

STATE OF NORTH CAROLINA

WAKE COUNTY

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.

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

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

N.C.R. Civ. P. 65

Plaintiffs, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, respectfully move for a temporary restraining order ("TRO") or, alternatively, expedited preliminary and permanent injunction ("PI") compelling Defendants to fulfill their duties set forth in N.C. Gen. Stat. § 163-166 and expressly forbidding the use of student or employee electronic ID from UNC under N.C. Gen. Stat. § 163-166.16(a), 163-160.17, and 163-166.18.

1. Plaintiffs seek immediate and permanent injunctive relief preventing Defendants from giving any guidance or instruction to local precinct officials or County Board of Elections allowing the use of UNC student or employee electronic identification; and instead, requiring Defendants to only allow the use of voter photo identification approved and permitted pursuant to N.C. Gen. Stat. § 163-166.16(a). Plaintiffs assert that they are likely to be successful on the merits of the underlying case. Plaintiffs will sustain irreparable harm unless a TRO or PI is issued. Plaintiffs request an expedited hearing. In support of this Motion, Plaintiffs state as follows:

INTRODUCTION

2. The General Assembly enacted a series of detailed statutes aimed at preventing electoral fraud by presentation of valid photo voter identification for in-person voting as required by the North Carolina Constitution, art 6 § 2(4) . North Carolina Gen. Stat. § 163-166.16(a) describes several acceptable physical voter photo identification cards. Defendants ignored these statutes and actively plan to use electronic identification stored on a computer device in the upcoming election on November 5, 2024.

3. Plaintiffs filed a Verified Complaint on September 12, 2024, seeking immediate TRO or PI and permanent injunctive and declaratory relief requiring Defendants to follow the law. Plaintiffs assert that they likely to be successful on the merits of the underlying case. Plaintiffs will sustain irreparable harm unless a TRO or PI is issued.

4. Plaintiffs request an expedited hearing on the matter pursuant to Local Rules 14.2 and 14.4 and have provided notice to Defendants by email to the NCSBE general counsel and to the Attorney General lawyer represents these Defendants. The Attorney General lawyer and Plaintiffs' lawyer agreed to having this Motion scheduled for hearing on the afternoon of September 19 or at any time at the Court's convenience on September 20, 2024. Plaintiffs rely on the Verified Complaint in support of this Motion.

BACKGROUND

5. 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, Alan Hirsch is the Chairman, Jeff Carmon is the Secretary, and Stacy Eggers, IV, Kevin Lewis, and Siobhan Millen are members of the NCSBE. *Id.* at 9-15. Each is sued in their official capacity.

6. The laws of North Carolina require that "[w]hen 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).

7. These physical items include passports, drivers licenses, photo identification cards for non-drivers, voter identification cards, military identification cards, veterans' identification cards, and tribal enrollment cards.

8. Defendants are required to enact rules and procedures that comply with this law. Every single item in subsections (a)(1-3) of N.C. Gen. Stat. § 163-166.16(a) 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.

9. Two types of cards the General Assembly mentioned in the law describing the only acceptable forms of photo identification to verify voter eligibility are at issue in this Motion: the UNC student identification card from N.C. Gen. Stat. § 163-166.16(a)(2)(g) and the UNC employee identification card from N.C. Gen. Stat. § 163-166.16(a)(2)(h).

10. For about a year, the NCSBE understood and agreed with the plain language of the law, and all the different complimentary laws, read together. When it first promulgated Numbered Memo 2023-03 ("NM23-03")¹ on September 14, 2023, and even when it updated NM23-03 on February 23, 2024, the NCSBE went so far as to say:

Acceptable Forms of Photo ID

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

Is 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?

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> (Last visited September 9, 2024.)

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]

11. Nowhere in N.C. Gen. Stat. § 163-166.16(a), or any related laws 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, electronic forms of photo identification to be used "to confirm the person presenting to vote is the registered voter on the voter registration records." N.C. Gen. Stat. § 163-166.16(g).

12. On August 20, 2024, less than three months before the November presidential election, the NCSBE abruptly reversed course. By a three-two Democrat majority vote, the NCSBE approved allowing precinct officials to rely upon UNC's student and employee electronic identification.² This UNC electronic identification is found as an electronic record on a computer device. Defendants' unilateral expansion to accept electronic photo identification contravenes the law and will likely allow hundreds, or thousands, of ineligible voters to vote in the upcoming November 5, 2024, election and beyond.

13. Upon information and belief, Defendants' position in NM23-03 remains in effect, despite the NCSBE reversing course at its August 20, 2024, meeting. Indeed, upon information and belief, no training on accepting UNC student or employee electronic identification has occurred in any local precinct or County Board of Elections, less than two months away from a presidential election. Thus, any burden on Defendants in terms of time required to correct the erroneous expansion of UNC student or employee electronic identification beyond the statutory confines is mitigated by the fact that the NCSBE has done nothing to implement their recent reversal.

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) (The discussion occurs between the seven and 23 minute mark, with the vote occurring around that 23 minute mark. Last visited September 9, 2024.)

14. Unlike the minimal burden Defendants would face if 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 qualified voters' legal votes, be diluted, but Plaintiffs' mission of advocating for Republican voters, causes, and candidates will be impeded by illegal votes of potentially ineligible voters.

15. 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, 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.

ARGUMENT

16. Plaintiffs seek a TRO because they will be seriously and irreparably harmed by Defendants' actions in allowing ineligible electronic photo voter identification to be used to obtain a ballot and vote. Such action not only ignores N.C. Gen. Stat. § 163-166.16, but it runs headlong into Plaintiffs' right to free and fair election and equal protection under N.C. Const. art. I §§ 10 & 19 and art. 6 § 2(4).

17. If Defendants do not require all eligible voters to present statutorily required adequate photo identification pursuant to N.C. Gen. Stat. §§ 163-166.16(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 likely be diluted, and they will be disenfranchised in elections. This reality will, in turn, have a substantial chilling effect on North Carolinians' right to vote in free and fair elections. By allowing ineligible voters to use illegal electronic photo identification to vote, Defendants have brought the integrity and validity of the State's elections into question.

18. Unless the Court grants emergency, immediate preliminary and permanent relief, Plaintiffs will be subjected to diluted votes and disenfranchisement when potentially thousands of ineligible voters cast illegal votes.

I. Standard

19. This Court has the inherent authority to issue a TRO or a PI. *See A.E.P. Indust., Inc. v. McClure*, 308 N.C. 393, 402, 302 S.E.2d754, 759 (1983).

20. A TRO 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).

21. "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).

22. A PI 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 plaintiffs 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 Valid Voter ID.

23. Plaintiffs are likely to succeed on the merits. Nowhere in N.C. Gen. Stat. § 163-166.16(a), or any related laws 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, electronic forms of photo identification to be used "to confirm the person presenting to vote is the registered voter on the voter registration records." N.C. Gen. Stat. § 163-166.16(g).

24. Plaintiffs incorporate and rely on the Verified Complaint in support of this Motion.

25. Defendants' actions do not comply with the law.

26. Defendants have no excuse to justify their violations of North Carolina's statutory and constitutional provisions about voter photo identification.

27. In considering whether a plaintiff is likely to suffer irreparable harm absent an injunction, a court 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 harms faced by Plaintiffs if Defendants force 100 County Boards of Elections and precinct officials to accept unlawful UNC student or employee electronic identification is palpable, especially insofar as it would violate fundamental principles of free election and dilute or annul every legal voters' clearly established statutory and constitutional rights.

28. In contrast, any potential harm faced by Defendants should the injunction be granted would be negligible. Upon information and belief, Defendants have taken no action to even change their existing centralized guidance, much less performed any training, on their inverted interpretation of existing law.

29. Considering that the harm Plaintiffs 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 Plaintiffs.

30. Finally, public interest favors granting injunctive relief because of the undeniable interest in avoiding confusion over proper voter photo identification, as well as having a free and fair election where each qualified voter has their vote counted equally. By allowing potentially unqualified voters to vote with illegal voter photo identification, Defendants put those foundational principles into jeopardy.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Grant a TRO or, in the alternative, expedited PI 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.
2. For all other relief deemed just and proper.

Respectfully submitted, this the 12th day of September, 2024.

/s/ W. Ellis Boyle
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to the following persons
at the following addresses which are the last addresses known to me:

Paul Cox
email: legal@ncsbe.gov

Terrence Steed
email: tsteed@ncdoj.gov

This 12th day of September 2024.

/s/ W. Ellis Boyle
W. Ellis Boyle
Attorney for Plaintiffs

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