballots are mailed after September 6, 2024, the issue becomes moot—thus, absent this Court's issuance of a writ of supersedeas, staying the trial court's order and entering a temporary injunction to preserve the status quo, Kennedy will suffer irreparable harm and be denied his right to a meaningful appeal.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **Factual Background**

Kennedy was the 2024 nominee for President of the United States for the We The People Party in North Carolina. *See* Verified Complaint ("Compl."), at ¶ 8. This past August, We The People successfully fought to be recognized as a valid political party in the state and to have Kennedy placed on North Carolina's ballots as the party's nominee for president. *Id.* at ¶ 20-24. However, on Friday, August 23, 2024, Kennedy announced that he was suspending his presidential campaign. *Id.* at ¶ 29.

The NCSBE is the state agency tasked with “general supervision over primaries and elections of the state.” *See* N.C. Gen. Stat. § 163-22. Karen Brinson Bell is the Executive Director of NCSBE, Alan Hirsch is the Chair of NCSBE, Jeff Carmon is the Secretary of NCSBE, and Stacy Eggers, IV, Kevin N. Lewis, and Siobhan O’Duffy Millen are members of NCSBE. *Id.* at ¶¶ 9-15. In hopes of avoiding voter confusion, both Kennedy and We The People promptly reached out to NCSBE after Kennedy’s announcement in order to begin the process of removing Kennedy from North Carolina’s ballots. *Id.* at ¶¶ 44-49. Unfortunately for North Carolina’s voters, requests from Kennedy and We The People were denied.

North Carolina law provides a clear right and process for political nominees to remove themselves from the ballot, as outlined in N.C. Gen. Stat § 163-113—titled “Nominee’s *right* to withdraw as a candidate.” (emphasis added). *Id.* at ¶ 31.

Specifically, N.C. Gen. Stat. § 163-113 states:

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate *unless, prior to* the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, that person submits to the board of elections which certified the nomination a written request that [the] person be permitted to withdraw.

*Id.* (emphasis added).

Thus, by its plain language this statute allows a nominee to withdraw provided that he or she submits a written request before absentee ballots are sent to military and overseas voters before the deadline for a given election cycle. The initial deadline for the 2024 election is September 6, 2024, however, the parties agree that the

operative final deadline is September 21, 2024, which is federally mandated.<sup>1</sup> *See* N.C. Gen. Stat. §§ 163-113, 163-258.9 *et seq.*; *see also* Compl. at ¶ 33.

It is undisputed that Kennedy submitted formal written requests for his withdrawal prior to any applicable statutory deadline(s). *Id.* at ¶¶ 44-50. NCSBE also admits it was aware of Kennedy’s wish to be removed from the ballot even before it received a formal request. *Id.* at ¶¶ 42-43. Defendant Brinson Bell, NCSBE’s Executive Director, admits she received inquiries from County Boards of Elections about continued ballot printing efforts soon after Kennedy’s August 23, 2024 press conference. *Id.* at ¶¶ 42. Despite knowing that Kennedy wished to have his name removed from the ballot, Defendant Brinson Bell instructed the boards to continue printing ballots with Kennedy’s name on them. *Id.* at ¶¶ 42-43.

On August 26, 2024, Kennedy inquired about the formal removal process. *Id.* at ¶ 44. Yet, NCSBE continued to direct counties to print ballots with Kennedy’s name on them. *Id.* at ¶ 45.

On August 27, 2024, the NCSBE received a letter from Kennedy formally requesting that he be removed from the ballot, but NCSBE maintained its directive to continue printing ballots with his name on them. *Id.* at ¶¶ 46-47. The NCSBE’s later justification for this directive was that Defendant Brinson Bell needed to receive a request from We The People directly, arguing that only the party could request

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<sup>1</sup> As set forth in the Complaint, NCSBE staff, including their general counsel, has recognized that there is some “wiggle room” to this deadline, so long as certain federally mandated deadlines are met. *See* Compl., at ¶¶ 35-38.

Kennedy's removal, a wholly novel position with no basis in the controlling statutes. *Id.* at ¶ 47.

On August 28, 2024, NCSBE received a letter from We The People formally requesting that Kennedy be removed from the ballot. Even still, despite Brinson Bell's purported justification being satisfied, NCSBE did not halt the printing of ballots with Kennedy's name on them. *Id.* at ¶¶ 48-49.

Despite having been aware of the issue for nearly a week, the NCSBE finally held an emergency hearing on the matter on August 29, 2024. *Id.* at ¶ 50. During the hearing, the focus was on "practical" concerns of printing corrected ballots. *Id.* at ¶ 52. Tellingly, there were no discussions of Kennedy's compliance with the plain language of the applicable statutes, despite NCSBE staff admitting that "normally a candidate can withdraw their name from the ballot" so long as the request is received before applicable deadline(s). *Id.* at ¶¶ 51, 54.

While ignoring Kennedy's undeniable adherence to the deadlines specified in North Carolina law, discussion in the August 29, 2024 meeting instead devolved into criticisms of Kennedy personally, with some Defendants disparaging him and questioning his motives. *Id.* at ¶¶ 56-57. Amazingly, several Defendants faulted Kennedy for not requesting his removal sooner, totally ignoring the fact that he immediately began requesting his withdrawal from the ballot soon after his announcement. *Id.* at ¶ 60.

Ultimately, in a 3-2 vote along party lines, the NCSBE declined to remove Kennedy from the ballot. *Id.* at ¶ 61. In reaching this conclusion, NCSBE ignored



controlling statutes and instead elected to insert their own indeterminate, subjective “practicality” standard in denying Kennedy’s requests. *Id.* at ¶ 61. This standard was wholly undefined by the board, the statutes, or the applicable regulations, a fact which confused several Defendants and led one to observe that it felt as though the determination on “practicality” had already been made based on NCSBE’s own actions. *Id.* at ¶¶ 59, 61. Ultimately, as the timeline above highlights, any impracticalities could have been mitigated by NCSBE by paying heed to Kennedy’s request. Instead, NCSBE chose to exacerbate the impracticalities by ordering continued printing of ballots with Kennedy’s name on the despite the compliance with the statutory requirements to withdraw from the election.

### **Procedural Background**

On August 30, 2024, Kennedy filed his Complaint. On September 3, 2024, Kennedy filed his Motion for Temporary Restraining Order And, In The Alternative, An Expedited Preliminary Injunction (“Motion for TRO”). On September 5, 2024, the Motion for TRO was heard before the Honorable Rebecca W. Holt.

On September 5, 2024, Judge Holt denied the Motion for TRO (the “Order”), finding only that Kennedy had not established irreparable harm. Judge Holt also denied Kennedy’s request that the Court’s order be stayed for forty-eight (48) hours, including a forty-eight (48) hour injunction on the mailing of ballots (which are set to be mailed out the morning of September 6, 2024). However, the Court granted a twenty-four (24) hour stay and injunction.

Kennedy filed his Notice of Appeal with the trial court on September 5, 2024. Given the impending September 6, 2024 deadline when ballots are to be mailed out, and that the Order only prevents ballots from being mailed for the next twenty-four hours, Kennedy filed this petition to preserve the status quo—i.e., halt ballots from being printed or mailed with his name on them—until his appeal can be heard. Accordingly, a writ of supersedeas should be issued.

### **REASONS WHY THIS WRIT SHOULD ISSUE**

#### **I. A STAY AND INJUNCTIVE RELIEF IS NECESSARY TO PRESERVE THE STATUS QUO, AVOID IRREPARABLE HARM TO KENNEDY, AND TO PROTECT KENNEDY’S RIGHT TO A MEANINGFUL APPEAL.**

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

power of an appellate court,” and the writ’s purpose “is to preserve the status quo pending the exercise of appellate jurisdiction.” *Craver v. Craver*, 298 N.C. 231, 237-38, 258 S.E.2d 357, 362 (1979); *see also City of New Bern v. Walker*, 255 N.C. 355, 121 S.E.2d 544, 545-46 (1961).

In this case, a writ of supersedeas is proper because it would preserve the status quo immediately prior to the trial court’s Order. Specifically, no ballots bearing Kennedy’s name have been sent to any voters. Because of the substantial rights implicated and the potential harm facing Kennedy should these inaccurate ballots be mailed to voters, this status quo should remain while this Court reviews and addresses that Order. By refusing to provide injunctive relief, the Order effectively cancels Kennedy’s statutory and constitutional rights while ballots with his name on them are printed and mailed, despite his withdrawal as a candidate in North Carolina.

Here, though the trial court granted a twenty-four hour stay of its order denying the TRO, the short stay entered will not suffice to maintain the status quo and prevent the irreparable harm Kennedy would suffer as a result based on the extraordinary circumstances of this case. This is especially true where the NCSBE has indicated it would begin mailing ballots upon the termination of the stay. A longer stay is necessary for this Court to review the trial court’s erroneous Order. Given the conceded flexibility NCSBE has to delay mailing ballots so long as the federal September 21, 2024 deadline is met, such a stay would be appropriate and not impact the ability of voters to cast their ballots prior to Election Day.

In the absence of a writ of supersedeas, Kennedy would suffer irreparable harm and be deprived of a meaningful appeal. To date, the NCSBE has ignored Kennedy's rights under North Carolina election law and his free speech rights under the state constitution. Instead, the NCSBE continues barreling down an erroneous and prejudicial path that would erase those rights permanently. If the NCSBE proceeds as it has forecasted and mails ballots to voters on September 6, there will be no remedy for its brazen violation of Kennedy's statutory and constitutional rights to withdraw from the ballot. Even worse, voters in North Carolina will have ballots bearing Kennedy's name and can choose him as their candidate for president, despite his withdrawal from that race, thus leading to potentially widespread voter confusion. And if this Court disagrees with the trial court, the further printing and, ultimately, mailing of ballots with Kennedy's name on them *prior* to this Court's decision would deprive Kennedy the benefit of his appeal. Indeed, once the ballots are mailed in days' time, the harm to Kennedy will have been done, and his entire case is rendered moot. Kennedy will have been deprived of his statutory right pursuant to N.C. Gen. Stat. § 163-113 to withdraw as a candidate, and further, his constitutional rights against compelled speech will have been violated. *See* N.C. Const. art. I § 14; *see State v. Petersilie*, 334 N.C. 169, 184 (1993) ("In this case, for the purpose of applying our State Constitution's Free Speech Clause we adopt the United State Supreme Court's First Amendment jurisprudence."); *see also Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795, 108 S.Ct. 2667, 2677 (1988) (finding that compelling one to make speech they would not otherwise make is

a content-based regulation and subject to strict scrutiny, requiring a compelling state interest to justify the action). Thus, the trial court's Order affects a substantial right and is immediately appealable, as it is virtually impossible to obtain a final judgment prior to Kennedy's right to withdraw his name from the ballot being eliminated. *See Harris v. Matthews*, 361 N.C. 265, 269-70, 643 S.E.2d 566, 569 (2007) (holding First Amendment rights to be substantial and citing cases supporting same).

In addition, public interest favors the relief Kennedy seeks. There is an undeniable interest in avoiding ballot confusion, as well as having a ballot where each qualified voter and their vote is counted equally. By forcing Kennedy to remain on the ballot despite his withdrawal from the contest in North Carolina over a week ago, Defendants and the trial court have brought those foundational principles into jeopardy. And at this stage, the interests of voters in voting early is not meaningfully damaged: as the NCSBE indicated, there is "wiggle room" between now and the federal September 21, 2024 deadline to mail absentee ballots to military and overseas personnel.<sup>2</sup> Any of those individuals who might have wished to vote between September 6 and whenever the stay expires can submit their votes immediately upon receipt, and any individuals intending to vote thereafter would be largely (if not entirely) unaffected. This Court should protect the status quo impacting significant and substantial rights and issue a writ of supersedeas.

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<sup>2</sup> To the extent the NCSBE claims reprinting ballots is difficult or expensive, that is an issue with the legislature. The NCSBE has not said it cannot reprint ballots, rather, it has hedged on feasibility. *See* Defs' Br. in Opp. to Pltff's Mtn. for TRO, at ¶ 25.

## II. KENNEDY IS LIKELY TO SUCCEED ON THE MERITS.

Kennedy is likely to succeed on the merits. Indeed, the trial court did not deny Kennedy's Motion for TRO on this ground. This is because N.C. Gen. Stat. § 163-113 clearly grants Kennedy an unambiguous and undeniable "right" to withdraw from the ballot by September 6, 2024. Similarly, N.C. Gen. Stat. §§ 163-22(k) and 227.10 plainly provide the time necessary to adjust absentee ballot deadlines. Indeed, Section 227.10 goes as far as contemplating a pending appeal leading to a delay in ballots being mailed. Thus, the legislature clearly provided for such situations and the plain language of the relevant statutes illustrates the feasibility of Kennedy's requested relief. *See, e.g., C Investments 2, LLC v. Auger*, 383 N.C. 1, 15, 881 S.E.2d. 270, 281 (2022) ("Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute in its plain meaning.") (citation omitted). The only activating or limiting condition upon this right is that the candidate must request the withdrawal before certain statutory deadlines. *See* N.C. Gen. Stat. § 163-113.

It is undisputed that Kennedy requested his withdraw prior September 6, 2024. The NCSBE simply disregarded this statute and opted instead to apply a vague and undefined "practicality" standard, drawn from the North Carolina Administrative Code, 8 NCAC 6B.0104. And while the NCSBE claims that N.C. Gen. Stat. § 163-22(k) has never been interpreted or applied by the court, they cite no authority supporting this position as a feasible basis to ignore the legislature's clear

intent. Further, the NCSBE's position ignores the fact that N.C. Gen. Stat. § 163-227.10(a) directly cites to 22(k) in contemplating applicable adjustments to absentee mailing deadlines, further indicating that while the NCSBE is fully capable of removing Kennedy from the ballot, it simply does not want to.

**A. N.C. Gen. Stat. § 163-113 Provides Kennedy a Statutory Right to Withdraw from the Ballot.**

First, N.C. Gen. Stat. § 163-113 is unquestionably applicable to Kennedy. It refers to “[a] person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110[.]” N.C. Gen. Stat. §163-113. Looking to N.C. Gen. Stat. § 163-182.15, which is titled “Certificate of nomination or election, or certificate of the results of a referendum,” (emphasis added), this statute sets forth who can certify nominations or elections. It is undisputed that the NCSBE certifies elections for presidential candidates in North Carolina; thus, there is no carveout for presidential candidates who are nominated as a candidate by their party, such as Kennedy. *Id.* Resultingly, N.C. Gen. Stat. § 163-113 is applicable to Kennedy by virtue of Section 163-182.15 and NCSBE's own role thereunder.

**B. The NCSBE Cannot Ignore Clear Statutory Directives, Especially in Favor of an Inapplicable Agency Regulation.**

Second, “[a]n administrative agency has no power to promulgate rules and regulations which alter or add to the law it was set up to administer or which have the effect of substantive law.” *State ex rel. Com'r of Ins. v. Integon Life Ins. Co.*, 28 N.C. App. 7, 11, 220 S.E.2d 409, 412 (1975). No such “practicality” standard exists in

N.C. Gen. Stat. § 163-113—thus, the NCSBE cannot promulgate rules that alter this statute. Moreover, 8 NCAC 6B.0104 is regarding *replacement* nominees, not former candidates who are simply trying to withdraw entirely from the ballot with no replacement. As such, the NCSBE’s reference to N.C. Gen. Stat. § 114 as the supposed statute speaking to Presidential candidate replacements is inapposite.

**C. Not Only is the NCSBE’s “Practicality Test” Undefined, But It Creates a Test With a Pre-Determined, Self-Serving Outcome.**

Third, even if the NCSBE’s “practicality” test were the operative standard, the present circumstances are not impractical. Other statutes on deadlines contemplate this very situation by allowing the NCSBE to adjust or delay the mailing of ballots as necessary—or as the NCSBE’s General Counsel states, allow “wiggle room” so long as the federal mandate of September 21, 2024 is met. *See* Compl., ¶¶34–28; *see also* N.C. Gen. Stat. § 163-227.10(a) (stating ballots being mailed “as quickly as possible” in the event of an action pending in front of NCSBE or a court); *Id.* at § 163-22(k) (stating that, where ballots are not ready, the NCSBE “shall allow the counties to mail them out as soon as they are available”). That is exactly what the NCSBE should do here, and yet they refused to do so. Instead, NCSBE chose to ignore what was happening around them and plowed ahead printing ballots they knew were inaccurate. To claim that correcting this mistake would now be impractical is to create a test with a foregone conclusion which no person could reasonably expect to understand, let alone satisfy. No such standard exists in N.C. Gen. Stat. § 163-113, and for good reason. The legislature could not have intended such an anomalous result.



**D. The Legislature Provided Candidates a Right to Withdraw, and Kennedy Exercised That Right.**

Finally, while N.C. Gen. Stat. § 163-113 refers to “withdraw”, it is clear from the statute that this includes removal from the ballot. Why else would the legislature have set the deadline for a candidate to withdraw prior to the deadline for absentee ballots being mailed out? The NCSBE cannot cite any authority to support their position that only a political party may withdraw a candidate’s name from the ballot. Indeed, such a reading is contrary to the statute’s express provisions.

Simply put, when a statute’s language is clear and unambiguous, courts are obligated to interpret it according to its plain meaning. *C Investments 2, LLC v. Auger*, 383 N.C. 1, 15, 881 S.E.2d. 270, 281 (2022). Here, N.C. Gen. Stat. § 163-113 gives Kennedy to withdraw from the ballot, so long as he requests to do so before September 6, 2024. He has done just that.

**III. THE DOCTRINE OF CONSTITUTIONAL AVOIDANCE MILITATES AGAINST THE NCSBE’S INTERPRETATION OF THE RELEVANT STATUTES**

“If a statute is reasonably susceptible of two constructions, one of which will raise a serious question as to its constitutionality and the other will avoid such question, it is well settled that the courts should construe the statute so as to avoid the constitutional question.” *In re Arthur*, 291 N.C. 640, 642, 231 S.E.2d 614, 616 (1977) (quoting *Milk Commission v. Food Stores*, 270 N.C. 323, 331, 154 S.E.2d 548 (1967); see also *State v. Barber*, 180 N.C. 711, 104 S.E. 760 (1920). Simply put, the doctrine of constitutional avoidance requires that “[w]hen reasonably possible, a statute ... should be construed so as to avoid serious doubt as to its constitutionality.”

*Comm'r of Ins. v. N.C. Fire Ins. Rating Bureau*, 291 N.C. 55, 70, 229 S.E.2d 268, 276 (1976). This principle applies in full force as to both the North Carolina and United States Constitutions. *See N. Carolina State Bd. of Educ. v. State*, 371 N.C. 149, 161, 814 S.E.2d 54, 62 (2018) (discussing constitutional avoidance as to the North Carolina Constitution); *see also National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30, 57 S.Ct. 615, 621 (1936) (“The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same.”).

Here, the NCSBE has taken the position that the relevant statutory scheme is ambiguous. Even assuming *arguendo* that were true, the doctrine of constitutional avoidance weighs in favor of Kennedy. As explained prior, the NCSBE’s reading of these statutes would force Kennedy to remain on the statewide ballot in spite of the fact that he requested his removal before the statutory cutoff date. *See* Compl. at ¶¶ 31-32, 42-49. Forcing a party to engage in speech they would not otherwise make is compelled speech in its most basic form. *See State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840-41 (1993) (“[f]or the purpose of applying our State Constitution’s Free Speech Clause we adopt the United States Supreme Court’s First Amendment jurisprudence.”); *see also Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 63, 164 L. Ed. 2d 156 (2006) (“Our compelled-speech cases are not limited to the situation in which an individual must personally speak the government’s

message. We have also in a number of instances limited the government's ability to force one speaker to host or accommodate another speaker's message.”). The NCSBE's reading of the statutes in question would force Kennedy to promote the government's message regarding an apparent willingness to be a candidate for President in North Carolina, a message he plainly does not wish to convey.

It is well-established that a government who compels a party to engage in such speech is subject to exacting scrutiny as these actions almost always violate one's constitutional rights. *See Petersilie*, 334 N.C. at 184, 432 S.E.2d at 840-41 (1993); *see also Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795, 108 S. Ct. 2667, 2677 (1988). Here the NCSBE cannot survive strict scrutiny, let alone provide a legitimate, compelling interest justifying their forcing Kennedy's speech. Kennedy has unambiguously expressed his desire to be removed from the North Carolina general election ballot. *See* Compl. at ¶¶ 29-30, 42-49. Kennedy took every available and required step to remove his name. *Id.* at ¶¶ 44-46. These facts notwithstanding, the NCSBE refuses to remove Kennedy from the ballot which, in effect, forces him to hold himself out as a candidate for President seeking the votes and support of North Carolinians, speech Kennedy does not wish to make. Thus, the NCSBE has revealed that their reading of the applicable statutes holds the “practicality” of complying with Kennedy's desired speech in higher regard than his constitutional right to be free from being compelled to share a message he does not wish to make.

The NCSBE's interpretation of the applicable statutes runs headlong into Kennedy's right to be free from compelled speech and, resultingly, risks violating both

the North Carolina and United States Constitutions. *See* N.C. Const. art. I § 14; *see also* U.S. Const. amend. I. In contrast, Kennedy's interpretation of the statutes does not implicate any party's constitutional rights. As such, the doctrine of constitutional avoidance renders the NCSBE's position untenable.

### **MOTION FOR TEMPORARY STAY AND TEMPORARY INJUNCTION**

Pursuant to N.C. R. App. P. 23(e) and the Court's inherent authority to supervise lower courts, as identified in N.C. R. Civ. P. 62(f), Kennedy respectfully moves this Court to (a) issue a temporary stay of the trial court's September 5, 2024 Order, and (b) grant a temporary injunction halting all printing or mailing of ballots with Kennedy's name on them. In other words, Kennedy requests that this Court extend the stay/injunction entered by the trial court such that his appeal can be heard, and not rendered moot by the mailing of ballots. Kennedy further incorporates and relies on the arguments presented in the foregoing petition for writ of supersedeas in support of this Motion for Temporary Stay and Temporary Injunction.

### **CONCLUSION**

For the foregoing reasons, Kennedy respectfully prays that this Court:

1. Issue its Writ of Supersedeas to the Superior Court of Wake County staying enforcement of the September 5, 2024 Order pending this Court's review and determination of Kennedy's appeal of that Order;
2. Issue an Order granting Kennedy's Motion for a Temporary Stay And Temporary Injunction pending this Court's consideration of the foregoing Petition for Writ of Supersedeas; and

3. Grant Kennedy such other relief that this Court may deem proper.

This, the 5th day of September, 2024.

**SIRI & GLIMSTAD LLP**

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*\*Pro Hac Vice Motion  
forthcoming*

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

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

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

Mary Carla Babb  
Special Deputy Attorney General  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602  
[MCBabb@ncdoj.gov](mailto:MCBabb@ncdoj.gov)

This, the 5th day of September, 2024.

**SIRI & GLIMSTAD LLP**

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*\*Pro Hac Vice Motion  
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*Attorneys for Plaintiffs*

**ATTACHMENTS**

Attached to this Petition for Writ of Supersedeas and Motions for Temporary Stay are copies of the following documents from the trial court record:

- Exhibit A Complaint, filed 30 August 2024
- Exhibit B Verification of Complaint, dated 30 August 2024
- Exhibit C Summonses to (i) North Carolina State Board of Elections; (ii) Karen Brinson Bell, in her official capacity as Executive Director of the North Carolina State Board of Elections; (iii) Alan Hirsch, in his official capacity as Chair of the North Carolina State Board of Elections; (iv) Jeff Carmon, in his official capacity as Secretary of the North Carolina State Board of Elections; (v) Stacy Eggers IV, (vi) Kevin N. Lewis, and (vii) Siobhan O'Duffy Millen, in their official capacities as members of the North Carolina State Board of Elections, all issued 30 August 2024
- Exhibit D Motion for Temporary Restraining Order and, in the Alternative, an Expedited Preliminary Injunction
- Exhibit E Acceptance of Service, filed 4 September 2024
- Exhibit F Order on Plaintiff's Motion for Temporary Restraining Order and, in the Alternative, an Expedited Preliminary Review, filed 5 September 2024
- Exhibit G Plaintiff's Notice of Appeal, filed 5 September 2024 (file-stamped version not available at time of filing of Petition)

## VERIFICATION

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

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

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

  
Philip J. Strach

Wake County, North Carolina

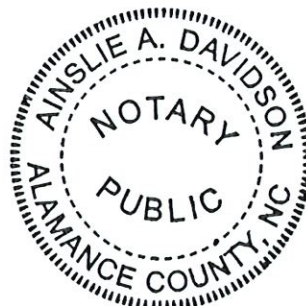
Sworn to and subscribed before me this 5th day of September, 2024.

  
\_\_\_\_\_

Ainslie A. Davidson

Notary's Printed Name, Notary Public

My Commission Expires: 12.01.2025





# Exhibit A

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 24CV027757-910

ROBERT F. KENNEDY, JR.,

*Plaintiff,*

v.

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

*Defendants.*

**COMPLAINT**  
***Emergency Relief Requested***

NOW COMES Plaintiff Robert F. Kennedy, Jr. ("Kennedy"), by and through undersigned counsel and, pursuant to Rule 7 of the North Carolina Rules of Civil Procedure file this Verified Complaint seeking a Declaratory Judgment, Temporary Restraining Order, and Permanent Injunction compelling the North Carolina State Board of Elections ("NCSBE") and its members, Alan Hirsch, Jeff Carmon, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE's Executive Director Karen Brinson Bell (collectively "Defendants") to fulfill their duties set forth in N.C. Gen. Stat. § 163-113 *et seq.* and remove Kennedy from the state's ballots, as he requested. In support, Kennedy allege as follows:

## **INTRODUCTION**

1. Robert F. Kennedy, Jr. timely complied with all requirements set forth under state law in order to remove his name from North Carolina's general election ballot. This statutory compliance notwithstanding, NCSBE, in a 3-2 vote, declined to remove Kennedy from the ballot. In reaching this conclusion, NCSBE ignored controlling statutes and instead elected to insert their own indeterminate, subjective "practicality" standard in denying his request. NCSBE cited no legal authority for its action, nor did it even feign an attempt to define what this test might entail.

2. At its core, NCSBE's "practicality" test appears rooted in the cost of printing new ballots without Kennedy on them, but NCSBE concedes it was aware of at least Kennedy's desire to remove himself from the ballot since August 23, 2024. Nevertheless, NCSBE directed its County Boards of Election to continue printing ballots with Kennedy on them. Thus, to the extent NCSBE claims it is "impractical" to remove him from the ballot, it is an issue of NCSBE's own making.

3. Not only is NCSBE's refusal to recognize Kennedy's statutory rights untethered from any legal justification or precedent, but it is a stark departure from NCSBE's own position in defending its approval of a minor political party in North Carolina called We The People Party of North Carolina ("We The People"). Namely, that if one follows the plain language of the controlling statutes, then there is no further test or inquiry NCSBE or the court may impose. That principle is just as true today as it was when NCSBE made that argument to this court a mere two weeks ago.

4. The facts here mirror that which this court previously found persuasive: the statutory procedures and requirements to remove Kennedy from the ballot were followed, just as they were when he and We The People were seeking to have his name added to the ballot. The only fact that has changed in the intervening period is NCSBE's position on whether it may

superimpose their own subjective test atop the statute's plain language. This Court should reject that invitation. The operative question—and the only question—is whether or not Kennedy's withdrawal complied with North Carolina law. It did.

5. Defendants and this Court previously recognized Kennedy's rights to be on the statewide ballot for the November 5, 2024 election due to compliance with the applicable state statutes. Now, despite Kennedy once again following what those statutes require, Defendants are ignoring his clearly established rights. Kennedy respectfully requests that the Court declare that NCSBE's refusal to remove him from the general election ballot is a violation of North Carolina law, including N.C. Const. art. I § 14 and N.C. Gen. Stat. § 163-113.

6. By refusing to acknowledge Kennedy's statutory rights and entitlements, Defendants have irreparably harmed him. Even worse, by forcing Kennedy to remain on the ballot against his will, Defendants are compelling speech in violation of N.C. Const. art. I § 14.

7. With November election looming and ballot deadlines fast-approaching, Kennedy has no choice but to turn to this Court for immediate relief. In the words of Defendant Hirsch, when it comes to resolving this issue, "time is of the essence."<sup>1</sup>

### **PARTIES**

8. Robert Francis Kennedy, Jr. was a nominee and candidate for President of the United States in North Carolina. Kennedy is a resident of New York. On August 23, 2024 Kennedy announced that he was suspending his campaign.

9. The North Carolina State Board of Elections is the state agency tasked with "general supervision over primaries and elections of the state." *See* N.C. Gen. Stat. § 163-22.

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<sup>1</sup> Defendants' decision to prohibit Kennedy from removing himself from the ballot is memorialized in the recorded NCSBE meeting held on August 29, 2024, which is publicly available. *See* [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-08-29/State%20Board%20of%20Elections%20Meeting-20240829.mp4](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-08-29/State%20Board%20of%20Elections%20Meeting-20240829.mp4) [last accessed 08.29.34]

NCSBE is tasked with ensuring that elections in North Carolina comply with all relevant state and federal laws and, in NCSBE's own words, "ensur[ing] that elections are conducted lawfully and fairly."<sup>2</sup>

10. Karen Brinson Bell is the Executive Director of NCSBE and the state's "Chief Election Official" as defined by N.C. Gen. Stat. § 163-82.2. In this capacity, Ms. Brinson Bell oversees elections in all one hundred counties in North Carolina and administering all elections occurring therein. *See* N.C. Gen. Stat. § 163-27(d). Ms. Brinson Bell is sued in her official capacity.

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

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

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

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

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

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. §§ 7A-245; 1-253 *et seq.*; § 163-22(*l*); and Article 4 of Chapter 150B. Additionally, this Court has original jurisdiction over Plaintiff's request for a mandatory injunction

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<sup>2</sup> <https://www.ncsbe.gov/about>

17. This Court has personal jurisdiction over NCSBE as it is a state agency of North Carolina.

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

19. Venue is proper in this court pursuant to N.C. Gen. Stat. §§ 1-77, 1-82, and 163-22(I).

### **FACTUAL ALLEGATIONS**

#### ***I. Robert F. Kennedy, Jr. is Placed on the Ballot***

20. On July 16, 2024, Defendants voted to approve We The People as a valid political party in North Carolina pursuant to N.C. Gen. Stat. § 163-96.

21. This recognition was not without controversy. In fact, in the midst of voting to approve We The People’s status as a political party in North Carolina, Defendant Hirsch expressly invited suit from third parties who sought to challenge the board’s own determination, even referring to We The People as a “subterfuge” for Kennedy to get his name on the ballot.<sup>3</sup>

22. Based on these comments and NCSBE’s ultimate vote it was clear from the beginning that certain members did not wish for Kennedy to be on the ballot. However, a majority of Defendants felt as though We The People’s compliance with North Carolina law foreclosed any other outcome.

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<sup>3</sup> The NCSBE July 16, 2024 meeting is publicly available at: [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/State%20Board%20of%20Elections%20Meeting-20240716.mp4](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/State%20Board%20of%20Elections%20Meeting-20240716.mp4) [last accessed 08.30.24].

23. Defendant Hirsch’s invitation to sue was heard by the North Carolina Democratic Party who subsequently filed a belated complaint against Defendants, seeking an immediate invalidation of We The People’s status as a recognized political party and Kennedy’s removal from the ballot. *See North Carolina Democratic Party v. Hirsch, et al.*, 24CVS023631-910 (Wake Sup. Ct. July 25, 2024).

24. On Monday, August 12, 2024 this court rebuffed the North Carolina Democratic Party’s efforts and in doing so, allowed Kennedy to remain on the statewide ballot for the November 5, 2024 election. *See N.C. Dem. Party*, Order at ¶¶ 6, 18-23 (incorporating NCSBE’s arguments regarding statutory compliance by reference and holding that the plain language of an unambiguous statute precludes any extrastatutory inquiries).

25. Critically, in that hearing NCSBE took the position that, so long as one complies with the plain language of the relevant statutes, then there is no room for any further inquiry, let alone a subjective one. *See id.* at ¶ 6; *see also N.C. Dem. Party*, NCSBE Resp. in Opp. to Pltffs. Emergency Mtn. for Prelim. Inj., at pp. 14-15 (arguing that when an operative statute is clear, the court cannot “read into [it] an additional requirement” that is not there).

26. In warning of the dangers of what such a limitless test could entail, NCSBE invoked imagery of future boards and courts who based their decisions not on statutory requirements, but on the political whims of the time. *Id.* at p. 3, 14-15 (arguing that adding an undefined test which is not found in the plain language of the statute is contrary to principles of statutory construction).

27. In NCSBE’s view at the time, if a statutory directive is clear and a party complies with what it requires, then Defendants must recognize the right established as a result of that compliance.

28. This court wholeheartedly agreed. *See N.C. Dem. Party*, Order, at ¶¶ 27-28 (finding that adding a non-statutory, subjective test which inherently implicated We The People and Kennedy’s constitutional rights was at odds with the doctrines of constitutional avoidance and statutory interpretation).

**II. *Kennedy Suspends His Presidential Campaign and Immediately Seeks to Have His Name Removed from the North Carolina Ballot***

29. On Friday, August 23, 2024, Kennedy suspended his presidential campaign .

30. Kennedy then sought to remove his name from the ballot in North Carolina but Defendants refused to honor that request. *See State Board Determines it is Too Late to Remove We The People Nominee for President from the Ballot*, NCSBE (Aug. 29, 2024), <https://www.ncsbe.gov/news/press-releases/2024/08/29/state-board-determines-it-too-late-remove-we-people-nominee-president-ballot>.

**III. *Just as it Does for a Political Party Seeking Official Recognition, North Carolina Law Provides a Clear Path to Remove Kennedy from the Ballots.***

31. North Carolina General Statute § 163-113 provides a “Nominee’s *right* to withdraw as a candidate.” (emphasis added).

32. To exercise this right, § 113 sets a clear procedure by which a political party’s nominee may remove themselves as a candidate, stating:

“A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate *unless, prior to* the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, that [the] person submits to the board of elections which certified the nomination a written request that person be permitted to withdraw.”

N.C. Gen. Stat. § 163-113 (emphasis added).

33. Basic canons of statutory interpretation indicate that, by inserting a conditional clause such as the one emphasized above, the General Assembly intended for compliance with the



contemplated timeline to trigger the right contemplated by the Section, namely, a person’s right to withdraw themselves as a candidate. *See C Investments 2, LLC v. Auger*, 383 N.C. 1, 15, 881 S.E.2d. 270, 281 (2022) (“Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.”) (citation omitted).

34. N.C. Gen. Stat. § 163-258.9(a) sets the conditional deadline contemplated by § 113.

35. As per N.C. Gen. Stat. § 163-258.9 *et seq.*, for the November 5, 2024 election cycle, County Boards of Election begin mailing absentee ballots to military and overseas personnel by September 6, 2024.

36. Notably, federal law mandates that such ballots must be mailed by September 21, 2024 at the latest. *See* 52 U.S.C. § 20302(a)(8)(A).

37. Regarding civilian absentee ballots, N.C. Gen. Stat. § 163-227.10(a) contemplates these ballots being mailed “as quickly as possible” in the event of an action pending in front of NCSBE or the court.

38. Similarly, North Carolina General Statute § 163-22(k), which § 227.10(a) cites, contemplates permissible modifications to absentee ballot mailing deadlines, or, in the words of NCSBE general counsel Paul Cox, “wobble room” so long as the federal mandate is met. *See* NCSBE August 29, 2024 meeting (hereinafter “NCSBE 8.29.24 Meeting”) at 36:00-38:16.

39. No matter which timeline applies, it is without dispute that formal written requests for Kennedy’s removal from the ballot were submitted and were received by Defendants at least two weeks before the earliest applicable deadline.

40. Thus, there was express compliance with the statutory prerequisites necessary to exercise the right to withdraw himself from the ballot.

41. Inexplicably, Defendants refused to recognize this compliance with the relevant statutory procedures. Instead, Defendants took the position that the requested withdrawal would place too much of a burden on NCSBE, statutory compliance notwithstanding.

**IV. *Defendants Are Placed on Ample Notice that Kennedy Wished to Be Removed from the Ballot.***

42. Defendant Brinson Bell admits that she began receiving questions from County Boards of Elections regarding the printing and contents of their ballots soon after Kennedy's August 23, 2024 press conference.

43. Even though during that press conference Kennedy expressed he was withdrawing from the race for president, Defendant Brinson Bell told those County Boards of Election to continue printing ballots with Kennedy's name on them. *See* NCSBE 08.29.24 Meeting at 25:23-49.

44. Then, on Monday, August 26, 2024, NCSBE received formal correspondence inquiring regarding the processes and procedures for removing Kennedy from the North Carolina ballots.

45. Despite this inquiry and its logical end result—especially in light of Kennedy's press conference a few days prior—NCSBE again instructed County Boards of Election to continue printing their ballots with Kennedy on them.

46. By Tuesday, August 27, 2024<sup>4</sup>, NCSBE received a letter from Kennedy formally requesting his removal from the ballot.

47. Even still, NCSBE instructed County Boards of Election to continue printing their ballots with Kennedy on them. Defendants' later justification for this directive was that Defendant

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<sup>4</sup> The letter from Kennedy was actually sent on Monday, August 26, 2024, but NCSBE claims it was not forwarded to legal staff until Tuesday, August 27. *See* NCSBE 8.29.24 Meeting at 17:20-18:32.

Brinson Bell needed to receive a request from We The People directly, arguing that only the party could request Kennedy's removal; a novel position for which she cited no law in support.

48. Then, on Wednesday, August 28, 2024, NCSBE received a letter from We The People formally requesting Kennedy's removal from the ballot. *See* NCSBE 8.29.24 Meeting at 18:40-19:02.

49. Even still, NCSBE did not instruct County Boards of Election to cease printing their ballots with Kennedy on them. *See id.* at 26:13-51.

50. On Thursday, August 29, 2024, Defendants finally held an emergency hearing to determine whether they would allow Kennedy to withdraw himself from the state's ballots, an issue Defendants were admittedly on notice of since Kennedy's initial press conference almost a week before.<sup>5</sup>

**V. *Despite Complying With the Statutes, NCSBE Refuses to Allow Kennedy to Withdraw His Name From the Ballot***

51. Defendants' August 29 hearing opened with a telling concession from NCSBE Staff who stated that "normally, a candidate can withdraw their name from a ballot before the deadline [set forth in N.C. Gen. Stat. § 163-258.9(a) and 52 U.S.C. § 20302(a)(8)(A)]." *See* NCSBE 8.29.24 Meeting at 2:00-14.

52. Despite recognizing this "normal" route a candidate may take, NCSBE staff immediately framed the issue presented—whether Kennedy was entitled to withdraw from the

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<sup>5</sup> During the August 29, 2024 meeting, Defendant Eggers IV raised serious concerns regarding an apparent lack of communication or sharing of information surrounding the requests for removal from the ballot which, upon information and belief, predated the correspondence cited by NCSBE Staff. In the words of Defendant Eggers IV, he was concerned that NCSBE staff was "box[ing] in" the Board Members into a predetermined decision and that he was "disappointed" that County Boards of Election were being told to continue incurring costs of printing ballots with Kennedy on them, despite NCSBE knowing this would be an issue. *See* NCSBE 08.29.24 Meeting at 19:04-20:50.

ballot—as one of “practical” considerations such as cost and time associated with printing new ballots. *Id.* at 2:40-48.

53. In furtherance of their framing of the issue presented, NCSBE staff, including Defendant Brinson Bell, proceeded to describe the request to remove Kennedy as a “significant hurdle” and a “tremendous undertaking,” all while ignoring any discussions of the clear compliance with the necessary process for requesting withdrawal from the ballot. *Id.* at 10:11-18.

54. Notably, none of Defendants’ discussions mentioned the formal, written requests for removal that were submitted prior to the deadlines set by N.C. Gen. Stat. § 163-2598.9(a) as required by N.C. Gen. Stat. § 163-113.

55. During the meeting, Defendant Lewis noted that NCSBE had the statutory authority and “flexibility” to alter the September 6, 2024 deadline for mailing ballots set by § 163-258.9 *et seq.*, so long as the federal mandate was met. Defendant Lewis went on to state that it was “disingenuous” for NCSBE staff to argue otherwise. *See* NCSBE 8.29.24 Meeting at 27:20-29:39.

56. In apparent disregard of Defendant Lewis’ statements or the legal question presented to the board, several Defendants, including Defendant Millen seized the opportunity to lambast Kennedy and his nomination, calling them a “farce” and accusing Kennedy of “capricious behavior.” *Id.* at 33:28-53; 35:14-22.

57. Curiously, those same statements cited to statutory ballot mailing deadlines—deadlines which had not yet passed—as the basis for denying Kennedy’s statutory rights to withdraw from the ballot. The irony of citing to a statutory deadline which had not passed as justification for ignoring Kennedy’s compliance with directly applicable statutory requirements cannot be understated.

58. Defendants’ failure to account for or even discuss Kennedy’s statutory compliance is revealing. In a 3-2 vote along party lines, the three Democratic NCSBE members voted to reject a motion brought by Republican NCSBE member, Defendant Lewis, which would have allowed Kennedy to withdraw his name from the ballot. *Id.* at 39:17-40:11 (closing with Defendant Hirsch stating his personal belief that this was the “fairest outcome under these circumstances.”).

59. After rejecting Defendant Lewis’ motion, the same Democratic NCSBE members, on advice of NCSBE staff, made a motion to find the request to withdraw was “impractical,” a standard which Defendants did not define, NCSBE staff admitted was not defined by the administrative code, and which caused confusion amongst members. This was highlighted by Defendants Lewis and Eggers IV expressing that the “practicality” determination the board was applying appeared to be a “decision that was made for [NCSBE]” due to its own actions in refusing to halt or alter its ballot printing procedures even once Kennedy made his intent on ballot removal clear. *Id.* at 42:35-45:18.

60. Amazingly, Defendants Carmon and Millen blamed Kennedy for not requesting his withdrawal sooner—even though Kennedy himself did not suspend his campaign until August 23, 2024. *Id.* These statements are illustrative of just how illusive Defendants’ “practicality” standard is. Under Defendants’ view, Kennedy, despite complying with the statutory deadline for withdrawing, would have had to request his withdrawal from the ballot even before he decided to withdraw from the race.

61. Ultimately the motion regarding the “impracticality” of the request to withdraw passed on a 3-2 vote, once again along party lines. *Id.* at 41:34-42:25 (citing the “short deadline” and “cost” as the basis for claiming “impracticality” but not mentioning that the withdrawal was statutorily compliant).

62. As the August 29 hearing closed, Defendant Carmon stated that he found it “ironic” that the same Democratic members of NCSBE who opposed Kennedy’s addition to the ballot were now the ones voting to keep him on. Defendant Carmon ended by saying he hoped for an apology from those who criticized those members’ opposition to Kennedy’s recognition in the first place. *Id.* at 46:00-28.

63. Defendant Carmon’s parting comments illustrate that, for the majority of NCSBE members, this vote on Kennedy and We The People’s requests was never about statutory compliance, rather, it was about sending a message and superimposing a subjective test with a foregone conclusion in place of the plain language of the statute. Simply put, Defendants’ “test” was the means to a predetermined end.

**FIRST CLAIM FOR RELIEF**  
**(Violation of N.C. Const. art. I § 14)**

64. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

65. Article I § 14 of the North Carolina Constitution provides that “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.”

66. The North Carolina Supreme Court has recognized that it looks to the United States Supreme Court for guidance on interpretation and application of the Section 14 and the right to free speech. *See State v. Petersilie*, 334 N.C. 169, 184 (1993) (“In this case, for the purpose of applying our State Constitution’s Free Speech Clause we adopt the United State Supreme Court’s First Amendment jurisprudence.”).

67. Further, the United States Supreme Court has repeatedly held that mandating speech a person would not otherwise make necessarily affects speech and is thus a content-based

regulation subject to strict scrutiny. *See, e.g., Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 795, 782, 108 S.Ct. 2667, 2677 (1988).

68. Similarly, candidate-eligibility requirements implicate the First Amendment. *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

69. Defendants' refusal to allow Kennedy to withdraw from the ballot despite his express requests and statutory compliance pursuant thereto is a content-based regulation to which strict scrutiny applies.

70. Defendants cannot point to any legitimate interest, let alone a compelling interest to justify ignoring the clear statutory withdrawal procedures here.

71. To the extent Defendants point to any burden or expense allegedly incurred in printing ballots as an interest in keeping Kennedy on the ballot, it is far from compelling, rather, it is an issue of Defendants' own making. They chose to continue printing ballots with Kennedy's name on them despite knowing he wished for it to be removed.

72. By forcing Kennedy to remain on the ballot against his will, Defendants are mandating speech Kennedy would not otherwise make, which is the antithesis of both state and federal free speech jurisprudence.

73. Just as this Court recognized in its Order *N.C. Dem. Party* where taking Kennedy off the ballot would impinge on First Amendment privileges, so too does forcing him to remain on the ballot, especially when he has clearly expressed his intent to be removed and taken all necessary steps to do so. *See N.C. Dem. Party*, Order at ¶¶ 26-28.

74. Tellingly, Defendants cannot point to a single statute Kennedy failed to comply with in requesting his removal from the ballot. Rather, Defendants would have this Court ignore that glaring error and inject a subjective, undefined test, unmoored from any cognizable standard

or definition, the result of which would be government action strongarming Kennedy into making speech he would not otherwise make.

75. Kennedy respectfully ask this Court to reject that invitation, reaffirm his foundational rights to free speech, and avoid Defendants' application of North Carolina law which naturally raises serious constitutional questions.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment – Violation of N.C. Gen. Stat. § 163-113)**

76. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

77. Kennedy bring this claim for declaratory judgment pursuant to N.C. Gen. Stat. § 1-253 et seq. as to the rights, status, or other legal relations between Plaintiff and Defendants.

78. NCSBE is an agency created by statute that only has the authority expressly provided to it by the North Carolina General Assembly and the Constitution of the State of North Carolina.

79. North Carolina General Statute § 163-113 provides the exact conditions upon which a candidate may exercise their right to withdraw from an election.

80. Section 163-113 does not contain any exception or condition upon which NCSBE may deny that withdrawal if those conditions are met.

81. Similarly, Section 163-113 does not contain any test, inquiry, or discretion for NCSBE to insert a question of whether or not such withdrawal is “practical,” so long as the statutory conditions themselves are met.

82. To the extent Defendants can cite to any basis for such a test, they point to 08 NCAC 06B.0104, but that regulation deals with replacing nominees on ballots and what occurs if that replacement cannot be made prior to applicable statutory deadlines. The same is true of the statutory provision that regulation is promulgated under. *See* N.C. Gen. Stat. § 163-165.3(c)



83. Unlike Section 165.3(c), the statutory conditions found in Section 113 work directly in tandem with the absentee ballot mailing deadlines provided in 52 U.S.C. § 20302 *et seq.*, N.C. Gen. Stat. § 163-258.9(a), and § 163-22(k), contemplating that a nominee has a right to withdraw from an election so long as those statutory deadlines had not passed. N.C. Gen. Stat. §163-113.

84. Kennedy complied with N.C. Gen. Stat. § 163-113 when formal written requests were sent to Defendants withdrawing Kennedy from the ballot well in advance of the deadlines contemplated by the aforementioned statutes.

85. As a result, Kennedy is entitled, as a matter of right, to remove his name from the ballot.

86. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiff and Defendants as to whether Kennedy can satisfy the statutory prerequisites for having his name removed from the ballots but then have that right ignored by Defendants based upon their subjective determination and mostly manufactured basis for claiming doing so would be “impractical.”

87. Additionally, to the extent the Court finds that practicality is a consideration factored into a request for removal from a ballot, then an actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiff and Defendants as to what cognizable, justiciable standards such an inquiry entails.

88. Defendants’ actions have irreparably harmed and will continue to harm Kennedy by forcing him to remain on the ballot against his will.

89. Specifically, Kennedy seek a declaratory judgment that:

- a. Defendants’ failure to remove him from the ballot is in violation of N.C. Gen. Stat. § 163-113 and N.C. Const. art. I § 14;

- b. Defendants must comply with Kennedy's request for withdrawal from the ballot and take all necessary steps prior to absentee ballots being mailed by County Boards of Election; and
- c. Defendants must expedite their compliance with these requirements and remove Kennedy from the ballot immediately as to avoid any conflicts with or violations of related deadlines.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully pray that the Court:

- 1. Enter immediate and injunctive relief in the form of a temporary restraining order followed by a preliminary and permanent injunction requiring Defendants to cease printing all ballots with Kennedy's name on them and requiring Defendants to remove Kennedy's name from any already printed statewide general election ballot;
- 2. Enter a Declaratory Judgment that there was full compliance with the statutory requirements for withdrawing Plaintiff's name from the November 5, 2024 general election;
- 3. Enter a Declaratory Judgment that Defendants must immediately remove Kennedy from the statewide ballots and that NCSBE must take all necessary steps to immediately begin and ensure that removal prior to September 21, 2024 as per 52 U.S.C. § 20302(a)(8)(A), and that all corrected absentee ballots must be sent out "as quickly as possible" under N.C. Gen. Stat. § 163-227.10(a);
- 4. Direct Defendants, under a court approved plan, to take all steps necessary to ensure corrected and accurate ballots are printed and mailed prior to the deadlines required by all applicable statutes;

5. Enter an Order pursuant to all applicable laws, awarding Plaintiff his reasonable attorney's fees;
6. Retain jurisdiction over this matter to ensure Defendants comply with any orders issued by this Court; and
7. Award such other and further relief in Plaintiff's favor as deemed just and proper.

This, the 30<sup>th</sup> day of August, 2024.

**SIRI & GLIMSTAD LLP**

Aaron Siri, Esq.\*  
Elizabeth A. Brehm, Esq.\*  
Alycia Perkins, Esq.\*  
745 Fifth Ave, Suite 500  
New York, NY 10151  
Tel: (888) 747-4529  
Fax: (646) 417-5967  
aaron@sirillp.com  
ebrehm@sirillp.com  
aperkins@sirillp.com

*Attorneys for Plaintiff*

*\*Pro Hac Vice Motion forthcoming*

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**


By: /s/ Phillip J. Strach  
Phillip J. Strach  
North Carolina State Bar no. 29456  
Jordan A. Koonts  
North Carolina State Bar no. 59363  
J. Matthew Gorga  
North Carolina State Bar no. 56793  
Aaron T. Harding  
North Carolina State Bar no. 60909  
301 Hillsborough Street, Suite 1400  
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Ph: (919) 329-3800  
phil.strach@nelsonmullins.com  
jordan.koonts@nelsonmullins.com  
matt.gorga@nelsonmullins.com  
aaron.harding@nelsonmullins.com

*Attorneys for Plaintiff*

# Exhibit B

**VERIFICATION**

I, ROBERT F. Kennedy Jr., affirm under the penalty of perjury, I have reviewed the foregoing complaint, which was filed on August 30, 2024 bearing the case number 24CV027757-910. I further affirm that, upon review of the allegations, the foregoing representations contained in the Complaint are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: 

Date: Sept 3 2024

LOS ANGELES County

STATE OF CALIFORNIA

Sworn and subscribed to me on this, the 3 day of September, 2024.

**See Attached Certificate**

Notary Public, VLADIMIR STURZA

My commission expires: Dec. 7, 2027

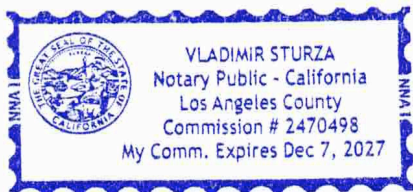
CALIFORNIA JURAT

GOVERNMENT CODE § 8202

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles



Subscribed and sworn to (or affirmed) before me on  
this 3<sup>RD</sup> day of September, 2024, by  
Date Month Year

(1) ROBERT F. KENNEDY JR.

(and (2) \_\_\_\_\_),  
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to  
be the person(s) who appeared before me.

Signature *[Signature]*  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or  
fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Verification

Document Date: September 3, 2024 Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

# Exhibit C

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

North Carolina State Board of Elections

c/o Paul Cox. General Counsel

Dobbs Building, 3rd Floor, 430 N. Salisbury Street

6400 Mail Service Center, Raleigh, NC

27603-1362

Name And Address Of Defendant 2



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

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

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

**A Civil Action Has Been Commenced Against You!**

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

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

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

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

Phillip J. Strach &amp; Jordan A. Koonts

Nelson Mullins Riley &amp; Scarborough LLP

301 Hillsborough Street, Suite 1400

Raleigh, NC 27603

Date Issued

**8/30/2024 5:13:22 pm**

Time

☐ AM☐ PM

Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

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

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

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

(Over)



**RETURN OF SERVICE**

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

**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

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

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

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

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

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

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

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

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Karen Brinson Bell, in her official capacity as Executive Director of  
the North Carolina State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2



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

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

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

**A Civil Action Has Been Commenced Against You!**

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

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

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

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

Date Issued

**8/30/2024**

Time

**5:13:22 pm**☐ AM☐ PM

Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

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

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

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

(Over)

**RETURN OF SERVICE**

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

**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

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

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

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

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

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ **ALIAS AND PLURIES SUMMONS (ASSESS FEE)**

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Alan Hirsch, in his official capacity as Chair of the North Carolina  
State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2

**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!**  
**You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales.**  
**¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!****A Civil Action Has Been Commenced Against You!**

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

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

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

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

Date Issued

**8/30/2024**

Time

**5:13:22 pm**☐ AM☐ PM

Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ **ENDORSEMENT (ASSESS FEE)**

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

Date Of Endorsement

Time

☐ AM☐ PM

Signature

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

(Over)

**RETURN OF SERVICE**

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**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
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<input type="checkbox"/> Other: (type or print name)		

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

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

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Jeff Carmon, in his official capacity as the Secretary of the North  
Carolina State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2

**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!****A Civil Action Has Been Commenced Against You!**

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2. File the original of the written answer with the Clerk of Superior Court of the county named above.

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

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

Date Issued

**8/30/2024 5:13:22 pm**☐ AM ☐ PM

Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ **ENDORSEMENT (ASSESS FEE)**

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

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

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

(Over)

**RETURN OF SERVICE**

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

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

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

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

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Stacy Eggers IV, in his official capacity as a Member of the North  
Carolina State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2

**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!****A Civil Action Has Been Commenced Against You!**

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

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

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

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

Date Issued

**8/30/2024 5:13:22 pm**☐ AM ☐ PM

Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

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Signature

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(Over)



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

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ **ALIAS AND PLURIES SUMMONS (ASSESS FEE)**

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Kevin Lewis, in his official capacity as a Member of the North  
Carolina State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2

**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!****A Civil Action Has Been Commenced Against You!**

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

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
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If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

Date Issued

**8/30/2024**

Time

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Signature

**/s/ Blair Williams**☐ Deputy CSC☐ Assistant CSC☒ Clerk Of Superior Court☐ **ENDORSEMENT (ASSESS FEE)**

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Time

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Signature

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Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
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Date Of Return	County Of Sheriff

**STATE OF NORTH CAROLINA**

File No.

**24CV027757-910**

WAKE County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

Robert F. Kennedy, Jr.

Address

City, State, Zip

**VERSUS**

Name Of Defendant(s)

North Carolina State Board of Elections, et al.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**CIVIL SUMMONS**☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1

Siobhan O'Duffy, Millen, in her official capacity as a Member of the  
North Carolina State Board of Elections  
Dobbs Building, 3rd Floor, 430 N. Salisbury Street  
6400 Mail Service Center, Raleigh, NC 27603-1362

Name And Address Of Defendant 2

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

Phillip J. Strach & Jordan A. Koonts  
Nelson Mullins Riley & Scarborough LLP  
301 Hillsborough Street, Suite 1400  
Raleigh, NC 27603

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Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

# Exhibit D

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 24CV027757-910

ROBERT F. KENNEDY, JR.,

*Plaintiff,*

v.

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

*Defendants.*

**MOTION FOR TEMPORARY  
RESTRAINING ORDER AND, IN THE  
ALTERNATIVE, AN EXPEDITED  
PRELIMINARY INJUNCTION**

N.C. R. Civ. P. 65

NOW COMES Plaintiff Robert F. Kennedy, Jr. ("Kennedy"), by and through undersigned counsel and, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, respectfully move this Court for a temporary restraining order ("TRO") and, in the alternative, and expedited preliminary injunction ("PI") compelling the North Carolina State Board of Elections ("NCSBE") and its members, Alan Hirsch, Jeff Carmon, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE's Executive Director Karen Brinson Bell (collectively "Defendants") to fulfill their duties set forth in N.C. Gen. Stat. § 163-113 *et seq.* and remove Kennedy from the state's general election ballots.

Plaintiff seeks immediate and permanent injunctive relief preventing NCSBE from mailing ballots with Kennedy's name on them and, instead, requiring NCSBE to remove Kennedy's name

from all statewide ballots. Plaintiff asserts that he is likely to be successful on the merits of the underlying case and that he will sustain irreparable harm unless the TRO and PI are issued. Plaintiff requests an expedited hearing on the matter pursuant to Local Rules 14.2 and 14.4.

In support of this Motion, Plaintiff states as follows:

### **INTRODUCTION**

1. On August 30, 2024, Plaintiff filed a Complaint for Declaratory and Injunctive relief pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, arising from Defendants' violations of N.C. Const. art. I § 14, N.C. Gen. Stat. § 163-113, and Plaintiff's rights established therein. Plaintiff subsequently verified the Complaint.

- a. Plaintiff seeks a declaration that he has satisfied all statutory requirements necessary to exercise his right to withdraw from the ballot and that Defendants' refusal to remove Kennedy from the ballot is an unjustifiable violation of those rights.
  - b. Plaintiff seeks a declaration that Defendants violated his free speech rights by, among other things, compelling speech in the form of forcing Kennedy to remain on the ballot against his will, a violation of N.C. Const. art. I § 14.
  - c. Plaintiff seeks an injunction ordering his removal from the ballot and halting the mailing of any ballots with his name on them.
2. The Verified Complaint is submitted in support of this Motion.
3. Plaintiff has endeavored to provide Defendants with notice of this Motion.

### **BACKGROUND**

4. Robert Francis Kennedy, Jr. was a nominee for President of the United States. *See* Compl., at ¶ 8.



5. NCSBE is the state agency tasked with “general supervision over primaries and elections of the state.” *See* N.C. Gen. Stat. § 163-22. Karen Brinson Bell is the Executive Director of NCSBE, Alan Hirsch is the Chair of NCSBE, Jeff Carmon is the Secretary of NCSBE, and Stacy Eggers, IV, Kevin N. Lewis, and Siobhan O’Duffy Millen are members of NCSBE. *Id.* at ¶¶ 9-15. Each is sued in that official’s official capacity.

6. North Carolina law provides a clear right and process for political nominees to remove themselves from the ballot, as outlined in N.C. Gen. Stat § 163-113—titled “Nominee’s *right* to withdraw as a candidate.” (emphasis added). *Id.* at ¶ 31.

7. Specifically, N.C. Gen. Stat. § 163-113 states:

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate *unless, prior to* the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, that person submits to the board of elections which certified the nomination a written request that [the] person be permitted to withdraw.

N.C. Gen. Stat. § 163-113 (emphasis added).

8. Thus, by its plain language this statute requires a nominee to submit a written withdrawal request before absentee ballots are sent to military and overseas voters, with the deadline for the 2024 election cycle being September 6, 2024.<sup>1</sup> *See* N.C. Gen. Stat. §§ 163-113, 163-258.9 *et seq.* *See* Compl. at ¶ 33.

9. It is undisputed that Kennedy submitted formal written requests for his withdrawal prior to any applicable statutory deadline(s). *Id.* at ¶¶ 34- 40.

10. NCSBE also admits it was aware of Kennedy’s wish to be removed from the ballot even before it received a formal request. *Id.* at ¶¶ 42-43.

---

<sup>1</sup> As set forth in the Complaint, NCSBE staff, including their general counsel, has recognized that there is some “wiggle room” to this deadline, so long as certain federally mandated deadlines are met. *See* Compl., at ¶¶ 35-38.

11. On Friday, August 23, 2024, Kennedy suspended his presidential campaign. . *Id.* at ¶¶ 29-30.

12. Defendant Brinson Bell, NCSBE’s Executive Director, admits she received inquiries from County Boards of Elections about continued ballot printing efforts soon after Kennedy’s August 23, 2024 press conference. Despite knowing that Kennedy wished to have his name removed from the ballot, Defendant Brinson Bell instructed the boards to continue printing ballots with Kennedy’s name. *Id.* at ¶¶ 42-43.

13. On August 26, 2024, Plaintiff inquired about the formal removal process, but even still, NCSBE continued to direct counties to print ballots with Kennedy’s name on them. *Id.* at ¶¶ 44-45.

14. On August 27, 2024, the NCSBE received a letter from Kennedy formally requesting that he be removed from the ballot, but NCSBE maintained its directive to continue printing ballots with his name on them. Defendants’ later justification for this directive was that Defendant Brinson Bell needed to receive a request from We The People directly, arguing that only the party could request Kennedy’s removal, a wholly novel position. *Id.* at ¶¶ 46-47.

15. On August 28, 2024, NCSBE received a letter from We The People formally requesting that Kennedy be removed from the ballot. Even still, NCSBE did not halt the printing of ballots with Plaintiff’s name on them. *Id.* at ¶¶ 48-49.

16. Finally, on August 29, 2024, Defendants held an emergency hearing on the matter, despite having been aware of the issue for nearly a week. *Id.* at ¶ 50. During the hearing, the focus was on “practical” concerns of printing corrected ballots. *Id.* at ¶ 52. Tellingly, there were no discussions of Kennedy’s compliance with the plain language of the applicable statutes, despite

NCSBE staff admitting that “normally a candidate can withdraw their name from the ballot” so long as the request is received before applicable deadline(s). *Id.* at ¶¶ 51, 54.

17. While ignoring Kennedy’s undeniable adherence to the deadlines specified in North Carolina law, the August 29, 2024 meeting instead devolved into criticisms of Kennedy personally, with some Defendants disparaging him and questioning his motives. *Id.* at ¶¶ 56-57. Amazingly, several Defendants faulted Kennedy for not requesting his removal sooner, totally ignoring the fact that he immediately began requesting his withdrawal from the ballot soon after his announcement, a fact NCSBE was on notice of. *Id.* at ¶ 60.

18. Ultimately, in a 3-2 vote along party lines, the NCSBE declined to remove Kennedy from the ballot. In reaching this conclusion, NCSBE ignored controlling statutes and instead elected to insert their own indeterminate, subjective “practicality” standard in denying Plaintiff’s requests. *Id.* at ¶ 61. This standard was wholly undefined by the board, the statutes, or the applicable regulations, a fact which confused several Defendants and led one to observe that it felt as though the determination on “practicality” had already been made based on NCSBE’s own actions. *Id.* at ¶¶ 59, 61.

### **ARGUMENT**

19. Plaintiff seeks a TRO because he will be seriously and irreparably harmed by Defendants’ actions in forcing him to stay on the ballot against his will. Such action not only ignores Kennedy’s statutory right to withdraw his name under N.C. Gen. Stat. § 163-113, but it runs headlong into Plaintiff’s right to be free from compelled speech.

20. Unless the court grants emergency preliminary and permanent relief, Plaintiff will be subjected to compelled government speech in violation of N.C. Const. art. I § 14.

**I. Standard**

21. This court has the inherent authority to issue a TRO or a PI. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 402, 302 S.E.2d 754, 759 (1983).

22. A temporary restraining order is particularly appropriate where: (1) “it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition”; and (2) “the applicant’s attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.” N.C. R. Civ. P. 65(b).

23. “The issuance of a TRO ‘is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.’” *Nat’l Surgery Ctr. Holdings, Inc. v. Surgical Inst. of Viewmont, LLC*, No. 16 CVS 1003, 2016 WL 2757972, at \*3 (N.C. Super. May 12, 2016) (quoting *A.E.P. Indust., Inc.* at 759).

24. A preliminary injunction is appropriate where (1) “a plaintiff is able to show likelihood of success on the merits of his case and (2) [where] a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977).

## **II. Emergency Injunctive Relief is Proper and Necessary to Protect Kennedy's Rights**

25. Plaintiff is likely to succeed on the merits. The plain language of N.C. Stat. § 163-113 clearly grants Kennedy an unambiguous and undeniable right to withdraw from the ballot—the title of the statute itself reveals as much.

26. The only activating or limiting condition upon this right is that the candidate must request the withdrawal before certain statutory deadlines.

27. There is no disputing that Kennedy complied with the statute.

28. Even under the soonest of deadlines, Kennedy would have had to request his withdrawal and removal before September 6, 2024, which he did.

29. However, NCSBE disregarded this statutory compliance and Kennedy's right to withdraw arising thereunder, opting instead to apply a vague and undefined "practicality" standard.

30. When a statute's language is clear and unambiguous, courts are obligated to interpret it according to its plain meaning. *C Investments 2, LLC v. Auger*, 383 N.C. 1, 15, 881 S.E.2d. 270, 281 (2022).

31. Defendants' refusal to recognize Kennedy's statutory right to withdraw from the ballot under N.C. Gen. Stat. § 163-113 will cause irreparable harm to Plaintiff unless a TRO or PI is granted, especially with the impending deadlines for mailing absentee ballots fast approaching.

32. Further, by forcing Kennedy to remain on the ballot against his will, Defendants are not only disregarding his statutory rights but also compelling speech, a clear violation of N.C. Const. art. I § 14. *See State v. Petersilie*, 334 N.C. 169, 184 (1993) ("In this case, for the purpose of applying our State Constitution's Free Speech Clause we adopt the United State Supreme Court's First Amendment jurisprudence."); *see also Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 795, 782, 108 S.Ct. 2667, 2677 (1988) (finding that compelling one to make speech they

would not otherwise make is a content-based regulation and subject to strict scrutiny, requiring a compelling state interest to justify the action).

33. Defendants have no compelling reason to justify forcing Kennedy to stay on the ballot. To the extent their “practicality” test is grounded in the cost and time needed to print correct ballots, this is an issue of Defendants’ own making. *See* Complaint at ¶¶ 69-71. Defendants were on notice that Kennedy wished to be removed from the ballot. Yet when faced with that fact, NCSBE chose to continue directing County Boards of Election to print ballots with Kennedy’s name on them despite numerous opportunities to pause the process without running afoul of any statutory deadlines. *Id.* at ¶¶ 42-49.

34. Simply put, Defendants cannot articulate any reason sufficient to warrant these extreme violations of Kennedy’s statutory and Constitutional rights.

35. In considering whether a plaintiff is likely to suffer irreparable harm absent an injunction, a judge must balance the potential harm to the plaintiff if the injunction is not granted as against the harm to the defendant if the injunctive relief is granted. *Williams v. Greene*, 36, N.C. App. 80, 86 (1978). Here, the harm faced by Kennedy if forced to remain on the ballot is palpable, especially insofar as it would violate fundamental principles of free speech and fly in the face of clearly established statutory rights.

36. In contrast, any harm faced by Defendants should the injunction be granted would be negligible, and any financial burden would be of lessened significance, namely because they ordered counties to continue printing ballots with Kennedy’s name on them despite knowing Kennedy wanted his name withdrawn.

37. Considering the harm Kennedy would face should a TRO or PI be denied substantially outweighs the harm Defendants would face if such relief were granted, the balance of Equities favors Plaintiff.

38. Finally, public interest favors granting injunctive relief because of the undeniable interest in avoiding ballot confusion, as well as having a free and fair ballot where each qualified voter and their vote is counted equally. By forcing Kennedy to remain on the ballot despite his withdrawal from the contest over a week ago, Defendants are bringing those foundational principles into jeopardy.

39. Similarly, the public interest analysis is not affected by Defendants' malleable "practicality" standard which, as discussed, appears to have reached an outcome predetermined by NCSBE's affirmative directives to continue printing incorrect ballots despite being on notice that Kennedy had withdrawn. *See Appeal of Judicial Review by Republican Candidates for Election in Clay Cnty.*, 45 N.C. App. 556, 573 (1980) (quoting *People v. Wood*, 148 N.Y. 142, 146-47, 42 N.E. 536 (1895) ("We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.")).

WHEREFORE, Plaintiff respectfully requests the Court enter an Order:

1. Granting emergency and/or permanent injunctive relief requiring NCSBE to immediately cease printing any ballots with Kennedy's name on them and requiring NCSBE to take such necessary steps to ensure ballots with Kennedy's name on them are not mailed to any voter;

2. Granting emergency and/or permanent injunctive relief requiring NCSBE to immediately take all steps necessary to ensure that correct ballots, without Kennedy's name on them, are printed and mailed to voters prior to all applicable statutory deadlines; and
3. For all other relief deemed just and proper.

This, the 3rd day of September, 2024.

**SIRI & GLIMSTAD LLP**

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Elizabeth A. Brehm, Esq.\*  
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*Attorneys for Plaintiff*



# Exhibit E

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 24CV027757-910

ROBERT F. KENNEDY, JR.,

*Plaintiff,*

v.

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


*Defendants.*

**ACCEPTANCE OF SERVICE**

The undersigned hereby acknowledges the receipt of the complaint and summons issued in this action to the Defendants. The undersigned further acknowledges and represents that they are authorized by said Defendants to receive service of process on their behalf, and further acknowledges that this service of process and their acceptance of same complies with Rule 4 of the North Carolina Rules of Civil Procedure.

This the 4th day of September, 2024

NORTH CAROLINA  
DEPARTMENT OF JUSTICE

By: 

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Special Deputy Attorney General  
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T: (919) 716-6567

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*Attorneys for State Board Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of September, 2024, I e-filed the foregoing document and served the same via email pursuant to Rule 5 N.C.R.C.P to the following persons:

Terence Steed  
Special Deputy Attorney General  
N.C. Department of Justice  
[Tsteed@ncdoj.gov](mailto:Tsteed@ncdoj.gov)

Mary Carla Babb  
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*Attorneys for Defendants*

This the 4th day of September, 2024.

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*Attorneys for Plaintiff*

# Exhibit F

DATE: September 5, 2024

TIME: 09/05/2024 5:01:39 PM

WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

NORTH CAROLINA

BY: S. Smallwood

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

24CV027757-910

ROBERT F. KENNEDY, JR.,

Plaintiff,

v.

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

Defendant.

**ORDER ON PLAINTIFF'S MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND, IN THE ALTERNATIVE,  
AN EXPEDITED PRELIMINARY  
INJUNCTION**

THIS MATTER came on to be heard and was heard on September 5, 2024, before the undersigned upon Plaintiff's Motion for Temporary Restraining Order and, in the Alternative, an Expedited Preliminary Injunction, filed on September 3, 2024. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. In attendance for Plaintiff were Phillip Strach, Jordan Koontz, Matthew Gorga, and Aaron Harding. In attendance for Defendants were Special Deputy Attorneys General Mary Carla Babb and Terence Steed.

In this litigation, Plaintiff has asserted two causes of action against Defendants, seeking a declaration that: (1) Plaintiff has met the statutory requirements for a candidate

to withdraw under N.C.G.S. § 163-113, and Defendants have violated this statute by determining it was impractical to remove his name from North Carolina's 2024 general election ballot; and (2) Defendants' refusal to remove him from the ballot amounts to compelled speech, in violation of Article I, Section 14 of the North Carolina Constitution.

Plaintiff seeks an order enjoining Defendants from printing any ballots with his name on them and requiring Defendants to take any necessary steps to ensure ballots with his name on them are not mailed to any voter. Plaintiff further requests this Court enter an order requiring Defendants to take all steps necessary to ensure that ballots without Plaintiff's name on them are printed and mailed to voters "prior to all applicable statutory deadlines."

For the reasons stated below, Plaintiff's motion is denied.

### **PROCEDURAL HISTORY**

Plaintiff filed the Complaint in this matter on August 30, 2024, and the present Motion on September 3, 2024.

On September 5, 2024, the Court heard Plaintiff's Motion. Prior to the hearing, counsel for Defendants submitted a Response to the Motion setting forth their position. With the Response, Defendants submitted two affidavits for the record, one from Defendant State Board's Executive Director, Karen Brinson Bell, and the other from a Wake County Board of Elections member, Gerry Cohen.

Upon considering the pleadings, other materials submitted, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

## INJUNCTIVE RELIEF

A temporary restraining order is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). Injunctive relief “may not issue unless the movant carries the burden of persuasion as to each of these prerequisites.” *A.E.P. Industries*, 308 N.C. 393, at 413, 302 S.E.2d at 766. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). Even if the movant carries his burden, “it still remains in the trial court’s discretion whether to grant the motion” for injunctive relief. *Id.* Injunctive relief “may be classified as ‘prohibitory’ and ‘mandatory.’ The former are preventive in character, and forbid the continuance of a wrongful act or the doing of some threatened or anticipated injury; the latter are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.” *Roberts v. Madison Cty. Realtors Ass’n*, 344 N.C. 394, 399-400, 474 S.E.2d 783, 787 (1996) (citations and quotation omitted). A mandatory injunction “will ordinarily be granted only where the injury is immediate, pressing, irreparable, and clearly established.” *Auto. Dealer Res., Inc. v. Occidental Life Ins. Co.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972) (citing *Highway Com. v. Brown*, 238 N.C. 293, 77 S.E.2d 780 (1953)).



## **FINDINGS OF FACT & CONCLUSIONS OF LAW**

### **The Balancing of the Equities Weighs in Defendants' Favor**

Without touching upon the merits, the Court has balanced the equities, as required by law. After weighing the potential harm to Plaintiff if injunctive relief is not issued against the potential harm to Defendants if injunctive relief is granted, the Court concludes that the balance of the equities weighs substantially in Defendants' favor. For that reason, Plaintiff has failed to meet his burden, and the motion is denied.

The Court finds that Plaintiff will suffer no practical, personal, or pecuniary harm should his name remain on the ballot. In contrast, if the State were enjoined and required to reprint ballots, the harm to Defendants, county boards of elections, and voters would be substantial. Voting for the 2024 general election begins in North Carolina with the distribution of absentee-by-mail ballots, and state law requires those ballots to be distributed beginning sixty days prior to a statewide general election. *See* N.C.G.S. §§ 163-227.10(a) (for a statewide general election) and -258.9(a) (for military and overseas voters). This year, that date is Friday, September 6. The county boards are therefore on the verge of mailing absentee ballots beginning tomorrow morning. Removing Plaintiff from the ballot at this late date would force the State and counties to expend significant resources to reformat and reprint ballots. Starting afresh with ballot preparation, moreover, would require the state to violate the statutory deadline for distributing ballots, N.C.G.S. § 163-227.10(a), and, potentially, federal law as well. Finally, removing Plaintiff from the ballot and reprinting the ballots will necessarily mean that voters have at least two fewer weeks in which to vote. Together, these harms greatly outweigh the negligible harm that Plaintiff will suffer by appearing on North Carolina's ballot after the suspension of his presidential campaign in North Carolina.

**Conclusion**

For the foregoing reasons, Plaintiff's motion for a temporary restraining order is DENIED. At Plaintiff's request, Defendants are ordered not to proceed with mailing absentee ballots before noon on Friday, September 6, 2024.

SO ORDERED, this the 5th day of September, 2024.



Rebecca Holt, Superior Court Judge

9/5/2024 4:41:12 PM

# Exhibit G

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 24CV027757-910

ROBERT F. KENNEDY, JR.,

*Plaintiff,*

v.

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

*Defendants.*

**NOTICE OF APPEAL**

Plaintiff Robert F. Kennedy, Jr. ("Plaintiff"), by and through the undersigned counsel, and pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, hereby gives notice of appeal to the Court of Appeals of North Carolina from the Order denying Plaintiff's Motion For Temporary Restraining Order And, In The Alternative, An Expedited Preliminary Injunction. This Order was filed on all parties on September 5, 2024.

Respectfully submitted, this the 5th day of September, 2024.

**SIRI & GLIMSTAD LLP**

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of September, 2024, I e-filed the foregoing document and served the same via email pursuant to Rule 5 of the North Carolina Rules of Civil Procedure to the following persons:

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*Attorneys for Defendants*

This the 5th day of September, 2024.

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