

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:23-cv-00862-TDS-JEP

DEMOCRATIC NATIONAL
COMMITTEE, et al.,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS, et al.,

Defendants,

And

PHILIP E. BERGER, et al.,

Intervenor-Defendants.

**NOTICE OF
AGENCY ACTION
AND
RELATED CASE**

NOW COME Defendants the North Carolina State Board of Elections, Karen Brinson Bell, Alan Hirsch, Jeff Carmon, III, Stacy Eggers, IV, Kevin N. Lewis, and Siobhan O’Duffy Millen (collectively, the “State Board Defendants”), through undersigned counsel, to give notice of the following agency action and recently filed related case.

1. On February 6, 2024, Plaintiffs amended their Complaint (“First Amended Complaint”), adding among other claims one alleging that SB 747’s noncitizen-juror removal provision, N.C. Sess. Law 2023-140, sec. 44(d) § 9-6.2(b), violates the National Voter Registration Act (“NVRA”), 52 U.S.C. §20507(c)(2)(A). [D.E. 75 at ¶¶ 103-05, 109-11].

2. Prior to Plaintiffs adding the above-noted NVRA claim, on October 10, 2023, Plaintiffs' counsel Seth Waxman sent the State Board a letter raising a possible NVRA violation with SB 747's noncitizen-juror removal provision [D.E. 75-2], to which State Board General Counsel Paul Cox responded on November 3, 2023 [D.E. 75-3]. Mr. Cox assured Mr. Waxman that the State Board had "no intention of establishing a schedule for the submission of jury-excusals from the clerks of superior court that would consequently lead to removals of registered voters in the 90 days prior to a federal election[.]" [*Id.* at 3].

3. On November 6, 2023, the Court granted the Republican National Committee's and the North Carolina Republican Party's motion to intervene as defendants in this matter. [D.E. 48].

4. State Board Defendants filed a Motion to Dismiss several of the claims Plaintiffs raised in their First Amended Complaint, including the claim regarding SB 747's noncitizen-juror removal provision, which remains pending with the Court. [D.E. 79, 80].

5. State Board Defendants hereby give notice to the Court and the other parties that the State Board has been taking and will continue to take action implementing S.B. 747's noncitizen-juror-removal provision consistent with Mr. Cox's November 3, 2023 letter and those portions of the Memorandum supporting the State Board's Motion to Dismiss discussing that provision. [D.E. 75-3; 80 at 6, 14-15, 24]; *see also* attached June 28, 2024 Ltr. from State Board Executive Director Karen Brinson Bell to the Executive Director of the North Carolina Conference of Clerks of Superior Court, Jamie Liles.

6. Given the effective date of the noncitizen-juror removal provision, July 1, 2024, the requirements of the NVRA, and the time provided in state law to complete the noncitizen-juror removal process, it is not possible to complete the necessary steps for implementing the law prior to the 90-day NVRA cutoff provision for the November 2024 election. *See* attached June 28, 2024 Ltr. from State Board Executive Dir. to the Executive Dir. of the N.C. Conf. of Clerks of Super. Ct., Exhibit A, p. 2.

7. Accordingly, the State Board developed a process and has and will continue to take steps to comply with SB 747's noncitizen-juror removal provision this year, without running afoul of the NVRA. *Id.*, p. 2.

8. As the State Board is authorized to do, it established an August 5, 2024 deadline for clerks of superior court to transmit to the Board lists of individuals who claimed to be ineligible for jury service because they were not citizens. *See id.* at 2.

9. The State Board plans to contact registrants who match with persons on the lists transmitted to the Board by superior court clerks, where the review of state and federal databases does not indicate that the person is, in fact, a U.S. citizen. *Id.* at 3. The Board will inform these registrants of the information indicating they may not be citizens and of the rules prohibiting registration and voting as a noncitizen and provide a cancellation-of-registration form to the registrants, in the event they determine they are not eligible to vote. *Id.*

10. In addition to notifying the Court and the parties of the above-noted agency action, the State Board also hereby gives notice of a related case, *N.C. Republican Party*,

et al., v. N.C. State Board of Elections, et al., No. 24CV026820-910, filed in North Carolina Superior Court, Wake County, on August 22, 2024. In that case, the North Carolina Republican Party and Republican National Committee, both of whom are Intervenor-Defendants in the present case, allege, despite the foregoing and the requirements of the NVRA, that 1) that the State Board is refusing to comply with and implement the requirements of SB 747's noncitizen-juror removal provision prior to the November 5, 2024 election, thus violating that provision; and 2) that the State Board is in violation of North Carolina's Public Records Act by failing to honor Plaintiffs' requests for documents related to the Board's efforts to comply with that law. A copy of the Complaint filed in the state-court action is attached to this Notice as Exhibit B.

Respectfully submitted this the 27th day of August, 2024.

NORTH CAROLINA
DEPARTMENT OF JUSTICE

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