

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. _____

REPUBLICAN NATIONAL COMMITTEE and
NORTH CAROLINA REPUBLICAN PARTY,

Plaintiffs,

v.

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

Defendants.

VERIFIED COMPLAINT

Pursuant to Rules 3, 38, 57, and 65 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §§ 1-253, et seq., 150B-43, et seq., and 163-166.16, et seq., Plaintiffs file this Complaint against Defendants seeking declaratory and injunctive relief as follows:

INTRODUCTION

1. The General Assembly enacted a detailed statute aimed at preventing electoral fraud by presentation of valid photo voter identification for in-person voting, as required by the Constitution. N.C. Gen. Stat. § 163-166.16(a). The law describes several physical photo voter identification items that a voter can produce to comply. Nowhere in that law, or related ones like N.C. Gen. Stat. §§ 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, or 20-7, did the General Assembly directly describe or indirectly permit the use of electronic forms of photo identification "to confirm the person presenting to vote is the registered voter on the voter registration records." N.C. Gen. Stat. § 163-166.16(g). The NCSBE knew the law up until August 19, 2024. It

promulgated Numbered Memo 2023-03 ("NM23-03")¹ on September 14, 2023, and updated it on February 23, 2024. Indeed, the NCSBE stated the law simply:

Acceptable Forms of Photo ID

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

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

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

In spite of this obvious application of the law for almost a year, the three Democrat members of the NCSBE abruptly reversed course, less than three months before the November presidential election. On August 20, 2024, by a three-two Democrat majority vote, the NCSBE approved allowing precinct workers to rely upon the University of North Carolina Chapel Hill's digital student and employee identification.² This UNC digital identification exists as an electronic record on a computer device. According to the NCSBE, on August 19, an image of a photo ID on a computer device did **NOT** satisfy the law requiring "a voter shall produce any of the following forms of identification that contain a photograph" to satisfy the voting procedures and vote. But on August 20, that somehow met the specific requirements of the law. The law never changed. The Court should, respectfully, curb the NCSBE from acting outside its statutory authority.

¹ [Numbered Memo 2023-03 Photo ID and In-Person Voting.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-03%20Photo%20ID%20and%20In-Person%20Voting.pdf)
<https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-03%20Photo%20ID%20and%20In-Person%20Voting.pdf> (Last visited September 9, 2024.)

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

PARTIES, JURISDICTION & VENUE

2. The Republican National Committee (“RNC”) is the national committee for the Republican Party, representing all registered Republicans across both the state and nation. It serves as the collective voice for the Republican Party’s platform. It is the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), and a political party, as defined in Article 9 of Chapter 163 of the North Carolina General Statutes, to include N.C. Gen. Stat. § 163-96.

3. Part of the RNC’s core mission involves organizing lawful voters and encouraging them to support Republican candidates at all levels of government, including throughout North Carolina. The RNC expends significant time and resources fighting for election security and voting integrity across the nation, including in North Carolina. These efforts are intended to ensure that the votes and voices of its members, its candidates, the party, and, truly, all eligible voters who vote regardless of party or affiliation, are not silenced or diluted in any way. Preventing unqualified persons from voting, or seeking to vote, in elections has forced the RNC to divert its efforts and funds in order to hold elections officials accountable to requirements of state law.

4. The NCGOP is a state committee of the Republican Party, as defined by 52 U.S.C. § 30101(15), and a political party, as defined in Article 9 of Chapter 163 of the North Carolina General Statutes to include by N.C. Gen. Stat. § 163-96. The NCGOP represents the interests of registered Republican voters across North Carolina, residing in all 100 counties. The NCGOP also advocates for the interests of thousands, if not millions, of non-affiliated voters who align with various aspects of the Republican Party platform.

5. The NCGOP’s mission and platform overlap with that of the RNC, including an emphasis on election integrity and security. The NCGOP’s core mission ranges from counseling interested voters and volunteers on election participation, hosting candidate and voter registration

events, staffing voting protection hotlines, investigating reports of voter fraud and disenfranchisement, and providing election day volunteers in all 100 counties across North Carolina. The NCGOP spends much time and effort advocating for its members throughout all levels of state government, working to ensure they are heard at the ballot box and beyond.

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

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

8. Additionally, NCGOP has associational standing because its members have standing in their own right to challenge Defendants' actions here. NCGOP represents millions of registered Republican voters across North Carolina, including, as a matter of public record, at least one registered Republican voter in all 100 counties. These unlawful voter identification processes

and state law violations harm NCGOP's members. Defendants' statutory violations dilute these members' votes when any one ineligible voter votes illegally in an election. Additionally, these members' rights to participate in a fair and secure electoral process, free from voter fraud, will be significantly hindered. Ensuring such freedom and security in all elections throughout North Carolina is central to the NCGOP's organizational mission.

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

FACTUAL ALLEGATIONS

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

I. What the Law Actually Says.

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

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

- 1) Any of the following that is valid and unexpired, or has been expired for one year or less:
 - a. A North Carolina **drivers license**.
 - b. A special identification **card** for nonoperators issued under G.S. 20-37.7 or other form of nontemporary identification issued by the Division of Motor Vehicles of the Department of Transportation.
 - c. A United States **passport**.
 - d. A North Carolina voter photo identification **card** of the registered voter issued pursuant to G.S. 163-82.8A.
 - e. Recodified as sub-subdivision (a)(2)c. of this section by Session Laws 2019-22, s. 1, effective June 3, 2019.
 - f. Reserved.
 - g. A student identification **card** issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), provided that card is issued in accordance with G.S. 163-166.17.
 - h. An employee identification **card** issued by a state or local government entity, including a charter school, provided that card is issued in accordance with G.S. 163-166.18.
 - i. A **drivers license** or special identification **card** for nonoperators issue by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.
- (2) Any of the following, regardless of whether the identification contains a printed expiration or issuance date:

- a. A military identification **card** issued by the United States government.
 - b. A Veterans Identification **Card** issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities.
 - c. A tribal enrollment **card** issued by a State or federal recognized tribe.
 - d. An identification **card** issued by a department, agency, or entity of the United States government or this State for a government program of public assistance.
- (3) Any expired form of identification allowed in this subsection presented by a registered voter having attained the age of 65 years at the time of presentation at the voting place, provided that the identification was unexpired on the registered voter's sixty-fifth birthday.

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

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

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

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

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

A. Other Forms of Voter Photo Identification Under the Laws.

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

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

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

License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 60 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The

temporary driving certificate shall be valid for driving purposes and shall not be valid for identification purposes, except when conducting business with the Division and not otherwise prohibited by federal law. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant, unless the applicant is ineligible for mail delivery by the United States Postal Service at the applicant's residence. If the United States Postal Service documents that it does not deliver to the residential address provided by the applicant, and the Division has verified the applicant's residential address by other means, the Division may mail the drivers license to the post office box provided by the applicant. Applicants whose only mailing address prior to July 1, 2008, was a post office box in this State may continue to receive their license at that post office box, provided the applicant's residential address has been verified by the Division.

NC Gen. Stat. § 20-7(f)(3b)(5).

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

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

30. The first definition of "card" on Dictionary.com is: "a usually rectangular piece of stiff paper, thin pasteboard, or plastic for various uses, as to write information on or printed as a means of identifying the holder." *See* www.dictionary.com/browse/card (Last visited September 9, 2024.)

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

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

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

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

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

36. Indeed, the statute later describes instances where the voter can get a replacement card: "[i]f the registered voter loses or defaces the voter's photo identification card, the registered

voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, or by telephone or mail." N.C. Gen. Stat. § 163-82.8A(d)(3). The General Assembly's intent is clear: nobody replaces a lost or defaced digitally stored electronic identification that is stored on a computer device. The General Assembly intended photo identification cards to be physical, tangible items.

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

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

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

B. UNC Student and Employee Electronic Identification Documents.

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

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

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

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

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

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

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

46. The law contemplates that the employer, in this instance UNC, will have equipment for producing the identification cards and will protect that equipment to prevent misuse of it. N.C. Gen. Stat. § 163-166.17(a)(1)(c, d, & e). Again, the need for equipment necessarily implies the production or creation of a physical, tangible identification card, handed or delivered by mail to the employee. Equipment does not produce a card if it is simply an electronic or digital image stored on a computer system.

C. NCSBE Administrative Code Regulations on Voter Identification.

47. In the regulations promulgated by the NCSBE under the North Carolina Administrative Code about Verification of Photo Identification During In-Person Voting, the NCSBE required: "(1) The photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.16(a). A valid United States passport book or passport card is acceptable

pursuant to G.S. 163-166.16(a)(1)(c). (2) The photograph appearing on the photo identification bears a reasonable resemblance to the person presenting to vote." 08 NCAC 17 .0101(a)(1, 2).

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

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

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

II. What the NCSBE Used to Say.

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

Acceptable Forms of Photo ID

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

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

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

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

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

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

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

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

No. Once an institution's ID has been approved, that institution's ID is acceptable, including ID cards that were issued before the ID was approved, even if those previously issued ID cards differ from the latest version. **Both N.C.G.S. §§ 163-166.17 and 163-166.18 permit the State Board to approve "the use of . . . cards issued by" an institution** if "cards issued during the approval period" comply with the requirements outlined in the statute, including the requirement that the card contain an expiration date. In short, the legislature's intent was to permit an institution's ID card to be used for voting if that institution commits to issuing compliant cards during the approval period. The law is not meant to permit only those cards issued during the approval period to be accepted for voting, thus requiring an institution to replace the already issued ID cards in circulation, in order for their students or employees to be able to use their IDs to vote. Instead, once an institution's ID meets the requirement with respect to the IDs that are to be issued during the approval period, the institution's ID, including cards already issued, are acceptable.

56. Again, the words "ID cards," "issued," and "differing from latest versions" all show that the NCSBE understood it was talking about a physical, tangible item that a person could

hold in her hands and inspect. Indeed, NM23-03 never mentions anything about an electronic version of a photo identification "card" for students or government employees.

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

III. **The NCSBE's New Story, Two Months Away from a Presidential Election.**

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

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

(Emphasis added.)

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

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

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

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

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

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

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

- a. It may be easy, or at least easier, to alter an electronic document than a physical, tangible item that a precinct official can hold in her hands and inspect;
- b. It may be difficult for a precinct official to be able to see a screen;
- c. It may be difficult to use if there are network or hardware problems that preclude viewing the electronically stored document;
- d. Can a voter bring in an iPad or a laptop to show the precinct official?; or
- e. What happens if there is a dispute about the reliability or authenticity of the electronic document? Does the voter have to leave the device with precinct officials or elections workers to ensure security of it after it is implicated in potential voter irregularity?

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

IV. By Defying the Law, Defendants Place Foundational Election Principles in Jeopardy.

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

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

69. Upon information and belief, Defendants' violations will allow non-eligible voters to vote in North Carolina, in direct contravention of both state law and the North Carolina Constitution. *See, e.g.*, N.C. Const. art. VI § 2(4) (Photo identification for voting in person. Voters

⁴ On Wednesday, August 21, 2024, Ohio announced that it had identified at least 597 non-citizens who registered or voted in recent elections or both. A comprehensive statewide audit identified 154,995 ineligible registrants on Ohio's voter rolls. *See* <https://apnews.com/article/ohio-voters-citizenship-referrals-42799a379bdda8bca7201d6c42f99c65> (Last visited September 9, 2024.)

offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.)

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

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

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

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

V. Fixing this Will Not Harm the NCSBE.

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

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

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

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

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

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

CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

91. Plaintiffs are also entitled to preliminary and permanent injunctive relief requiring Defendants to:

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment declaring that:
 - a. The only type of voter photo identification that qualifies under North Carolina law is a voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
 - b. To be allowed to vote, a voter must produce acceptable voter photo identification which cannot, under the law, be a UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.
2. Issue an expedited writ of mandamus and preliminary and permanent injunction ordering Defendants to comply with North Carolina laws to include specifically N.C. Gen. Stat. §§ 163-166(a), 163-166.17, 163-166.18, 163-166.82.8A, 20-37.7, & 20-7, and requiring

Defendants to:

- a. Immediately notify all County Boards of Elections in writing that:

- i. The only type of voter photo identification that qualifies under North Carolina law is a voter photo identification that satisfies all of N.C. Gen. Stat. § 163-116(a)'s, and any related laws, requirements; and
 - ii. To be allowed to vote, a voter must produce acceptable voter photo identification which cannot, under the law, be a UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118.
 - b. Rescind or delete all parts of any Numbered Memo or board meeting that state or in any way imply that a County Board of Elections or precinct official may accept a UNC student or employee electronic photo identification under either N.C. Gen. Stat. §§ 163-117 or 163-118 when a voter must produce acceptable voter photo identification.
3. Promptly set a date for hearing this dispute pursuant to N.C. R. Civ. P. 57 and 65;
 4. Award Plaintiffs attorney's fees, expenses, and costs as permitted by law;
 5. Retain jurisdiction over this matter to ensure Defendants comply with any Orders issued by this Court; and
 6. Grant such additional relief as the Court deems just and proper.

Filed this the 12th day of September, 2024.

/s/ W. Ellis Boyle
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STATE OF NORTH CAROLINA

WAKE COUNTY

NORTH CAROLINA REPUBLICAN
PARTY and REPUBLICAN NATIONAL
COMMITTEE,

Plaintiffs,

v.

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

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO. _____

VERIFIED COMPLAINT

Kyle Offerman, Chief Counsel of the North Carolina Republican Party, Plaintiff in the above action, being duly sworn, deposes and says that he is authorized to make this verification; that he has read the COMPLAINT in this matter, and the same is true of my own knowledge, except as to those matters and

things stated on information and belief, and, as to those, he believes them to be true.

By: *Kyle V. Offerman*
Kyle Offerman

Sworn to and subscribed before me
this the 10TH day of September, 2024.

Gregory M. Fornshell

Notary Public

My commission expires: 12/6/27

