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WAKE COUNTY
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BY: J. Denton

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV02888-910

REPUBLICAN NATIONAL COMMITTEE
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants,

and

DEMOCRATIC NATIONAL COMMITTEE,
et al.,

Intervenor-
Defendants.

Proposed
**ORDER ON PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER OR,
IN THE
ALTERNATIVE, EXPEDITED
PRELIMINARY INJUNCTION**

THIS MATTER came on to be heard and was heard on September 19, 2024, before the undersigned upon Plaintiffs' Motion for Temporary Restraining Order and, in the Alternative, an Expedited Preliminary Injunction, filed on September 12, 2024. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. Plaintiffs were represented at the hearing by W. Ellis Boyle; Defendants by Special Deputy Attorney General Mary Carla Babb; Intervenor-Defendant the Democratic National Committee by Jim W. Phillips, Jr.; and Intervenor-Defendants Affirmative Action Coalition by Narendra K. Ghosh.

In this litigation, Plaintiffs contend that the State Board of Elections ("State Board") violated state law when it approved a digital identification card issued by the University of North Carolina at Chapel Hill as an authorized form of photo identification. In their view,

the state laws that identify acceptable forms of photo identification do not extend to digital identification cards.

Plaintiffs therefore seek an order requiring Defendants to notify the county boards of elections of the following in writing that: 1) the only acceptable forms of voter photo identification are those listed in N.C.G.S. § 163-166.16(a) and 2) to vote, a voter must provide acceptable voter photo identification, which does not include an electronic form of UNC student or employee photo identification. Plaintiffs also ask that the Court order Defendants to rescind or delete any guidance implying that county boards or precinct officials may accept the UNC Mobile One Card as student or employee photo identification for voting.

For the reasons stated below, Plaintiffs' motion is denied.

PROCEDURAL HISTORY

On August 20, 2024, the State Board of Elections approved the UNC Mobile One Card as an authorized form of photo identification under the State's voter-ID laws.

Plaintiffs filed the Complaint and present Motion in this matter over three weeks later on September 12, 2024.

On September 19, 2024, the Court heard Plaintiffs' Motion after granting Intervenor-Defendants' motions to intervene in this matter. Prior to the hearing, counsel for Defendants and Intervenor-Defendants submitted a Response to the Motion setting forth their respective positions.

The Court has considered the pleadings, other materials submitted, the parties' arguments, pertinent case law, and the record established thus far. In making its findings of facts and conclusions of law for the purposes of this Order, the Court adopts and incorporates by reference the arguments presented by Defendants and Defendant-Intervenors in their Briefs in Opposition to Plaintiffs' TRO motion and during the

September 19, 2024 hearing. The Court summarizes its findings of fact and conclusions of law 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

Plaintiffs Fail to Establish a Likelihood of Success on the Merits

Plaintiffs fail to establish they are likely to succeed for two reasons. Their claim has no merit, and they are not aggrieved parties, as required by the Administrative Procedure Act.

Plaintiffs' claim has no merit.

The General Assembly has authorized an expansive and inclusive list of acceptable “forms of identification,” including driver’s licenses, military identification cards, tribal enrollment cards, and student and government employee identification cards approved by the State Board, among others, to serve as the “required identification” presented by a voter when voting. N.C.G.S. § 163-166.16(a).

State law requires the State Board to “approve the use of student identification cards issued by a constituent institution of The University of North Carolina” and “employee identification cards issued by a state or local government entity,” so long as certain criteria are met. N.C.G.S. §§ 163-166.17(a), -166.18(a).

Protected by sophisticated technology, the University of North Carolina at Chapel Hill’s Mobile One Card is the default identification card issued to UNC students and employees. As noted above, on August 20, 2024, the State Board approved the Mobile One Card as an authorized form of photo identification under the State’s voter-ID laws.

Plaintiffs’ contention that state law forbids approval of digital or electronic photo identification, like the UNC Mobile One Card, as a means of proving one’s identity for voting is incorrect.

UNC’s Mobile One Card satisfies all of the criteria for approval as a “student identification card” and “employee identification card” in N.C.G.S. §§ 163-166.17(a) and -166.18(a). Though Plaintiffs contend that state law requires an “identification card” to be a

physical, tangible object, the controlling statutes contain no such requirement. The State Board was therefore required to approve of the use of the Mobile One Card as an acceptable form of identification for voting under North Carolina's voter-ID law. *Id.*

Plaintiffs are not aggrieved parties.

In addition to asserting a meritless claim, Plaintiffs fail to establish that they are aggrieved parties as required by N.C.G.S. § 150B-43. A "person aggrieved" must be "directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision." N.C.G.S. § 150B-2(6). Plaintiffs have no such injury.

Plaintiffs contend that approval of the Mobile One Card may result in hundreds or thousands of ineligible voters casting ballots, threatening the security and integrity of our election. But Plaintiffs provide zero support for the notion that approval of the Mobile One Card will allow any unqualified voters to vote in this year's election. The Mobile One Card is useful only in verifying the identity of an already-registered voter who shows up to cast a ballot or mails in an absentee ballot. It cannot help an unqualified voter register to vote.

Moreover, Plaintiffs offer no support for the notion that students or employees will be able to secure fake Mobile One Cards. Nor do they provide any reason to believe that Mobile One Cards are any less secure or easier to falsify than any of the other forms of identification allowable under state law. To the contrary, in its application seeking approval of the One Card, UNC submitted substantial evidence of the ID's security and reliability.

Without any real injury caused by the State Board's approval of Mobile One Cards, Plaintiffs are not "persons aggrieved." And because they consequently have no right even to bring their claims, they have no likelihood of success on the merits.

For these reasons, the Court denies Plaintiffs' TRO motion.

The Balancing of the Equities Weighs in Defendants' Favor

In addition to concluding that Plaintiffs have not established that they will succeed on the merits, the Court has balanced the equities, as required by law. After weighing the potential harm to Plaintiffs if injunctive relief is not issued against the potential harm to Defendants and voters if injunctive relief is granted, the Court concludes that the balance of the equities weighs substantially in Defendants' favor. For that reason, Plaintiffs have failed to meet their burden for the issuance of a TRO.

The Court finds that Plaintiffs have failed to explain how the State Board's approval of the Mobile One Card could possibly lead to the harms they assert, including voter fraud or vote dilution. Plaintiffs have not advanced any credible link between the State Board's approval of Mobile One Cards and a heightened risk of ineligible voters casting illegal votes. An unqualified voter cannot use a Mobile One Card to register to vote or vote. The Mobile One Card simply helps already registered voters prove their identity when they cast a ballot.

In contrast, if the Court were to disallow use of the Mobile One Card, the harm to voters and Defendants would be real, serious, and substantial. UNC has informed its students and employees that they can use the Mobile One Card for voting, and the State Board's approval of the Mobile One Card has been widely publicized. Reversing the State Board's decision at this point is likely to result in significant confusion among students and employees at UNC. Also, the State Board will have to spend time and incur the expense of revising its training materials and programs to ensure that elections officials are aware that they can no longer accept the Mobile One Card as a valid form of photo identification.

These harms are especially acute considering that voting is set to begin September 20, 2024. In considering whether to grant injunctive relief in an election case, "a court is entitled to and should consider the proximity of a forthcoming election . . . and should act

and rely upon general equitable principles.” *Pender Cty. v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). This is a “bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring); see also *Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam). In asking for relief, Plaintiffs are asking that this Court risk precisely those “unanticipated and unfair consequences” here. *Id.* This Court is unwilling to take that risk, especially when the State Board voted to approve the Mobile One Card on August 20, 2024, but Plaintiffs inexplicably waited more than three weeks to challenge that decision.

Together, the real harms that injunctive relief would cause to the voters and the State Board greatly outweigh the harm that Plaintiffs claim that they will suffer.

Conclusion

For the foregoing reasons, Plaintiffs’ motion for a temporary restraining order is DENIED.

SO ORDERED, this the ^{9/20/2024 10:11:45 AM} ___ day of _____, 2024.



Keith D. Gregory, Superior Court Judge