

NORTH CAROLINA COURT OF APPEALS

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,

DEMOCRATIC NATIONAL
COMMITTEE,

Intervenor Defendant,

AFFIRMATIVE ACTION
COALITION,

Intervenor Defendant.

From Wake County

No. 24CV028888-910

**AFFIRMATIVE ACTION COALITION'S RESPONSE IN
OPPOSITION TO PETITION FOR WRIT OF SUPERSEDEAS AND
MOTIONS FOR TEMPORARY STAY AND TEMPORARY
INJUNCTION**

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INTRODUCTION

Voting has started in North Carolina. Nonetheless, Plaintiffs seek to use the courts to change the state's voter ID rules, threatening the voting rights of more than 32,000 students and nearly 10,000 employees at the University of North Carolina-Chapel Hill ("UNC"). The Superior Court was right to deny Plaintiffs' request that it issue a temporary restraining order ("TRO") of the North Carolina State Board of Elections' ("State Board") 20 August 2024 decision approving UNC's mobile One Card for use as a valid voter ID. The mobile One Card is UNC's digital, default official university ID card. And the Superior Court correctly held, among other things, that it meets all of the statutory requirements of the voter ID law and that nothing in North Carolina law forbids the use of a digital ID card for voting. As a result, Plaintiffs' sole claim is entirely without merit. Moreover, Plaintiffs' petition threatens to disenfranchise qualified voters, who have done nothing wrong. The brunt of Plaintiffs' requested relief will be borne by lawful UNC voters who have prepared for the election with the understanding that they may use their mobile One Card—indeed, some of whom may have already voted using it—and others who will not learn in time or will be unable to act in time to procure alternative acceptable ID to exercise their right to vote.

Plaintiffs' petition fails on every level. Threshold considerations require dismissal at the outset. For one, a writ of supersedeas does not allow for the relief Plaintiffs seek. And crucially, Plaintiffs lack any injury that would permit the Court to grant relief.

Plaintiffs fare no better on the merits or the equities. UNC students are entitled to use their university-provided ID cards for voting so long as the ID satisfies certain statutory requirements. Being a physical card is simply not one of those requirements, and Plaintiffs do not argue that mobile One Cards fail to meet any of the others. Mobile One Cards may therefore be used as voter IDs, and the State Board did not exceed its authority in approving such use.

Finally, even if their claims were not as meritless as they are, Plaintiffs identify *no* harm they will suffer absent court intervention—let alone the irreparable injury necessary to obtain relief. However, if the Court were to eliminate the mobile One Card as acceptable voter ID after voting has already begun, UNC voters would suffer direct and, in some cases, severe and irreparable harm. These voters have reasonably relied on the State Board's decision and plan to vote using their UNC mobile One Card; some likely have already done so. Any change to the law now would sow widespread confusion and chaos among the UNC community, potentially disenfranchising some and discouraging others from voting at all. For all of these reasons—including that

Plaintiffs waited too long to ask the courts to eliminate a form of acceptable voter ID—the petition should be denied.

BACKGROUND

I. Statutory Framework

North Carolina law requires voters to provide an acceptable form of ID when casting a ballot in-person or by mail. *See* N.C.G.S. §§ 163-166.16(a), 163-230.1(f1). Permissible forms of ID include a driver’s license, a U.S. passport, a military ID, or a tribal enrollment card, among others. *Id.* § 163-166.16(a)(1)–(2). Postsecondary student IDs are also permitted so long as three conditions are met. First, the ID and issuing institution must satisfy a list of statutory criteria—for instance, the ID must include a frontal photograph of the student’s face and must contain an expiration date, and the issuing institution must provide copies of the ID to assist the State Board with training. *See id.* § 163-166.17(a)(1). Second, the issuing institution must comply with any “reasonable security measures determined by the State Board to be necessary for the protection and security of the student identification process.” *Id.* § 163-166.17(a)(2). Third, the State Board must approve the ID’s use as voter ID. *See id.* § 163-166.17(a).

Notably, the State Board’s duty to approve an ID that complies with the statutory criteria is mandatory; the statute requires that the Board “shall approve” a given student identification card so long as § 163-166.17(a)’s criteria

“are met.” *Id.* Analogous rules govern approval of public employee IDs, such as those used by UNC employees. *See id.* § 163-166.18(a). The State Board has approved approximately 70 different student IDs, as well as nearly 40 public employee IDs, across the state.¹

II. Factual Background

The One Card is UNC’s official student ID card.² The State Board first approved the One Card as voter ID in 2020.³ In 2023, UNC launched the mobile One Card, and it is now the default form of the One Card issued to students.⁴ The mobile One Card is a cryptographically secured card housed in Apple Wallet—similar to a digital credit card stored in the same application which can be used to make payments by tapping the phone on a credit card reader.⁵ UNC’s website indicates that “[a]ll newly issued One Cards will be mobile One

¹ Sarah Michels, *GOP May Fight Decision Letting UNC Students Use Digital ID to Vote*, Carolina Pub. Press (Aug. 27, 2024), <https://carolinapublicpress.org/65196/gop-may-fight-decision-letting-unc-students-use-digital-id-to-vote/>; *see also Student and Public Employee IDs Approved for Voting*, N.C. State Bd. of Elections, <https://www.ncsbe.gov/voting/voter-id/student-and-public-employee-ids-approved-voting> (last modified Sept. 3, 2024).

² *Mobile One Card*, Univ. of N.C. at Chapel Hill, <https://onecard.unc.edu/mobile-one-card/> (last accessed Sept. 25, 2024).

³ *See Mobile UNC One Card for Apple Wallet Approved for Voter ID Use*, Univ. of N.C. at Chapel Hill (Aug. 23, 2024), <https://onecard.unc.edu/news/2024/08/23/mobile-unc-one-card-for-apple-wallet-approved-for-voter-id-use/>.

⁴ *Id.*; *Get My Card*, Univ. of N.C. at Chapel Hill, <https://onecard.unc.edu/get-my-card/> (last accessed Sept. 17, 2024).

⁵ *Mobile UNC One Card for Apple Wallet Approved for Voter ID Use*, *supra* note 3.

Cards” by default, with physical cards available only “on a case-by-case basis.”⁶ And, crucially, a student may have only one active ID at a time, meaning that, once a student sets up a mobile One Card, any previously issued physical card will cease functioning.⁷ As a result, UNC students generally tend to carry only one form of the One Card—most often, the default mobile One Card. See Declaration of Alexander Denza ¶ 12 (“Denza Decl.”) (attached as Exhibit 1 and originally filed with Affirmative Action Coalition’s Motion to Intervene in the Superior Court).

Mobile One Cards have several advantages over physical cards—chief among them is security. Digital wallets like Apple Wallet are far more secure than their physical counterparts for a simple reason: Digital wallets give users the protection of an additional, and incredibly powerful, layer of security. Both digital cards housed in digital wallets and physical cards housed in physical wallets enjoy some measure of *physical* security—a wallet or phone can be secured in one’s pocket or bag. But digital wallets add a layer of *cryptographic* security—to access Apple Wallet, one must not only physically access the phone, but also unlock it using a secure pin, password, or biometric key (*e.g.*, a

⁶ *Get My Card*, *supra* note 4.

⁷ *See Mobile One Card*, *supra* note 2.

fingerprint or facial recognition).⁸ Such security measures are difficult even for law enforcement to overcome, never mind the average citizen.⁹ Given these security advantages, it is no surprise that digital card technology has rapidly been adopted by security-minded enterprises ranging from credit card issuers and banks to airlines and universities.

The State Board approved mobile One Cards for use as voter ID on 20 August 2024.¹⁰ Prior to the Board's vote, Executive Director Karen Brison Bell informed the Board that although multiple universities had requested approval of digital ID cards, the Board staff was recommending approval of only UNC's card, as it was the only submission that satisfied all statutory criteria.¹¹ The Board approved the use of mobile One Cards 3-2.¹² The two

⁸ See *Apple Pay Security and Privacy Overview*, Apple, <https://support.apple.com/en-us/101554> (last updated Sept. 17, 2024) ("Apple Pay uses security features built-in to the hardware and software of your device to help protect your transactions. In addition, to use Apple Pay, you must have a passcode set on your device and, optionally, Face ID, Touch ID, or Optic ID.").

⁹ See, e.g., Jeff Guo, *Why Even the FBI Can't Hack the iPhone*, Wash. Post (Feb. 17, 2016), <https://wapo.st/34DbMXm> ("You can't just take a stab at guessing someone's iPhone passcode. After five wrong guesses, you're forced to wait a minute. After nine wrong guesses, you have to wait an hour. And depending on how the phone was set up, it might delete all its data after ten wrong tries.").

¹⁰ The Board also approved use of the mobile One Card employer ID as voter identification for UNC employees. Plaintiffs challenge both approvals.

¹¹ *August 20, 2024 Meeting of the N.C. State Board of Elections* at 15:30–16:33, N.C. State Bd. of Elections (Aug. 20, 2024), https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-08-20/State%20Board%20of%20Elections%20Meeting-20240820.mp4.

¹² *Id.* at 22:39–23:29.

members who voted against based their opposition not on the governing statutory criteria but on their belief that a mobile card is not a “card.”¹³

III. Procedural History

Plaintiffs were aware of the State Board’s decision to approve mobile One Cards as voter ID as soon as the decision was made on 20 August 2024. Plaintiffs then waited 23 days to file this suit, filing it on 12 September 2024, and moving for a temporary restraining order or preliminary injunction that same day. By that point, the fall election schedule was already underway: North Carolina mail ballots were scheduled to go out on 6 September, and election officials were busy getting ready for in-person early voting, which begins on 17 October. The mailing of ballots was slightly delayed pursuant to a court order in an unrelated matter (requiring revisions to the slate of candidates), but, now, voting has already begun. Ballots were sent to military and overseas citizen voters on 20 September, and absentee ballots were distributed to all other voters who requested them on 24 September.¹⁴

Affirmative Action Coalition moved to intervene as a defendant in this suit two business days after it was filed. The court granted Affirmative Action

¹³ See *id.* at 10:18–14:41 (Stacy Eggers), 20:15–22:13 (Kevin Lewis).

¹⁴ *Upcoming Election*, N.C. State Bd. of Elections, <https://www.ncsbe.gov/voting/upcoming-election> (last accessed Sept. 25, 2024).

Coalition’s motion on the record at a hearing on 19 September 2024. *See* 19 Sept. 2024 Hr’g Tr. at 10:20–11:1 (attached as Exhibit 2).¹⁵

At the 19 September hearing, the Superior Court considered Plaintiffs’ TRO motion and denied it on the record. *See* 19 Sept. 2024 Hr’g Tr. at 11–46. The court entered its written order on 20 September and held that: (1) Plaintiffs’ claim had no merit, as North Carolina law does not require voter IDs to be a physical or tangible object; (2) Plaintiffs could not bring their claims because they suffered no injury and therefore were not “aggrieved” parties under North Carolina law; and (3) Plaintiffs failed to meet their burden to demonstrate the balance of equities favored injunctive relief because the ensuing harms to voters and the State Board greatly outweigh any claimed harm to Plaintiffs. *See generally* Order on Pls.’ Mot. for TRO or, in the Alternative, Expedited Prelim. Inj. (Pet. Ex. F) (“TRO Order”).

Plaintiffs filed their notice of appeal on 20 September, along with the present Petition for Writ of Supersedeas and Motions for Temporary Stay and Temporary Injunction (“Pet.”).

¹⁵ The Superior Court also granted the DNC’s motion to intervene on 20 September 2024. *See* Pet. Ex. E.

LEGAL STANDARD

A writ of supersedeas may issue “to stay the execution or enforcement of any judgment, 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). The party seeking the writ must demonstrate both a likelihood of success on the merits and that it will face irreparable injury absent a stay. *See Abbott v. Town of Highlands*, 52 N.C. App. 69, 79, 277 S.E.2d 820, 827 (1981); *see also Kennedy v. N.C. State Bd. of Elections*, 905 S.E.2d 55, 66, 2024 WL 4119196, at *11 (N.C. 2024) (mer.) (Riggs, J., dissenting); *N. Iredell Neighbors for Rural Life v. Iredell County*, 196 N.C. App. 68, 78–79, 674 S.E.2d 436, 442–43 (2009) (holding similar criteria apply to trial court rulings on motions for injunction pending appeal); N.C. R. App. P. App’x D.

REASONS WHY THE WRIT SHOULD NOT ISSUE

I. A writ of supersedeas cannot be used to obtain an injunction in the first instance.

Plaintiffs’ petition fails at the outset because they seek relief that is procedurally unavailable. Plaintiffs demand a “Writ of Supersedeas to the Superior Court of Wake County *staying enforcement* of the 20 September 2024 Order and *stopping the use of electronic photo identification* in the 2024 general election.” Pet. 24 (emphasis added). But there is nothing to stay—all the Superior Court did on 20 September was deny a request for preliminary relief,

so there is no “enforcement” this Court could halt. A writ of supersedeas is not a tool to impose a *new injunction*. Rather, as Plaintiffs themselves explain, the purpose of a writ of supersedeas is “to preserve the status quo pending the exercise of the appellate court’s jurisdiction.” *Id.* at 12 (quoting *City of New Bern v. Walker*, 255 N.C. 355, 356, 121 S.E.2d 544, 545–46 (1961)); *see also Craver v. Craver*, 298 N.C. 231, 237–38, 258 S.E.2d 357, 362 (1979); N.C. R. App. P. 23(a)(1) (“writ of supersedeas” can issue “to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal”). The status quo is the world as it existed before Plaintiffs filed their lawsuit and as it exists today: the mobile One Card is a valid form of voter ID. Because Plaintiffs request a writ that cannot provide them with the relief they seek—reversal of the denial of their TRO motion—the Court may dismiss the Petition without further consideration.

II. The Court lacks jurisdiction to address the merits of the underlying interlocutory appeal.

Setting aside the procedural infirmity of Plaintiffs’ petition, it should be denied because the Court lacks jurisdiction over Plaintiffs’ underlying appeal, for two independent reasons. First, Plaintiffs lack standing to bring this action at all, a necessary predicate for both the Superior Court and this Court to have subject-matter jurisdiction. Second, the Court lacks appellate jurisdiction, as

Plaintiffs are not appealing from a final judgment and none of the statutory criteria for an interlocutory appeal are satisfied.

A. Plaintiffs lack standing.

Plaintiffs purport to seek “a declaratory judgment under N.C. Gen. Stat. § 1-253,” Pet. 22, and argue that they need not show any injury to bring such an action. *See id.* at 22–23. But standing “is a ‘necessary prerequisite to a court’s proper exercise of subject matter jurisdiction.’” *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 2022-NCSC-143, ¶ 67, 881 S.E.2d 32, 59–60 (“*United Daughters*”) (quoting *Willowmere Cmty. Ass’n, Inc. v. City of Charlotte*, 370 N.C. 553, 561, 809 S.E.2d 558, 563 (2018)). That bedrock legal requirement applies equally to Declaratory Judgment Act claims. *See id.* ¶ 70, 881 S.E.2d at 60 (“As this Court held long ago, the Declaratory Judgment Act ‘does not license litigants to fish in judicial ponds for legal advice.’” (quoting *Lide v. Mears*, 231 N.C. 111, 117, 56 S.E.2d 404, 409 (1949))). Indeed, the North Carolina Supreme Court has expressly held that, as a “prerequisite for maintaining” a declaratory judgment action, a “plaintiff is still required to demonstrate that it has sustained a legal or factual injury arising from defendants’ actions.” *Id.* ¶ 32, 881 S.E.2d at 46–47.

The only authority that Plaintiffs cite to support their belief that they need not suffer any injury to bring suit directly refutes their position. *See* Pet. 22–23. *Committee to Elect Dan Forest v. Employees Political Action Committee*,

376 N.C. 558, 2021-NCSC-6, 853 S.E.2d 698 (2021), simply recognized that where “the legislature exercises its power to create a cause of action under a statute, even where a plaintiff has no factual injury and the action is solely in the public interest,” a plaintiff can have standing “so long as he is in the class of persons on whom the statute confers a cause of action.” In other words, some statutes explicitly confer a cause of action on an identified class of persons even where they suffer no injury. But as *United Daughters* confirms, the Declaratory Judgment Act is not such a statute. See 2022-NCSC-143, ¶ 32, 881 S.E.2d at 46–47. Indeed, Plaintiffs’ cited authority reiterates the point, describing the Declaratory Judgment Act as a context in which a plaintiff is “required . . . to show direct injury.” *Comm. to Elect Don Forest*, 2021-NCSC-6, ¶ 61, 853 S.E.2d at 724.¹⁶

Plaintiffs’ only attempt to show an injury, Pet. 23, fails: Plaintiffs will not suffer a competitive injury just because some UNC students may present their mobile One Card instead of a physical ID to vote. Although competitive injuries can, in some circumstances, support standing, this is not such a

¹⁶ The Superior Court held that Plaintiffs could not bring their claims because they were not “aggrieved parties” entitled to challenge an administrative decision under N.C.G.S. § 150B-43 and N.C.G.S. § 150B-2(6). See TRO Order 5. Plaintiffs argue that they need not satisfy that standard because they “do not seek to challenge the NCSBE’s decision in a contested case.” Pet. 22. Even if Plaintiffs are correct, that does not help them—they must still demonstrate standing to maintain their action.

circumstance. As Plaintiffs’ only authority explains, for competitive standing to exist, Plaintiffs must show that an allegedly illegal competitive environment creates “a state-imposed disadvantage.” *Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022). The approval of the mobile One Card—which allows qualified voters to cast ballots using a particular form of ID—does not advantage or disadvantage any party or candidate. Plaintiffs are as free to compete for UNC students’ votes as any other political committee, regardless of the form of voter ID the students use.

In sum, because Plaintiffs must demonstrate injury to maintain this suit but have failed to do so, they lack standing to maintain their action, depriving this Court of jurisdiction.¹⁷

B. Plaintiffs are not entitled to an interlocutory appeal.

Plaintiffs do not have a right to an interlocutory appeal of the Superior Court’s denial of preliminary relief. To have such a right, as Plaintiffs acknowledge, Pet. 11 n.4, they must show that the Superior Court’s “order deprived [them] of a substantial right which [they] would lose absent a review

¹⁷ Plaintiffs have abandoned any other theories of standing asserted in their Complaint. *See QUB Studios, LLC v. Marsh*, 262 N.C. App. 251, 256–57, 822 S.E.2d 113, 119 (2018) (holding arguments not raised on appeal to be abandoned). In any event, Plaintiffs failed to articulate any other basis for standing below because, as the Superior Court correctly found, Plaintiffs identified no injury they would suffer as a result of the approval of the mobile One Card. *See* TRO Order 5. In short, Plaintiffs provided “zero support for the notion that approval of the Mobile One Card will allow any unqualified voters to vote in this year’s election.” *Id.*

prior to final determination.” *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (cleaned up). For reasons similar to their failure to show that they have any cognizable injury for purposes of standing, Plaintiffs have failed to demonstrate that an immediate appeal is necessary to preserve any substantial right they hold.

Plaintiffs observe that the right to vote is fundamental, *see* Pet. 11 n.4, but do not claim the mobile One Card prevents or makes it even a little bit more difficult for *anyone* to vote—including any Republican Party voter. Nor do Plaintiffs identify any right they possess that is “protected by law,” that is threatened here. *Barnes v. Kochhar*, 178 N.C. App. 489, 497, 633 S.E.2d 474, 479 (2006) (citation omitted). They claim purported rights “to protect the integrity” of voter ID, North Carolinians’ votes, and the 2024 general election, but identify no authority to suggest they possess such rights or that such rights are protected by law. Pet. 11 n.4. Perhaps even more importantly, Plaintiffs offer *no* explanation as to how these purported rights would be affected, much less “deprived,” without an immediate appeal. Because allowing lawful UNC voters to cast ballots using their one mobile One Cards poses no risk to any right Plaintiffs possess, an interlocutory appeal is inappropriate here.

III. Plaintiffs are not likely to succeed on the merits.

Plaintiffs’ petition also fails on the merits because they have not shown any likelihood of success on their sole claim. The relevant statutes

unambiguously permit the use of mobile One Cards as voter ID. Plaintiffs offer only a single argument against the use of mobile One Cards—their claim that only physical cards are permissible under N.C.G.S. §§ 163-166.16, .17, and .18. *See* Pet. 17–19. This argument fails for several reasons.

First, a mobile One Card plainly is a “student identification card” under Section 163-166.16(a)(1)(g) and an “employee identification card” under Section 163-166.16(a)(1)(h). In “examining statutes, words that are undefined by the legislature ‘must be given their common and ordinary meaning.’” *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 291 N.C. App. 188, 193, 895 S.E.2d 437, 441 (2023) (quoting *In re Clayton-Marcus Co.*, 286 N.C. 215, 219, 210 S.E.2d 199, 202–03 (1974)). In ordinary meaning, a mobile One Card is an “identification card” because it is a “document . . . bearing identifying information about and often a photograph of the individual whose name appears on it.”¹⁸ A mobile One Card ably and demonstrably serves the purpose of allowing its bearers to be identified using personal details and a photograph. Indeed, it is the *default* form of student ID now used for this exact function at the state’s flagship public university.

¹⁸ *ID*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/id> (last accessed Sept. 25, 2024).

Second, the General Assembly has not imposed any requirement that a voter ID be “physical” or “tangible.” *Contra* Pet. 19. The Court should refuse Plaintiffs’ request to write into the statute a requirement that the General Assembly has not. Courts have a “duty to respect not only what [the legislature] wrote but, as importantly, what it didn’t write.” *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 765 (2019) (plurality op.). If the General Assembly had wanted to require that voter ID be physical or tangible, the statute would say that. The legislature enumerated comprehensive—and exclusive—requirements that student and employee ID cards must meet, including criteria related to the ID’s contents, access to samples for training, and security. N.C.G.S. §§ 163-166.17–.18. Lacking from this list is any requirement that the card be physical. Clearly, given the near dozen requirements the General Assembly did impose, *see id.* §§ 163-166.17–.18, it could have imposed a tangibility requirement had it wished to do so.

Third, Plaintiffs are wrong that student or employee “cards” must be physical to match “the same definition of ‘card’ in other sections of the elections statute.” Pet. 19. Fatal to Plaintiffs’ argument, no other section of the voter ID statute states that a voter ID must be physical. And Plaintiffs’ argument is further undermined by the fact that at least one other form of ID listed in Section 163-166.16 will soon be available in a digital format. Under House Bill 199, which was signed into law earlier this year, North Carolinians will soon

be able to utilize digital drivers' licenses. *See* An Act to Make Various Changes to the Motor Vehicle . . . Laws Of The State, S.L. 2024-30, § 1.(a) (H.B. 199). Specifically, H.B. 199 permits the DMV to issue a “digital version of a valid drivers license that (i) is approved by the Commissioner, (ii) is issued by the Division of Motor Vehicles, (iii) is comprised of the same data elements as are found on a valid drivers license, and (iv) is capable of, and limited to, being linked to and displayed by a mobile device owned by the person to whom the valid drivers license is issued.” *Id.*

Crucially, Section 163-166.16 does not require a “physical” or “tangible” driver’s license. It just requires a “North Carolina drivers license” of some sort. N.C.G.S. § 163-166.16(a)(1)(a). The General Assembly did not either specify in H.B. 199 that digital driver’s licenses may not be used as voter ID, or amend Section 163-166.16 to require physical licenses. As a result, when H.B. 199 goes into effect in July 2025, North Carolina’s new digital drivers’ licenses will unquestionably be permissible voter ID. Accordingly, Plaintiffs’ argument that Section 163-166.16 does not allow for the use of digital forms of ID is simply wrong.

Fourth, Plaintiffs are also incorrect that Sections 163-166.17’s and .18’s references to “equipment for producing the identification cards,” which are then “issued,” imposes a tangibility requirement. *Contra* Pet. 17–18. The statutes require that “[a]ccess to the equipment for producing the identification

cards is restricted through security measures,” N.C.G.S. §§ 163-166.17(a)(1)(c), .18(a)(1)(c); Plaintiffs argue that the existence of “equipment” “necessarily implies the production of a physical, tangible identification card.” Pet. 18. But “producing” a voter ID is plainly not the same as “printing” one. *See In re M.I.W.*, 365 N.C. 374, 379, 722 S.E.2d 469, 473 (2012) (“Different words used in the same statute should be assigned different meanings.” (cleaned up)). Indeed, it is evident that the General Assembly knew that, because whereas a separate statute dealing with a different type of voter ID refers to “equipment necessary to *print* voter photo identification cards,” the statutes at issue here refer to “equipment for *producing* the identification cards.” *Compare* N.C.G.S. § 163-82.8A(b), *with id.* §§ 163-166.17(a)(1)(c), 163-166.18(a)(1)(c) (emphasis added). Nor does the word “equipment” help Plaintiffs’ cause. Even assuming “equipment” must mean a physical object—which is far from clear—tangible items such as computers are used to produce intangible items such as code and software on a daily basis.¹⁹

¹⁹ Because digital ID cards are permitted under N.C.G.S. §§ 163-166.16, .17, and .18, Plaintiffs’ corollary argument that the State Board exceeded its authority and extended the scope of those statutes in approving of the mobile One Card is also incorrect. *See* Pet. 19–21.

Because nothing in North Carolina law requires voter ID to be a physical item, and the mobile One Card meets all statutory requirements for valid voter ID, Plaintiffs are unlikely to succeed on the merits of their claim.

IV. Plaintiffs will not suffer any irreparable injury absent a grant of the writ.

Plaintiffs do not seriously argue that they will suffer irreparable harm absent their requested relief, a necessary showing under Rule 23 and for any form of preliminary relief. *See Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977). To establish irreparable harm, an applicant “is required to set out with particularity facts supporting such statements so the court can decide for itself if irreparable injury will occur.” *United Tel. Co. of Carolinas, Inc. v. Universal Plastics, Inc.*, 287 N.C. 232, 236, 214 S.E.2d 49, 52 (1975). Far from meeting this standard, Plaintiffs assert without explanation that this Court’s intervention is needed to prevent “irreparable harm to . . . voters who cast ballots consistent with North Carolina law and to protect Plaintiffs’ right to a meaningful appeal.” Pet. 12. But nowhere in their petition do Plaintiffs elaborate on these conclusory claims. These underdeveloped arguments should thus be deemed waived. *See Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 727 (4th Cir. 2021) (“It is not the obligation of this court to research and construct legal arguments open to parties, . . . and perfunctory and underdeveloped arguments are waived.”)

(cleaned up)); *see also Keenan v. Keenan*, 285 N.C. App. 133, 2022-NCCOA-554, ¶ 20, 877 S.E.2d 97, 104 (2022) (“We have previously held that, when an issue raised by an appellant is missing necessary reasons or arguments without which he cannot prevail on appeal, that issue is deemed abandoned.” (cleaned up)).

In any event, Plaintiffs cannot establish irreparable harm absent the injunctive relief they seek. Plaintiffs’ theory appears to be that some voters will be harmed if qualified UNC voters are allowed to cast ballots after verifying their identity using mobile One Cards. But as the Superior Court correctly found, Plaintiffs “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.” TRO Order 6. Indeed, in the proceedings below, Plaintiffs’ theory of harm was based solely on their unsubstantiated hypothetical concern that allowing UNC students to use their statutorily compliant official university IDs to vote might enable “ineligible voters” to cast ballots. Mot. for TRO or, in the Alternative, Expedited Prelim. Inj. ¶ 18 (Pet. Ex. B). But Plaintiffs failed to present *any* evidence for this assertion, much less “sufficient evidence tending to show” that any illegal voting “is threatened or actually going to occur” absent injunctive relief. *Analog Devices, Inc. v. Michalski*, 157

N.C. App. 462, 472, 579 S.E.2d 449, 455 (2003).²⁰ Plaintiffs offer nothing more here, failing to show that they will suffer any injury, *see supra* § II.A—and certainly not an irreparable injury—absent injunctive relief. *See United Tel. Co. of Carolinas*, 287 N.C. at 236, 214 S.E.2d at 52 (denying injunctive relief when plaintiff’s “evidence fail[ed] to support the broad allegations of irreparable injury contained in its complaint”).²¹

²⁰ Plaintiffs attach an affidavit of Jeffrey Moore as Exhibit H to their Petition and present it as if it is part of the record in this case. *See* Pet. 10, 20. It is not. As the date on the affidavit makes clear, Plaintiffs served this affidavit on Defendants and Intervenor just a few minutes before the Superior Court hearing—a full *week* after filing their Motion. North Carolina Rule of Civil Procedure 6(d) does not permit such eleventh-hour sandbagging; rather, it requires that “[w]hen a motion is supported by affidavit, the affidavit shall be served with the motion.” Accordingly, Defendants and Intervenor objected when Plaintiffs moved to introduce Moore’s affidavit at the hearing, and the Court never admitted it into evidence.

In any case, the affidavit does not support a finding of irreparable harm. Moore purports to have created a fake mobile One Card using an iPhone app. But as the affidavit itself proves, the fake is easy to spot—Moore’s creation has several obvious visual differences from the real thing, including in font, spacing, proportions, and even contents. And even if Moore’s fake looked something akin to a mobile One Card, it would not be an effective fake in the most material sense, because it would lack the unique, secure token on which digital card technology relies. Moore’s One Card facsimile, in this respect, is the digital equivalent of pasting a grainy, printed photo of a driver’s license to a piece of cardboard, then claiming to have made a “fake ID.” Neither are likely to enable fraudulent voting. Finally, even if this affidavit demonstrated that it is possible to create a fake mobile One Card (it does not), Plaintiffs offer no evidence that mobile One Cards are somehow more susceptible to unlawful duplication than any of the other 100+ university and public IDs that have been approved as voter ID.

²¹ Plaintiffs somehow offer even less of an explanation of their theory that a stay and/or injunctive relief is necessary to preserve their right to appeal. Those remedies

V. Equitable considerations strongly counsel against Plaintiffs' requested relief.

Because voting has begun, the balance of equities unquestionably weighs against granting Plaintiffs' requested relief. *See Holmes v. Moore*, 270 N.C. App. 7, 34, 840 S.E.2d 244, 265 (2020) (in analyzing irreparable harm, North Carolina courts "weigh the equities for and against" an injunction (cleaned up)). Granting Plaintiffs' requested relief would inflict direct, immediate, and in some cases irreparable harm on UNC voters who prepared for the election with the understanding that they may vote using their mobile One Cards.

Voters have started submitting absentee ballots, which must be accompanied by a copy of a voter ID. As such, UNC voters are currently able to return their absentee ballots with a copy of their mobile One Card. *See* N.C.G.S. § 163-230.1(f1) (requiring that returned absentee ballots be "accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit" under a separate subsection). And other voters are relying on the Board's approval of the mobile One Card as valid voter ID to vote absentee or in person. *See, e.g.,* Denza Decl. ¶ 13. These students may not

would simply grant Plaintiffs the full relief they seek, which they appear to acknowledge. *See* Pet. 15. Because Plaintiffs do not explain how their right to appeal would be lost absent a stay or injunction, this argument should be deemed waived. *See Steves & Sons*, 988 F.3d at 727.

realize soon enough to change their plans and procure alternative identification in time to participate in the election. *See id.* ¶¶ 14–15. Should the Court change the law now, it would result in widespread confusion, threatening the fundamental voting rights of qualified North Carolinians. *See, e.g., id.* ¶ 14. As this Court has rightly recognized, “voter confusion has a strong potential to negatively impact voter turnout.” *Holmes*, 270 N.C. App. at 35, 840 S.E.2d at 266.²² Here, moreover, the relief Plaintiffs request could disenfranchise voters—including those who are not able to procure in time a different, acceptable form of voter ID.

Plaintiffs’ unreasonable delay in filing this lawsuit has exacerbated the harms that will result if they succeed. The State Board approved the use of mobile One Cards to vote 23 days before Plaintiffs sued. Plaintiffs knew of the State Board’s decision in real time, threatening action the very same day that the Board approved mobile One Cards.²³ Yet Plaintiffs inexplicably sat on their hands for weeks before filing suit.

²² For the same reasons, the so-called *Purcell* doctrine also counsels strongly against relief here. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (cautioning against courts altering voting rules shortly before an election in a manner that is likely to cause “voter confusion,” which may create an “incentive to remain away from the polls”). Judicial elimination of one of the approved forms of voter ID *after* the election is underway is sure to cause confusion and inflict the very harms *Purcell* warns against.

²³ Plaintiff North Carolina Republican Party posted on X (formerly Twitter) that “[p]ermitting a ‘Digital ID’ on its face VIOLATES Voter ID requirements” and

Had Plaintiffs brought their action promptly, Affirmative Action Coalition, and UNC's student body more broadly, would have been on notice a month ago that they may need an identification other than the mobile One Card for purposes of voting. UNC's new semester began on 19 August—the day before the State Board vote—and school registration concluded on 23 August.²⁴ Thus, during the critical period when UNC students and staff were returning to campus and deciding whether to go out of their way, and pay extra, to obtain a physical ID, UNC students were told that they could use their mobile One Cards to vote because the State Board's ruling was in effect and unchallenged.²⁵ By delaying for weeks in bringing this lawsuit, Plaintiffs deprived UNC students of the opportunity to make a fully informed choice about which sort of ID to obtain for the academic year.

Now, the election has begun, and UNC students have the settled expectation that they can use their mobile One Cards to vote. Any change to the law now will cause widespread confusion and possible disenfranchisement.

warned: "Rest assured -- we won't stand for it." @NCGOP, X.com (Aug. 20, 2024, 12:54 p.m.), <https://x.com/NCGOP/status/1825939594405466418/> [<https://perma.cc/4T66-GB3Q>].

²⁴ *The University of North Carolina at Chapel Hill – Academic Calendar AY 23-26*, Univ. of N.C. Office of the Univ. Registrar (July 2024), <https://registrar.unc.edu/wp-content/uploads/sites/9/2023/11/Chancellor-Calendar-AY23-24-25.pdf> (last accessed Sept. 25, 2024).

²⁵ *Mobile UNC One Card for Apple Wallet Approved for Voter ID Use*, *supra* note 3.

Those UNC voters who have already cast absentee ballots using their mobile One Cards will be left in limbo. Those who learn of the eleventh-hour change too late will be left without time to procure a different ID and could very well be disenfranchised. In light of these grave harms, this Court should deny Plaintiffs' requested relief, thereby furthering "the public interest[, which] favors permitting as many qualified voters to vote as possible." *Holmes*, 270 N.C. App. at 35, 840 S.E.2d at 266 (alteration in original) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)).

Additionally, because Plaintiffs' unreasonable delay in filing suit will cause significant confusion and harm to UNC students, their request for emergency relief affecting the impending election is also barred by the doctrine of laches. Laches bars relief when, as here, "(1) the claimant knew of the existence of the grounds for the claim; (2) the delay was unreasonable and . . . worked to the disadvantage, injury or prejudice of the party asserting the defense; [and] (3) the delay of time has resulted in some change . . . in the relations of the parties." *Town of Cameron v. Woodell*, 150 N.C. App. 174, 177, 563 S.E.2d 198, 201 (2002).

REASONS WHY THIS COURT SHOULD NOT GRANT A TEMPORARY STAY AND A TEMPORARY INJUNCTION

For the same reasons set out above in opposition to Plaintiffs' petition for a writ of supersedeas, this Court should deny the motion for a temporary

stay and temporary injunction. That motion makes no independent arguments explaining what in the Superior Court's order could be stayed, even temporarily. Nor does it make any arguments showing that a temporary injunction is available or appropriate, but instead merely "incorporate[s] and rel[ies] on the arguments presented in the foregoing petition for writ of supersedeas." Pet. 24. It should thus be denied for the same reasons the petition as a whole should be denied.

CONCLUSION

For the reasons set forth above, Affirmative Action Coalition respectfully requests that this Court deny Plaintiffs' Petition for Writ of Supersedeas and Motions for Temporary Stay and Temporary Injunction.

Respectfully submitted, this 25th day of September, 2024.

Electronically Submitted
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N.C. R. App. P. 33(b) Certification: I certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been duly served upon counsel for all parties by email at the following addresses:

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This the 25th day of September, 2024.

Electronically Submitted
Narendra K. Ghosh
Counsel for Intervenor

ATTACHMENTS

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

- Exhibit 1** Declaration of Alexander Denza, filed 16 September 2024.
- Exhibit 2** Transcript of Hearing, held 19 September 2024.

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Exhibit 1

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STATE OF NORTH CAROLINA
WAKE COUNTY

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

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.

**DECLARATION OF ALEXANDER DENZA IN SUPPORT OF AFFIRMATIVE
ACTION COALITION'S MOTION TO INTERVENE AS DEFENDANT**

I, Alexander Denza, hereby declare as follows:

1. I am over eighteen years of age. I have personal knowledge of the facts set forth herein. If called upon to testify before this Court, I would do so to the same effect.
2. I am a resident of Moore County, North Carolina. I am registered to vote in North Carolina and I vote in Moore County. I am a student at the University of North Carolina-Chapel Hill ("UNC") and thus also reside part-time in Orange County, North Carolina.
3. I am a member of the executive board of Affirmative Action Coalition at UNC.

4. Affirmative Action Coalition is a registered student membership organization at UNC. Only currently enrolled UNC students are permitted to be active members of Affirmative Action Coalition and hold office in the organization.

5. Affirmative Action Coalition was founded amid the U.S. Supreme Court's consideration of cases stemming from both UNC and Harvard related to the use of race in college admissions.

6. Affirmative Action Coalition's mission is to work toward securing equal access to education for all students, and the organization is committed to maintaining diversity at UNC, despite the outcome of the Supreme Court's decision in *Students for Fair Admissions v. UNC* and *Students for Fair Admissions v. Harvard*.

7. One of Affirmative Action Coalition's core initiatives is a project called "TransparUNCy." TransparUNCy exists to educate students about the organization and workings of the UNC System. As part of this initiative, we have led teach-ins, published opinion pieces, and engaged in other efforts to oppose outside political interference in the UNC System.

8. Particularly important to Affirmative Action Coalition's approach is a strategy of student civic engagement. As students who are directly affected by the actions of our state government and of the state-appointed Board of Governors of the UNC System, we seek to harness the collective voices and activism of UNC students in order to advocate for fair education and against efforts to interfere in university governance and education policy.

9. As a result, the voting rights of UNC students, including in particular Affirmative Action Coalition's own members, are of substantial importance for Affirmative Action Coalition. Affirmative Action Coalition supports efforts to make it as easy and efficient as possible for UNC students to vote.

10. When UNC applied to the North Carolina State Board of Elections to allow the mobile One Card to be allowed to be used as a form of voter identification in North Carolina, Affirmative Action Coalition strongly supported those efforts, and continues to support the availability of the mobile One Card as acceptable identification for purposes of voting.

11. We support the availability of the mobile One Card as voter identification because we are invested in the voting rights of all UNC students, including Affirmative Action Coalition's own members. We thus encourage all of our members to vote, and support efforts to make voting as accessible and straightforward for UNC students as possible.

12. I have a mobile One Card, and carry it with me at all times simply by virtue of having my phone on me. I can say from my own experience, too, that most UNC students I encounter have the mobile One Card and carry it as a matter of course. It is also my experience that most students carry only one form of the One Card, either physical or mobile, but not both, in part because once a student activates the mobile version, his or her physical card will cease to work. In addition, while the mobile version is now included in the student fee, the physical version takes additional time and a \$10 fee to obtain.

13. I understand that, in this lawsuit, the Plaintiffs seek to disallow the mobile One Card as a form of voter identification. Such a decision would have direct, immediate, and negative consequences for UNC students and for Affirmative Action Coalition in particular. For instance, I plan to personally use the mobile One Card in order to vote in the upcoming election. Other members of Affirmative Action Coalition also have the mobile One Card and plan to use it to vote in this upcoming election.

14. If the mobile One Card were no longer an option, it would be more difficult for UNC students, including our members, to vote, because it would deprive them of their simplest

and most straightforward option for voting. It would also cause significant confusion, because students currently expect to be able to use the mobile One Card.

15. If Plaintiffs' lawsuit were to succeed, and the mobile One Card could not be used to vote, Affirmative Action Coalition would take several steps in response. For one, the organization would seek to educate its members and UNC students that the mobile One Card has been rescinded as a valid voter identification and that students must obtain a different identification to be able to vote. It would do so by conducting a teach-in that would address this topic, as well as by publicizing the decision on its email list and Instagram page. It would also write about the decision in TransparUNCy's publication, TransparUNCy Press.

16. In addition, Affirmative Action Coalition would also commit its time and resources to advocate that UNC print physical One Cards for all UNC students at no cost to students and distribute them to students before early voting starts. All of this would distract from Affirmative Action Coalition's other priorities. Resources would necessarily be taken from our other work, such as publicizing interference in university governance and education policy. This would frustrate Affirmative Action Coalition's mission of securing equal access to education for all students and opposing outside political interference in university governance and education policy.

I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct.

Executed on September 15, 2024.



Alexander Denza

Exhibit 2

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV028888-910

NORTH CAROLINA REPUBLICAN PARTY and
REPUBLICAN NATIONAL COMMITTEE,

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,

and

DEMOCRATIC NATIONAL COMMITTEE, et al.,

Intervenor-Defendants.

TRANSCRIPT, VOLUME 1 of 1
Thursday, September 19, 2024
Pages 1 -

WAKE COUNTY SUPERIOR COURT

SEPTEMBER 16, 2024, CIVIL SESSION

HONORABLE KEITH O. GREGORY, JUDGE PRESIDING

Maren M. Fawcett, RPR, CRR
Official Court Reporter
District 10
Wake County, North Carolina

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1 (Superior Court of Wake County resumed civil court
2 session on Thursday, September 19, 2024, at 3:45
3 p.m., before the Honorable Keith O. Gregory. The
4 case of North Carolina Republican Party v. North
5 Carolina Board of Elections, et al., was called
6 for hearing at 3:45 p.m.)

03:39:52 7 THE COURT: Good afternoon, Sheriff, Mr. Clerks,
03:45:29 8 Madam Court Reporter, members of the Bar, members of the
03:45:32 9 public.

03:45:46 10 Before we start, so that we're all on the same
03:45:50 11 page, the only devices that will be allowed to be used for
03:45:59 12 recording are the agencies that have asked previously
03:46:02 13 through our admin order. If you have not been granted the
03:46:09 14 authority to record, then you're not allowed to record,
03:46:11 15 other than the agencies that have already been granted that
03:46:14 16 access.

03:46:15 17 All right. If I'm correct, the next matter is
03:46:20 18 24CV028888. This is the Republican National Committee and
03:46:33 19 the North Carolina Republican Party vs. the North Carolina
03:46:36 20 State Board of Elections and so forth. Is that correct?

03:46:40 21 MR. BOYLE: Yes, Your Honor.

03:46:41 22 THE COURT: Okay. If the parties can introduce
03:46:43 23 themselves. I don't know the attorneys.

03:46:44 24 MR. BOYLE: Yes, Your Honor. Good afternoon.

03:46:46 25 THE COURT: Good afternoon.

03:46:46 1 MR. BOYLE: My name is Ellis Boyle from the Wake
03:46:48 2 County Bar with Ward and Smith law firm. I'm joined at
03:46:52 3 counsel table by the general counsel of the North Carolina
03:46:55 4 GOP, Kyle Offerman, who is also a lawyer, but not here in a
03:47:00 5 speaking role, and we represent the plaintiffs, Your Honor.

03:47:04 6 THE COURT: Thank you, sir.

03:47:07 7 And for defendants?

03:47:08 8 MS. BABB: Yes, Your Honor. My name is Mary Carla
03:47:10 9 Babb. I'm with the North Carolina Department of Justice and
03:47:12 10 I'm here on behalf of the State Board of Elections. With me
03:47:15 11 at counsel table is the State Board's associate general
03:47:18 12 counsel, Mr. Adam Steele.

03:47:22 13 THE COURT: Mr Steele, all right.

03:47:27 14 All right. Yes, sir.

03:47:28 15 MR. PHILLIPS: Your Honor, Jim Phillips from the
03:47:31 16 Guilford County Bar and the Brooks Pierce law firm, along
03:47:35 17 with Shana Fulton from here in Wake County on behalf of the
03:47:38 18 Democratic National Committee. I think we've provided an
03:47:41 19 order to the clerk approving our intervention for you to --
03:47:46 20 we understood we were supposed to provide that today.

03:47:49 21 THE COURT: All right. And I think, if I remember
03:47:52 22 correctly, during calendar call on Monday that was an
03:47:55 23 unopposed motion.

03:47:56 24 MR. BOYLE: No objection to that particular
03:47:58 25 intervenor, Your Honor.

03:47:59 1 THE COURT: And I will sign off on that.

03:48:00 2 Is that going to go through the -- Odyssey?

03:48:03 3 THE CLERK: Yes, sir, it should be there.

03:48:05 4 THE COURT: I'll sign off on that.

03:48:07 5 MR. PHILLIPS: Thank you, Your Honor.

03:48:08 6 THE COURT: Anyone else?

03:48:08 7 MR. GHOSH: Good afternoon, Your Honor. Narendra

03:48:10 8 Ghosh of the Durham County Bar. And --

03:48:12 9 THE COURT: What's your name again?

03:48:13 10 MR. GHOSH: Narendra Ghosh.

03:48:15 11 THE COURT: Spell that please.

03:48:15 12 MR. GHOSH: N-a-r-e-n-d-r-a, G-h-o-s-h, Durham

03:48:20 13 County Bar.

03:48:21 14 THE COURT: Yes, sir.

03:48:22 15 MR. GHOSH: The law firm Patterson Harkavy. I

03:48:26 16 represent the proposed intervenors, Affirmative Action

03:48:28 17 Coalition, filed our motion to intervene earlier this week.

03:48:31 18 I am joined by Lali Madduri, co-counsel, who I filed a pro

03:48:36 19 hac motion for. I believe our motion to intervene was

03:48:40 20 discussed at that calendar call. I understand that the

03:48:42 21 plaintiffs object to the motion.

03:48:48 22 THE COURT: Thank you.

03:48:48 23 Anyone else?

03:48:51 24 All right. Well, maybe I should deal with the

03:48:54 25 issue in reference to your opposition to the intervention.

03:48:58 1 I'll hear you, sir.

03:48:59 2 MR. BOYLE: Thank you, Your Honor.

03:49:00 3 The organization that they purport to intervene on
03:49:04 4 behalf of is related to Affirmative Action issues, which
03:49:09 5 deal with admissions into UNC. It doesn't have anything to
03:49:15 6 do with voting. If you look at their website, they don't
03:49:18 7 mention -- or at least yesterday they hadn't mentioned
03:49:20 8 anything about voting. If you look at, like, the most
03:49:25 9 up-to-date recent posts there, it was from April of 2024 and
03:49:30 10 it was part two from a February post, part one, talking
03:49:34 11 about a seminar or a meeting that they had related to
03:49:39 12 Affirmative Action, not voting.

03:49:42 13 This organization was formed, according to its own
03:49:46 14 website, in relation to the Students for Fair Admissions
03:49:50 15 case against UNC and the Supreme Court ruling, which I
03:49:54 16 believe was in June of 2023, over a year ago. The
03:49:59 17 representative that they listed, Mr. Denza, I believe, who
03:50:05 18 is not present and not here to testify, but they provided an
03:50:07 19 affidavit. In his affidavit, Your Honor, he says that he
03:50:11 20 has voted in the primary for North Carolina's 2024 primary
03:50:17 21 election, which means presumably he had some form of valid
03:50:21 22 voter ID that he used during the primary.

03:50:29 23 So there is really no connection that I could find
03:50:31 24 that would suggest that this organization has anything to do
03:50:33 25 with voting other than they say in their motion to intervene

03:50:37 1 and in his affidavit that they like voting and they think
03:50:39 2 voting is important. I don't disagree with any of that, but
03:50:43 3 that doesn't give them organizational standing for that
03:50:46 4 organization if it's not in any way connected to voting and
03:50:49 5 never has been up until the point they tried to use it as a
03:50:52 6 vehicle to intervene in this case.

03:50:53 7 THE COURT: Thank you.

03:50:54 8 MR. BOYLE: Thank you.

03:50:55 9 THE COURT: Before I hear from you, Mr. Ghosh,
03:50:58 10 Ms. Babb, do you need to be heard, ma'am?

03:51:00 11 MS. BABB: We have no objection, Your Honor.

03:51:02 12 THE COURT: All right. And, Mr. Phillips, you
03:51:03 13 need to be heard, sir?

03:51:05 14 MR. PHILLIPS: No, Your Honor.

03:51:06 15 THE COURT: All right. Thank you.

03:51:06 16 Yes, sir.

03:51:07 17 MR. GHOSH: Thank you, Your Honor.

03:51:09 18 I'll say it is still a membership organization of
03:51:13 19 UNC students. The members are directly affected by the
03:51:18 20 litigation here in terms of whether they will be permitted
03:51:22 21 to vote based on using their official student ID, and the
03:51:27 22 individual members have standing and, therefore, the
03:51:29 23 organization certainly has standing.

03:51:32 24 As we laid out in our motion and which lays out
03:51:35 25 the case law as well, we satisfy all of the requirements

03:51:37 1 both for intervention as a right under Rule 24, as well as
03:51:41 2 permissive intervention under Rule 24(b) and the -- those
03:51:46 3 are ample grounds for us to participate here.

03:51:50 4 THE COURT: Thank you.

03:51:51 5 All right. Anything further?

03:51:53 6 MR. BOYLE: Just, Your Honor, I understand that
03:51:55 7 they are students, likely, in that organization, but, you
03:52:00 8 know, you wouldn't have the chess club having organizational
03:52:06 9 standing to intervene here simply because they're students
03:52:09 10 and they have UNC electronic student identification.

03:52:14 11 They purport to have some connection to this case
03:52:17 12 in voting related to electronic identification. It doesn't
03:52:22 13 exist anywhere in their records that are publicly available,
03:52:24 14 and the one person that they listed in the affidavit, by
03:52:30 15 virtue of deduction, already has valid ID because he voted
03:52:35 16 in the 2024 primary. So the only thing they presented to
03:52:40 17 the court undermines their argument for organizational
03:52:44 18 standing.

03:52:44 19 THE COURT: Thank you.

03:52:45 20 Well, no, you're right, this isn't the chess club.
03:52:48 21 This is discretionary, if I'm correct. The motion to
03:52:51 22 intervene is allowed. I'm going to incorporate by reference
03:52:55 23 your argument along with case law presented. I reserve the
03:52:59 24 right to make further findings of fact if necessary.

03:53:01 25 The objection to my ruling is noted. However, as

03:53:04 1 I said, the motion to intervene is allowed.

03:53:07 2 Now, if I'm correct, this is a TRO?

03:53:11 3 MR. BOYLE: Yes, Your Honor.

03:53:12 4 THE COURT: How long do the parties anticipate

03:53:13 5 this will take? I thought originally it was supposed to be

03:53:16 6 a quick TRO.

03:53:18 7 MR. BOYLE: I think if I could speak initially for

03:53:20 8 15 or 20 minutes, Your Honor, and reserve 10 minutes after

03:53:24 9 the other folks talk, that's where I think I'm 25 to 30

03:53:28 10 minutes.

03:53:29 11 THE COURT: Well, you said 10, 15. Now you're

03:53:31 12 saying 25 to 30 total?

03:53:34 13 MR. BOYLE: I think I said 15 to 20 and then

03:53:35 14 another 10 at the end to rebut if that's possible, Your

03:53:38 15 Honor.

03:53:38 16 THE COURT: This is what I'm -- How long do you

03:53:40 17 need, Ms. Babb?

03:53:41 18 MS. BABB: I'm thinking 20 minutes at most, Your

03:53:43 19 Honor.

03:53:44 20 THE COURT: For your side?

03:53:44 21 MS. BABB: Uh-huh.

03:53:46 22 MR. PHILLIPS: Five.

03:53:46 23 MR. GHOSH: Also five.

03:53:47 24 THE COURT: What we are going to do, I'm going to

03:53:49 25 do it this way. I'm going to give the plaintiffs 15

03:53:52 1 minutes. I'm going to give the defendant 15 minutes. Then
03:53:54 2 I will give the intervenors five minutes apiece, and then I
03:53:59 3 will give another five minutes to the plaintiff and another
03:54:03 4 five minutes to the defendant, and then after that then I'll
03:54:06 5 conclude.

03:54:06 6 All right. So yes, sir, I believe Mr. --

03:54:14 7 MR. BOYLE: Boyle.

03:54:14 8 THE COURT: -- Boyle?

03:54:14 9 MR. BOYLE: Yes, Your Honor.

03:54:16 10 THE COURT: Yes, sir.

03:54:16 11 MR. BOYLE: Thank you, Your Honor. And I have a
03:54:18 12 notebook to hand up. I've given a copy -- may I approach,
03:54:21 13 Your Honor?

03:54:21 14 THE COURT: Yes, sir.

03:54:22 15 MR. BOYLE: Thank you.

03:54:26 16 And in this notebook, Your Honor, I believe the
03:54:29 17 Court mentioned on Monday that it had already reviewed the
03:54:33 18 pleadings that had been filed, the complaint -- verified
03:54:36 19 complaint and the TRO motion. I don't intend to harp on
03:54:42 20 that stuff.

03:54:43 21 You know, from our perspective, Your Honor, the
03:54:45 22 law is clear. You have to read it in pari materia, which
03:54:51 23 means, of course, as a whole, and in here, in 163-166.16,
03:55:01 24 they talk about passports; they talk about driver's
03:55:03 25 licenses; they talk about the other forms of cards. Cards

03:55:09 1 in that statute mean something, and what it means is a
03:55:13 2 physical item. It doesn't mention anything anywhere in
03:55:16 3 163-166.16 at all about an electronic identification. The
03:55:25 4 follow-on number 17, number 18, 163-166.17 and 163-166.18
03:55:34 5 talk about the government ID at 18, and talk about a student
03:55:37 6 identification card in 17. Again, they say card. Those are
03:55:43 7 the next statutes in order. They're all talking about
03:55:46 8 cards.

03:55:46 9 Nowhere do they mention electronic ID. And we
03:55:56 10 are -- I actually didn't see any of this until the Democrat
03:56:05 11 intervenors filed this with their exhibits, but, Your Honor,
03:56:08 12 I don't know if you have a copy of their opposition to the
03:56:15 13 motion for TRO, but if you do and you look at Exhibit 5 -- I
03:56:21 14 apologize, Your Honor, I did not make a copy of this.

03:56:23 15 THE COURT: That's fine.

03:56:24 16 MR. BOYLE: It's not in my notebook. This is
03:56:26 17 their information.

03:56:28 18 So if you look at Exhibit 5 in the Democrat
03:56:33 19 intervenor's motion, it talks about the Finance and
03:56:37 20 Operations One Card, the UNC Get My Card and it says,
03:56:40 21 "Obtaining your card. Follow these steps in order." The
03:56:45 22 third one says, "Upload a photo for your One Card, and a
03:56:50 23 valid photo ID, driver's license, state ID card, or
03:56:58 24 passport."

03:57:00 25 So if the argument is going to be, and I suspect

03:57:03 1 it might be, that, hey, these young adults who are over the
03:57:08 2 age of 18 such that they're eligible to vote and are in
03:57:11 3 college, one of the best colleges in this state, are unable
03:57:16 4 to get some form of identification, well, that's something
03:57:21 5 that's prebaked in this cake for them to get their UNC
03:57:27 6 student electronic identification. They already have to
03:57:30 7 have one of these other forms from 163-166.16. They have to
03:57:35 8 have it.

03:57:36 9 And you're also going to hear, I suspect, Your
03:57:43 10 Honor, an argument that it costs ten dollars now to get a
03:57:47 11 physical copy of the UNC student identification card, not
03:57:52 12 the electronic identification, but the actual card. Well --
03:57:55 13 and I don't blame them for this -- I think it was just
03:57:59 14 updated today; if you go on the website right now, they're
03:58:03 15 giving them away for free. So that argument no longer
03:58:06 16 exists. To the extent it was ever a good one, it's now been
03:58:10 17 taken away by UNC.

03:58:15 18 And, again, here in this second page of Exhibit 5,
03:58:21 19 they say that physical cards will be issued on a
03:58:24 20 case-by-case basis. Again, that's not updated as of today's
03:58:28 21 update on the website, but even then when this was printed a
03:58:33 22 few days ago, it said, "Should you need a physical card,
03:58:36 23 please come to the third floor of the Student Stores
03:58:39 24 Building and bring the One Card fee and a driver's license,
03:58:46 25 passport, or military ID." So, again, they bake this into

03:58:50 1 the cake. UNC has a requirement that to obtain these
03:58:58 2 identification cards or electronic identification from UNC
03:59:01 3 you have to have a separate preliminary, valid under
03:59:05 4 North Carolina, voter registration, you have to have one of
03:59:09 5 those cards.

03:59:11 6 If you turn to Exhibit 6 of their brief, this one
03:59:15 7 I found very interesting, this is a "Android devices
03:59:19 8 frequently asked questions and support." So you're going to
03:59:23 9 hear, I believe, from the other side that the GOP is trying
03:59:27 10 to restrict voting and to limit the way that students can
03:59:30 11 vote. Well, it turns out that if the State Board's rule is
03:59:37 12 in effect, it literally discriminates and chooses Tim Cook
03:59:45 13 versus Bill Gates, because if you got an Apple device with
03:59:49 14 an Apple Wallet, they say you can use that UNC electronic
03:59:55 15 identification. However, when you turn to the second page
04:00:02 16 of this, the question posed, "Can I use the Mobile One card
04:00:07 17 for Android as voter ID?" The answer is, "No. The mobile
04:00:11 18 One card is currently unavailable for Google Wallet on
04:00:14 19 Android devices."

04:00:16 20 So to the extent that they're going to suggest
04:00:20 21 that we are trying to limit people from voting, we are not.
04:00:23 22 And we're certainly not making device-by-device choices like
04:00:29 23 they are. And I'm sure that the Court can take judicial
04:00:32 24 notice that iPhones are very expensive. So that's a
04:00:36 25 limitation that has real meaning if they were actually

04:00:41 1 trying to make it easier for students to vote electronic --
04:00:48 2 with electronic identification.

04:00:50 3 And then Exhibit 9, again, from their brief, it
04:00:54 4 says, "The purpose" -- first of all, this was talking about
04:00:56 5 the UNC One Cardholder Agreement Policy. It says the
04:01:00 6 purpose of the One Card is "multipurpose identification card
04:01:04 7 that also serves as a card for library and meal plan use,
04:01:09 8 building access, copy and print services, and access to
04:01:14 9 campus events." It doesn't say anything about voting in
04:01:18 10 there.

04:01:19 11 And when you go down, I found this very
04:01:21 12 interesting, under their terms of conditions, number one,
04:01:25 13 "Property of UNC." It says here, quote, "The cardholder is
04:01:29 14 obligated to provide or display the UNC One Card upon
04:01:34 15 request by any university official or security personnel,"
04:01:38 16 end quote. And I'm not sure that's what the law requires
04:01:42 17 for people to present identification without reason, but
04:01:48 18 that's what they say in their policies here.

04:01:51 19 And then, "Requirements to obtain a UNC One Card,"
04:01:54 20 again, this is just the sort of more formal version as
04:01:57 21 opposed to the website page earlier. It says, quote, "A
04:02:01 22 valid U.S. driver's license, U.S. passport, U.S. visa, U.S.
04:02:05 23 military ID, or U.S. state-issued identification card is
04:02:11 24 required when requesting a UNC One Card."

04:02:18 25 So, again, you don't take plaintiffs' word for it,

04:02:22 1 Your Honor. This is what UNC says needs to happen. And in
04:02:28 2 their Exhibit B, they have a student, they claim this
04:02:31 3 student, Mr. Bajaj -- Bajaj. I don't know if I'm
04:02:35 4 pronouncing that right. I apologize if it's wrong. They
04:02:38 5 submit an affidavit here saying that this student is a
04:02:42 6 first-year student and he -- it's more convenient for him to
04:02:49 7 use his phone to vote, and he says he's registered in Orange
04:02:53 8 County. I haven't seen that. I spoke with Mr. Phillips
04:02:56 9 beforehand. He said he's got proof of that. I don't doubt
04:03:00 10 him, but I haven't seen it when I looked it up. Apparently,
04:03:02 11 it was misspelled on the voter registration website. I'll
04:03:07 12 take Mr. Phillips' word for that. But this student puts in
04:03:12 13 his affidavit that he has a passport; he just doesn't want
04:03:17 14 to use it, basically, because it's in Texas. So he's
04:03:20 15 registered to vote here and it's inconvenient for him to get
04:03:23 16 his passport from Texas. Well, that's not an unreasonable
04:03:28 17 burden to ask him to simply follow the law and present valid
04:03:32 18 ID.

04:03:33 19 And, Your Honor, if I may, I'd like to call --
04:03:35 20 I've got a witness here, Mr. Moore. I'd like to call him to
04:03:42 21 testify, if I may, briefly.

04:03:46 22 MS. BABB: We'd object to that, Your Honor.

04:03:47 23 THE COURT: You've got six minutes left on your --
04:03:49 24 so if you want him to say something, he can just say it. I
04:03:52 25 can take him saying it.

04:03:53 1 MR. BOYLE: Well, I've got an affidavit, if I can
04:03:55 2 hand it up, Your Honor.

04:03:56 3 MS. BABB: We'd like to object to that. I got
04:03:58 4 handed this affidavit 10 minutes ago, Your Honor, from
04:04:01 5 Mr. Boyle.

04:04:02 6 THE COURT: So noted. I'll take a look at that.

04:04:05 7 MR. BOYLE: Thank you, Your Honor. May I
04:04:06 8 approach?

04:04:06 9 THE COURT: Yes. Yes, sir.

04:04:10 10 MR. BOYLE: So it is late notice, Your Honor, and
04:04:13 11 I believe you recall from Monday's hearing, I've been in
04:04:16 12 Asheville for the past two days. I apologize for the late
04:04:19 13 notice. I got it at noon or 1 o'clock when I was on my way
04:04:23 14 over here and I gave it to defense counsel before.

04:04:28 15 Basically, what this affidavit shows, Your Honor,
04:04:30 16 is that Mr. Moore, who is sitting right here and can testify
04:04:34 17 if you'd like to hear from him -- that's why I also had him
04:04:36 18 appear because I knew it was a little bit late notice --
04:04:39 19 took someone else's Apple Wallet UNC electronic student
04:04:46 20 identification and was able to use -- easily access
04:04:51 21 publicly-available apps from the Apple Store. And I'd like
04:04:55 22 to note for the record that he says in this affidavit very
04:04:59 23 clearly that he was not doing it for any improper purpose,
04:05:01 24 has no intention of using this identification to vote
04:05:05 25 himself. He has his own independent, proper, valid

04:05:14 1 North Carolina voter ID, but he was able -- if you look at
04:05:17 2 the exhibits, Your Honor, you can see -- to manipulate
04:05:20 3 someone else's card and essentially put his face and a fake
04:05:24 4 name on it.

04:05:25 5 And, again, I would ask -- the Court could
04:05:29 6 probably take judicial notice if his experience has been
04:05:32 7 anything like mine, the poll workers are sixties, seventies.
04:05:38 8 They're not usually young people. And if someone shows up
04:05:40 9 with a phone -- with a photo on their phone, I think that
04:05:44 10 that is quite possible that they would be tricked if someone
04:05:49 11 had a fake ID, a fake UNC student electronic identification,
04:05:54 12 and they might be able to vote using an improper means of
04:06:01 13 North Carolina voter photo identification.

04:06:05 14 So we would ask -- and, obviously, the election's
04:06:08 15 coming up soon. We would ask that the Court enter this
04:06:13 16 temporary restraining order and preliminary injunction in
04:06:16 17 favor of the plaintiffs, Your Honor.

04:06:18 18 THE COURT: All right. Thank you, sir.

04:06:19 19 MR. BOYLE: Thank you.

04:06:20 20 THE COURT: All right. Ms. Babb, yes, ma'am.

04:06:23 21 MS. BABB: Yes, Your Honor. Being briefly myself,
04:06:26 22 the plaintiffs here have asked Your Honor to see that there
04:06:32 23 is this tangibility requirement for acceptable forms of ID
04:06:37 24 under North Carolina voter ID law. This is something that
04:06:40 25 they have invented. The statute does not define what

04:06:45 1 identification card means. It does not say that it has to
04:06:51 2 be a tangible card. It doesn't say one way or the other.
04:06:54 3 So there is a silence in the statute.

04:06:57 4 The plaintiffs are trying to read into that
04:06:59 5 silence a requirement that is not there, that it be a
04:07:02 6 tangible card. And I would say that that reading is not
04:07:08 7 supported by the purpose behind North Carolina's voter ID
04:07:10 8 law, which is very clear.

04:07:12 9 When you look at 163-166.16, there's a wide
04:07:18 10 variety of cards that can satisfy the forms of
04:07:22 11 identification -- that can be the acceptable forms of
04:07:24 12 identification under the law. There are several exceptions.
04:07:28 13 It is very clear in the language, which is what Your Honor
04:07:31 14 should look at for interpreting a statute first. It's very
04:07:34 15 clear in the language that the General Assembly intended
04:07:39 16 this to be a broad, wide law. And so the plaintiffs'
04:07:42 17 reading of this is not supported. Nowhere in there does it
04:07:44 18 say this has to be a tangible identification card.

04:07:47 19 All we have is -- in the statute is we have
04:07:51 20 certain qualifications that have to be met for a university
04:07:57 21 or an employer, a government employer to have their student
04:08:03 22 identification cards or employee identification cards
04:08:07 23 approved by the State Board. These are -- these two types
04:08:11 24 of identification cards are unique in that they have to be
04:08:14 25 approved by the State Board. And, in fact, the statutes

04:08:17 1 that govern these specifically says that "the State Board
04:08:20 2 shall approve these if the statutory criteria are met."

04:08:25 3 So here UNC -- UNC submitted its application.
04:08:28 4 That application is provided as our Exhibit A to our brief.
04:08:34 5 Very meticulously goes through the statutory qualifications.
04:08:37 6 Your Honor can go through and check them off. They were all
04:08:41 7 provided for very thoroughly, including that the
04:08:45 8 identification cards have a frontal view of the person's
04:08:49 9 face that is clear and that they have a expiration date
04:08:55 10 because the statute says they have to have an expiration
04:08:58 11 date if they were issued after January 1st of 2021, which
04:09:03 12 these were.

04:09:03 13 So UNC submitted this. They met the statutory
04:09:07 14 criteria for both their student identification cards and for
04:09:11 15 their employee identification cards. And, Your Honor, so
04:09:14 16 that's the end of this story. The Board shall approve these
04:09:18 17 if they meet the statutory criteria. They did, they have
04:09:21 18 approved. These are now acceptable forms of identification
04:09:25 19 for voting in North Carolina.

04:09:28 20 And if you look at the -- I just wanted to point
04:09:32 21 out if you look at the list of specifically -- the specific
04:09:37 22 list of designated forms of identification card in
04:09:42 23 166.16(a)(1), some of those are physical cards, undoubtedly;
04:09:50 24 the passport, the voter IDs issued by the -- the voter IDs
04:09:57 25 issued by the county boards of elections, driver's license,

04:10:00 1 but not all of them. So, for example, some other states,
04:10:03 2 including California, are now issuing mobile driver's
04:10:06 3 license. Driver's license from other states are accepted as
04:10:10 4 a form of identification in North Carolina for a voter if
04:10:13 5 they are registered within 90 days of an election day. So
04:10:18 6 presumably those would satisfy that particular
04:10:21 7 qualification. North Carolina General Assembly passed a law
04:10:26 8 this past year that says next year they're going to have
04:10:29 9 mobile driver's licenses, indicating that they will be valid
04:10:33 10 forms of identification.

04:10:35 11 So not all of these have to be tangible, handheld
04:10:40 12 cards, and there is nothing in the statute that requires
04:10:43 13 that. The statutory criteria were met here. The State
04:10:46 14 Board did its duty and approved these cards, and that's the
04:10:51 15 end of the story, Your Honor. I did want to -- so far as
04:10:55 16 the merits go.

04:10:56 17 I'll address a couple arguments that Mr. Boyle
04:10:58 18 made here in court and that he makes in his motion and the
04:11:02 19 contentions in his brief. The first one I wanted to point
04:11:06 20 out, he didn't mention it here, but I think it's important
04:11:09 21 is in the -- the plaintiffs accuse the State Board of
04:11:13 22 flip-flopping based upon a numbered memo that it issued.

04:11:18 23 Numbered memos are things the State Board issues
04:11:20 24 to county boards to instruct them about certain applications
04:11:23 25 of the law. There's a numbered memo -- and I have a copy of

04:11:27 1 it, Your Honor. And I think that the plaintiffs have
04:11:29 2 provided Your Honor with a copy of it in their binder as
04:11:33 3 Exhibit No. 10. And in that particular -- in that
04:11:40 4 particular numbered memo, this is numbered memo 2023-03 and
04:11:47 5 if you'll look, Your Honor, on page 3, I believe, of this
04:11:51 6 numbered memo, in the frequent -- in the frequently asked
04:11:54 7 questions the first one, it says, "Is a photo" -- "Is a
04:11:58 8 photocopy of a voter's photo ID, or a picture of their photo
04:12:03 9 ID stored electronically on a mobile device, is that an
04:12:06 10 acceptable form of ID for in-person voting?" And the answer
04:12:10 11 is, "No," under the statute we've been talking about, "a
04:12:13 12 voter presenting -- presenting to vote in person must
04:12:16 13 produce one of the listed forms of identification. An image
04:12:20 14 of a photo ID, either as a photocopy or a photo on a mobile
04:12:25 15 device, is not one of the permitted forms of photo ID when
04:12:30 16 voting in person."

04:12:31 17 Well, the State Board still holds this view
04:12:33 18 because this is not applying to a digital identification
04:12:35 19 card. That's not what this is. That's not what UNC's
04:12:38 20 mobile One Card is. This is where you were to take your
04:12:43 21 driver's license, take -- either take a photocopy of it or
04:12:46 22 take a picture of it, store it on your phone, those are not
04:12:50 23 acceptable -- and show it to a poll worker to be able to
04:12:52 24 vote, those are not -- those are not acceptable forms of
04:12:57 25 identification for voting.

04:12:58 1 That is not what the UNC digital card is. It is
04:13:01 2 the -- it is the card for UNC students. It is the default
04:13:05 3 card for UNC students that are -- that are -- that is issued
04:13:09 4 to them.

04:13:10 5 Mr. Boyle mentioned that UNC now provides -- the
04:13:15 6 physical cards are issued on a case-by-case basis. You have
04:13:19 7 to opt out of the digital card. Mr. Boyle -- I don't have
04:13:23 8 any knowledge of this, but Mr. Boyle says that they are now
04:13:26 9 free. That doesn't change the fact that they are not the
04:13:29 10 default card. The default card is -- the default
04:13:32 11 identification card for a UNC student, a UNC employee is the
04:13:36 12 digital UNC One Card.

04:13:39 13 THE COURT: So when you -- when you are a student
04:13:42 14 or an employee of the university, you automatically get this
04:13:48 15 UNC -- what do you call it again?

04:13:50 16 MS. BABB: The mobile One Card, Your Honor.

04:13:53 17 THE COURT: Mobile One Card. It's electronic?

04:13:56 18 MS. BABB: That's correct, Your Honor.

04:13:57 19 THE COURT: So if you're an incoming student if
04:13:58 20 you want a hard copy, you have to ask for it?

04:14:01 21 MS. BABB: You have to opt out of the mobile One
04:14:02 22 Card, that's correct, employee also.

04:14:04 23 THE COURT: So automatically they're going to give
04:14:06 24 you, I guess, the digital and if you don't want that, you
04:14:10 25 opt out and you say, well, I want a hard copy or a tangible

04:14:13 1 card?

04:14:13 2 MS. BABB: I would say it's better to say
04:14:15 3 default -- they give it to you as the default because what
04:14:18 4 they do do as a security measure is they do ask the students
04:14:22 5 to upload copies of a passport, military ID, or driver's
04:14:26 6 license so they can compare that to the student's
04:14:28 7 information; and it's only upon that -- passing that
04:14:32 8 comparison that the student is given the digital mobile One
04:14:35 9 Card. If they don't pass that -- that's a security measure
04:14:39 10 that UNC has in place. If they don't pass that, that
04:14:44 11 triggers -- the non-comparison triggers the not giving the
04:14:48 12 default card.

04:14:48 13 THE COURT: So the student or the employee would
04:14:50 14 have to be the ones to say, "I don't want this. I'd rather
04:14:54 15 have a tangible card"?

04:14:55 16 MS. BABB: That's correct, Your Honor.

04:14:56 17 THE COURT: Okay. All right. You can keep going.
04:14:58 18 Thank you.

04:15:03 19 MS. BABB: Let's see, Your Honor. Like I said,
04:15:04 20 the fact that UNC may be now issuing them free doesn't
04:15:08 21 change the fact that it is the -- the physical ID is not the
04:15:12 22 default student identification card that satisfies the
04:15:15 23 statute.

04:15:17 24 Mr. Boyle mentioned that Android digital IDs have
04:15:23 25 not been approved. And I don't know how that would show any

04:15:29 1 sort of discrimination on the part of anyone. I think, you
04:15:33 2 know, UNC submitted its application that showed the security
04:15:40 3 measures for the Apple version. And, of course, approving
04:15:42 4 some identifications -- digital identifications are better
04:15:45 5 than not approving any at all.

04:15:48 6 THE COURT: What happens if -- when an incoming
04:15:50 7 student -- they're told to upload these pictures of the
04:15:55 8 military ID, or driver's license, or the North Carolina ID,
04:15:59 9 an incoming first-year or freshman student, he or she at 18
04:16:04 10 years old, says, "I don't have a driver's license. I don't
04:16:07 11 have a military ID. I don't have a North Carolina ID," UNC
04:16:11 12 is still going to give them a digital ID. Is that fair or
04:16:15 13 no?

04:16:16 14 MS. BABB: I don't know the answer to that
04:16:18 15 question, Your Honor. I know that --

04:16:20 16 THE COURT: It's not unreasonable to think that
04:16:22 17 these days there are teenagers that don't get a driver's
04:16:25 18 license.

04:16:26 19 MS. BABB: It's really not unreasonable to think
04:16:28 20 that, Your Honor.

04:16:28 21 THE COURT: It's not unreasonable to be 18 to say,
04:16:30 22 "I don't have a military ID." It's not unreasonable to say,
04:16:34 23 "Well, I haven't gone to go get a North Carolina ID, but
04:16:37 24 I've been accepted to Chapel Hill." I'm trying to figure
04:16:40 25 out does UNC say for security purposes, well, we still want

04:16:45 1 to have something to show, you know, that you're a student
04:16:48 2 here and for security purposes and so forth, we're still
04:16:52 3 going to give you some form of ID. Is that fair or you
04:16:54 4 don't know the answer?

04:16:55 5 MS. BABB: I just don't know the answer to that.

04:16:57 6 THE COURT: That's fair.

04:16:58 7 MS. BABB: I only know -- So this was mentioned in
04:17:00 8 the application is that it's a type of security measure that
04:17:02 9 they showed to the board attempting to satisfy those
04:17:06 10 statutory criterias. I don't have any knowledge --

04:17:09 11 THE COURT: Okay.

04:17:09 12 MS. BABB: -- of what would happen if they cannot
04:17:12 13 do that fail-safe check on the student. I don't know if
04:17:14 14 they have any. They may have some procedures. I just don't
04:17:16 15 have any knowledge of it --

04:17:17 16 THE COURT: That's fair. Thank you.

04:17:18 17 MS. BABB: -- Your Honor.

04:17:24 18 And, Your Honor, just sort of -- we made a good
04:17:28 19 bit of arguments if they can't -- as to why and I made it
04:17:33 20 here why they can't satisfy the TRO requirement that they're
04:17:37 21 going to succeed on the merits eventually. So that's a
04:17:40 22 grounds to deny the TRO, but also that they are not
04:17:44 23 aggrieved parties here, Your Honor. Their claims of harm
04:17:49 24 and injury are either very generalized, you know. Their
04:17:54 25 claim that they are champion of election integrity and

04:17:59 1 security, concerned North Carolina citizens also -- every
04:18:04 2 concerned North Carolina citizen, I would hope, has that
04:18:06 3 same aim.

04:18:08 4 And also to say that the UNC mobile One Card
04:18:12 5 results in hundreds or thousands of ineligible voters
04:18:15 6 casting ballots diluting legitimate votes and forcing
04:18:20 7 plaintiffs to devote resources to combat election fraud,
04:18:25 8 there is just simply no support for their allegations here.
04:18:30 9 They're pretty hollow, just like the -- with all due respect
04:18:35 10 to Mr. Boyle, his factual allegations that he said today
04:18:39 11 that he asked you to take judicial notice of, we would ask
04:18:42 12 that you not. I mean, there is nothing to support that, the
04:18:44 13 allegations about these hundreds of thousands of ineligible
04:18:51 14 voters.

04:18:52 15 And, you know, Your Honor, the bottom line is, you
04:18:55 16 know, identification cards, what they do is they verify the
04:19:00 17 identity of already-registered voters. And so in no way do
04:19:05 18 they allow unregistered voters to vote. And there's nothing
04:19:12 19 here to support the notion that unqualified voters can
04:19:17 20 manufacture the fake -- can manufacture and make a fake
04:19:22 21 mobile One Card any better than I can do a physical card.

04:19:25 22 So, you know, this affidavit we're asking you not
04:19:26 23 to consider it. However, I'm certain that I could get
04:19:30 24 someone to come in here and tell me how they can fake a
04:19:34 25 physical card. So there is no greater risk with a mobile

04:19:36 1 card than there would be a physical card. And for these
04:19:39 2 reasons and the others cited in our opposition, they do
04:19:43 3 not -- they are not aggrieved parties and that also gives
04:19:47 4 grounds to deny the TRO.

04:19:50 5 And finally, regarding the weighing and the
04:19:53 6 balancing of the harms for the TRO, they greatly weigh in
04:19:57 7 favor of denial. Again, there's nothing that support
04:20:03 8 plaintiffs' claim of irreparable harm besides these
04:20:06 9 generalized claims of election fraud. And there is no harm
04:20:11 10 period, much less irreparable harm.

04:20:14 11 They haven't explained how the State Board's
04:20:18 12 approval of the mobile One Card would lead to fraud or vote
04:20:23 13 dilution. Unqualified voters can't vote, that's just the
04:20:26 14 way it is; and, more importantly, they can't be using these
04:20:29 15 mobile One Cards to be able to register to vote. Again, IDs
04:20:32 16 just confirm the identity of and allow already-qualified
04:20:36 17 registered voters to vote.

04:20:38 18 And finally, Your Honor, balancing that lack
04:20:42 19 of any harm --

04:20:42 20 THE COURT: You have one minute.

04:20:43 21 MS. BABB: -- against -- yes, Your Honor --
04:20:45 22 against, you know, what is a very serious real harm that
04:20:49 23 voters will be confused by this. UNC students and employees
04:20:53 24 have been told that they can use their digital UNC One Cards
04:20:56 25 to vote, and the State Board's decision was widely

04:21:01 1 publicized. There is a risk -- great risk of voter
04:21:03 2 confusion here. So for these reasons, we'd ask that you
04:21:06 3 deny the TRO.

04:21:06 4 THE COURT: Thank you, ma'am.

04:21:08 5 All right. Mr. Phillips?

04:21:11 6 MR. PHILLIPS: Your Honor, may I approach the
04:21:12 7 bench?

04:21:12 8 THE COURT: Yes, sir.

04:21:17 9 Thank you, Mr. Phillips.

04:21:18 10 MR. PHILLIPS: Yes, sir. If you don't mind, I'm
04:21:20 11 going to use the podium.

04:21:32 12 Your Honor, we agree with the arguments made by
04:21:35 13 Ms. Babb on behalf of the State Board, particularly the
04:21:39 14 point that the UNC mobile ID card meets the requirements of
04:21:44 15 the statute.

04:21:45 16 If you look at the statute and the introduction to
04:21:48 17 the statute, it specifically says, and this is 163(a) --
04:21:55 18 163-166.16, it says that what's required is that a voter
04:22:01 19 present any of the following forms of identification that
04:22:05 20 contain a photograph or the -- of the required voter. So it
04:22:12 21 doesn't use the word "card" in the introduction, and then
04:22:16 22 the examples that follow, some are cards and some are not.

04:22:22 23 I want to respond to a couple of things that
04:22:24 24 Mr. Boyle said. The first one, I can make -- I can make a
04:22:30 25 fake ID card just as well, as Ms. Babb said.

04:22:36 1 The other thing is with regard to the fact that
04:22:44 2 you have to produce a valid ID at Carolina to get an ID
04:22:49 3 card, that of course could be an out-of-state driver's
04:22:52 4 license, which does not suffice as voter ID under the
04:22:56 5 statute that I just cited to you.

04:23:00 6 So, to be clear, the DNC moved to intervene in
04:23:04 7 this case because it has a keen interest in assuring that
04:23:07 8 eligible voters can exercise their franchise. Yet with this
04:23:12 9 lawsuit and several others, all filed by the Republican
04:23:18 10 National Committee in recent days on the eve of this
04:23:21 11 election, the RNC seeks to create confusion and uncertainty
04:23:25 12 among voters and to chasten them from voting and exercising
04:23:30 13 their franchise.

04:23:32 14 They've targeted groups that they don't want to go
04:23:35 15 to the polls and are doing that. These lawsuits, including
04:23:40 16 this one; another which seeks to take hundreds of thousands
04:23:44 17 of people off the voter rolls; another which seeks to
04:23:47 18 rewrite the absentee ballot -- the absentee voting laws in
04:23:52 19 North Carolina, all of them have several things in common.

04:23:58 20 First, they come too late. The underlying facts
04:24:01 21 of this case, of all of these cases were known to them weeks
04:24:05 22 or months before they chose to file on the eve of the
04:24:09 23 election.

04:24:11 24 Second, these lawsuits seek to raise the specter
04:24:15 25 that hoards of noncitizens are going to cast votes in

04:24:19 1 North Carolina this year, while offering no proof whatsoever
04:24:23 2 that that is the case.

04:24:26 3 This Court shouldn't encourage or countenance such
04:24:31 4 fearmongering with injunctive relief. The bottom line, the
04:24:36 5 RNC comes to this Court seeking injunctive relief equity
04:24:40 6 with unclean hands.

04:24:42 7 Indeed, North Carolina law is squarely on the side
04:24:46 8 of the voters in this action. Our Supreme Court has made
04:24:49 9 clear that, and I quote, "Our constitution protects voters
04:24:55 10 from interference and intimidation in the voting process and
04:25:00 11 guarantees that each voter is able to vote according to his
04:25:03 12 or her best judgment and that the votes are accurately
04:25:07 13 counted."

04:25:08 14 That same guarantee applies here to UNC students,
04:25:11 15 particularly where students and employees have been told by
04:25:17 16 the university, a state agency, that their mobile One Card
04:25:22 17 will suffice for voter identification.

04:25:26 18 THE COURT: You have one minute, Mr. Phillips.

04:25:29 19 MR. PHILLIPS: Your Honor, to be sure, students
04:25:33 20 and employees will be affected by plaintiffs' challenges
04:25:36 21 have done nothing wrong. They have not gamed the system.
04:25:40 22 They are not noncitizens who are trying to take advantage of
04:25:45 23 something. They are already, by fact of being registered,
04:25:51 24 registered eligible voters, and the One Card is used solely
04:25:55 25 for the purpose of proving that they are who they say they

04:25:58 1 are. I'll yield my 15 seconds.

04:26:02 2 THE COURT: Thank you, Mr. Phillips.

04:26:03 3 MR. PHILLIPS: Thank you.

04:26:04 4 THE COURT: Allrighty. All right. Mr. Ghosh?

04:26:09 5 MR. GHOSH: Your Honor, I filed a pro hac motion

04:26:12 6 on behalf of my colleague, Ms. Madduri.

04:26:15 7 THE COURT: I'm sorry?

04:26:16 8 MR. GHOSH: I filed a pro hac vice motion on

04:26:19 9 behalf of my colleague, Ms. Madduri, already, and I would

04:26:22 10 ask that the Court allow her to participate and make

04:26:24 11 comments here on our behalf.

04:26:26 12 THE COURT: Yes, sir.

04:26:27 13 MR. BOYLE: We object to that motion, Your Honor.

04:26:29 14 THE COURT: Let me see the paperwork as far as the

04:26:32 15 pro hac. Do you have that?

04:26:40 16 Mr. Ghosh, are you -- aren't you capable of making

04:26:42 17 the argument yourself?

04:26:44 18 Why don't you just make the argument, Mr. Ghosh.

04:26:46 19 You're here on behalf of the Affirmative Action group. Why

04:26:49 20 don't you just make the argument, sir.

04:27:01 21 I'll give you five minutes.

04:27:02 22 MR. GHOSH: Thank you, Your Honor.

04:27:03 23 Narendra Ghosh on behalf of Affirmative Action

04:27:06 24 Coalition. I'd like to spend a few of my minutes here

04:27:09 25 discussing the equitable issues. There are a number of

04:27:13 1 different legal doctrines that counsel strongly in favor of
04:27:15 2 denying relief here. The harms that eliminating the mobile
04:27:22 3 One Card as a valid voter ID will impose on students are the
04:27:23 4 same no matter which of these doctrines apply, whether you
04:27:26 5 look it in balancing the equities or applying laches, as we
04:27:30 6 discuss in our brief, or the Purcell doctrine, the calculus
04:27:34 7 here is not close. The harm to UNC students is grave with
04:27:37 8 almost nothing on the other side of the issue.

04:27:39 9 When it comes to equities, it's the plaintiffs'
04:27:41 10 burden to prove with particularity facts supporting their
04:27:45 11 claim that irreparable injury will occur. They have not
04:27:49 12 come close to meeting that burden. They've only offered
04:27:52 13 unsubstantiated hypotheticals that allowing One Cards to
04:27:57 14 qualify as ID will lead to improper voting. No evidence of
04:28:01 15 that.

04:28:02 16 The plaintiffs are right about one thing only in
04:28:07 17 that there is absolutely undeniable interest in avoiding
04:28:10 18 confusion over proper voter photo ID. And dispositive here
04:28:16 19 is because confusion is exactly what will occur if the Court
04:28:19 20 changes the voter ID rules now.

04:28:22 21 Here's what could happen. Some students would be
04:28:24 22 disenfranchised because they don't have an accessible ID.
04:28:28 23 They may not be able to go back to Texas to get their
04:28:32 24 passport on relatively short notice. Others will find out
04:28:34 25 about the changed law until it's too late to obtain an ID.

04:28:37 1 Others will be confused about the Court changes at this late
04:28:40 2 date and they may not understand if they are permitted to
04:28:43 3 vote and be discouraged from doing so. Others will go to
04:28:47 4 the polls believing the mobile One Card is valid, and then
04:28:51 5 at that point might be turned away where it's too late for
04:28:54 6 them to solve the problem. So all of these harms are likely
04:28:59 7 to occur; whereas there is no harm to the plaintiffs that
04:29:03 8 would occur were their claims to be denied.

04:29:09 9 Mr. Phillips said there's nothing in the record to
04:29:12 10 show that ineligible voters will be able to vote because of
04:29:15 11 this change because all the people using ID are registered
04:29:18 12 voters. They are on the rolls.

04:29:26 13 Again, I just want to underscore too the point
04:29:28 14 that this -- the danger of confusion is heightened
04:29:33 15 particularly because of the delay in their bringing suit.
04:29:37 16 This issue came before the State Board weeks ago. The
04:29:39 17 decision was made weeks ago. Instead of filing a TRO the
04:29:43 18 next day, as would be common practice, they waited weeks for
04:29:46 19 that. And now we're about to start voting by mail, we're on
04:29:52 20 the eve of the election and now we're having this
04:29:55 21 controversy, which could have been avoided had suit been
04:29:58 22 brought earlier.

04:29:59 23 So not only do they have no harm, not only is
04:30:02 24 there dramatic risk of harm to students like our members,
04:30:06 25 but much of that harm could have been avoided if they had

04:30:10 1 filed suit on a timely basis; and that delay alone is
04:30:13 2 further reason why their motion should be denied.

04:30:22 3 Again, just the fact that a student is using a
04:30:27 4 mobile ID in no way makes them ineligible to vote. Using a
04:30:32 5 mobile ID does not aid any voter in voting improperly. It's
04:30:37 6 simply a means of identification. And for UNC students,
04:30:40 7 it's the default identification. And it's worth noting when
04:30:44 8 they get a mobile ID, their physical ID no longer works.
04:30:47 9 It's one or the other. And for most students, because
04:30:51 10 they're students, they carry their phones, it's the mobile
04:30:55 11 ID that they have. That's the only student ID that they
04:30:58 12 have. And under state law, the Board is required to approve
04:31:03 13 it because UNC met all the stringent requirements and for
04:31:06 14 that basis it's proper, and plaintiffs' motion should be
04:31:09 15 denied.

04:31:09 16 THE COURT: Thank you.

04:31:10 17 MR. GHOSH: Thank you, sir.

04:31:11 18 THE COURT: Thank you, Mr. Ghosh.

04:31:13 19 All right. As I said, I would give Mr. Boyle five
04:31:18 20 minutes of rebuttal and Ms. Babb five minutes of rebuttal.

04:31:25 21 I'll ask you, sir, where did the attorneys go to
04:31:27 22 undergraduate school? I'm just -- out of curiosity, where
04:31:30 23 did you go to undergraduate school?

04:31:32 24 MR. BOYLE: Davidson College Wildcats, Your Honor.

04:31:34 25 THE COURT: Where did you go, sir?

04:31:34 1 MR. OFFERMAN: Salisbury University.

04:31:37 2 MR. THOMAS: UNC Charlotte.

04:31:38 3 MS. BABB: UNC Chapel Hill.

04:31:42 4 MR. STEELE: NC State.

04:31:44 5 MR. PHILLIPS: Chapel Hill.

04:31:49 6 MS. FULTON: Chapel Hill.

04:31:52 7 MR. GHOSH: Harvard, sir.

04:31:53 8 THE COURT: I just wanted to know. I went to the

04:31:53 9 University of Virginia. That's fine.

04:31:53 10 MR. BOYLE: That doesn't count against my five

04:31:56 11 minutes, does it?

04:31:57 12 THE COURT: Out of curiosity --

04:31:58 13 MR. BOYLE: Yes, Your Honor.

04:31:58 14 THE COURT: -- I wondered where you went.

04:31:59 15 Yes, sir, I'll hear you.

04:32:00 16 MR. BOYLE: Thank you, Your Honor.

04:32:00 17 So pull up mobile UNC One Card for Apple Wallet

04:32:04 18 approved for voter ID use, update 9/17, this is on their

04:32:08 19 website, "Students and employees who need a physical One

04:32:11 20 Card to serve as a voter ID may request one at the One Card

04:32:15 21 office at no cost." So that's new, but it's there.

04:32:22 22 Four hundred votes separated a statewide election

04:32:25 23 within the past five years; every vote counts. We are here

04:32:30 24 to protect every single Democrat registered voter's vote and

04:32:35 25 make sure it is not diluted by an improper or invalid vote

04:32:40 1 by someone who has not met the qualifications of
04:32:46 2 North Carolina's voter ID laws.

04:32:49 3 Your Honor, if I could hand up student
04:32:54 4 characteristics -- if I may approach, Your Honor -- of UNC.
04:32:57 5 This was printed off today. It says that there are 31,258
04:33:06 6 students at Carolina and 10.1 percent of those, so I guess
04:33:12 7 over 3,000, are U.S. permanent residents or U.S.
04:33:16 8 nonresidents, who presumably will get UNC student electronic
04:33:24 9 identification, and they are not eligible to vote. So maybe
04:33:29 10 there is a messaging problem from the university and from
04:33:33 11 the State Board, but to suggest that if you get a UNC
04:33:39 12 student electronic identification, that means you can vote,
04:33:44 13 that's not true, Your Honor, not for all -- not for every
04:33:47 14 single student. And so we're trying to protect all
04:33:50 15 North Carolina eligible voters, including Democrat voters,
04:33:54 16 to make sure that their votes are not diluted.

04:33:58 17 And you can use the physical -- they said the
04:34:00 18 physical ID is no longer useful. It's cut off. Well, it is
04:34:04 19 useful; you can use it to vote if you need to.

04:34:07 20 And the fact that there's this notion that because
04:34:12 21 the State Board at 10:59 changed completely -- you look at
04:34:18 22 Number 10, Exhibit 10, Your Honor, in that notebook and look
04:34:22 23 at that memo, it says you can't use a photo electronic
04:34:27 24 identification and now they're trying to use some verbal
04:34:30 25 gymnastics to suggest that, oh, well, an Apple Wallet card

04:34:34 1 isn't the same thing. I mean, it is literally the same
04:34:38 2 thing that they said you can't do in their memo. And they
04:34:40 3 haven't changed that memo, I might add.

04:34:43 4 And not that it matters, but I was in trial for
04:34:45 5 two weeks and as soon as I got out of trial, we started
04:34:48 6 working on this lawsuit and we filed it fairly quickly
04:34:51 7 thereafter. And just because the State Board does something
04:34:54 8 illegal -- and if you look, Your Honor, to be intervenors
04:34:58 9 the Democrat intervenors and the Affirmative Action
04:35:04 10 organization intervenors had to file proposed answers and
04:35:08 11 they deny -- I thought this was interesting -- they deny the
04:35:13 12 part in the complaint that says, "The General Assembly
04:35:18 13 passes the laws in North Carolina, and state agencies must
04:35:21 14 follow, but not amend or deviate, from those laws." They
04:35:23 15 deny that. So that's what they're trying to do here.

04:35:26 16 And when you read it in pari materia, card means
04:35:30 17 card. They try to say, oh, well, some California licenses
04:35:35 18 are digital. Well, is the State Board showing up here in
04:35:40 19 court and saying they're going to use California electronic
04:35:44 20 licenses to allow people to vote in November in
04:35:47 21 North Carolina? Because I don't think they've had any votes
04:35:50 22 on that. I don't think the State Board has said that in any
04:35:52 23 public domain. So that's -- that's new breaking news here
04:35:57 24 and that's likely improper. And if they're going to do it,
04:36:01 25 they better do a public hearing about it before they do it,

04:36:05 1 Your Honor.

04:36:06 2 THE COURT: You have one minute.

04:36:07 3 MR. BOYLE: Yes, Your Honor.

04:36:14 4 Everybody -- These folks got up here and said that
04:36:16 5 it's really easy to make physical IDs, fake IDs. Well, I
04:36:21 6 remember being 20 and 19, and I recall it was pretty hard to
04:36:25 7 get a fake ID. And even if they can make one, you can look
04:36:29 8 at it and, you know, look at your own license and see is it
04:36:32 9 real, look at your own passport. Those are things you can
04:36:35 10 train tangibly the poll workers to look at and actually have
04:36:39 11 a model. And if you have, as we suggest with Mr. Moore's
04:36:45 12 affidavit, someone who is reasonably -- and I would posit
04:36:47 13 for the Court he's not very good at electronics, but
04:36:51 14 somebody that's reasonably good at computers, it would be
04:36:54 15 pretty easy, a lot easier to fake that. Irrespective, the
04:36:58 16 General Assembly hasn't addressed it and studied it.

04:37:01 17 Thank you, Your Honor.

04:37:02 18 THE COURT: Thank you.

04:37:03 19 Yes, ma'am.

04:37:03 20 MS. BABB: Your Honor, I really just have one
04:37:05 21 thing to say, which is unqualified voters cannot vote with
04:37:09 22 their mobile ID card. You have to be a qualified registered
04:37:11 23 voter to vote in North Carolina. If I was to go in there
04:37:14 24 and I had my UNC mobile -- digital mobile One Card and I am
04:37:18 25 not on that registration list, I can't vote. Being a

04:37:23 1 registered voter, there's certain qualifications for it.
04:37:26 2 Unqualified unregistered voters are not going to be able to
04:37:29 3 vote with that. That's all I want to say, Your Honor.
04:37:32 4 Thank you.

04:37:33 5 THE COURT: All right. Give me a few minutes.
04:37:34 6 I'm going to step in chambers momentarily.

04:37:37 7 Sheriff, we will be at ease for 10 minutes.

04:37:43 8 (Court in recess from 4:37 p.m. to 4:50 p.m.)

04:50:23 9 THE COURT: Allrighty. First, I want to thank
04:50:25 10 counsel for working with the Court. I know on Monday I
04:50:30 11 informed the lawyers that I am in a jury trial that's still
04:50:34 12 going on and so that's why we had to set the time to do this
04:50:39 13 hearing the way we did. I'm still in that trial, but I
04:50:43 14 appreciate the lawyers working with me.

04:50:47 15 You know, I asked the lawyers -- I wasn't being --
04:50:52 16 I wasn't trying to be funny. I just, out of curiosity,
04:50:55 17 wanted to know where the lawyers attended college. You
04:50:57 18 know, we all, I would assume, had to go to college somewhere
04:51:01 19 and then go to law school. And I think defense counsel
04:51:05 20 mentioned Davidson, I think, and I think some of the lawyers
04:51:08 21 mentioned they went to UNC and some other schools.

04:51:11 22 So I just -- out of curiosity, I wanted to go
04:51:15 23 ahead -- I Googled UNC Chapel Hill, and it says here in
04:51:21 24 their history, "The University of North Carolina was
04:51:24 25 chartered by the North Carolina General Assembly on

04:51:27 1 December 11th, 1789. Its cornerstone was laid on
04:51:32 2 October 12th, 1793, at Chapel Hill, chosen because of its
04:51:38 3 central location within the state. It is one of three
04:51:42 4 universities that claims to be the oldest public university
04:51:46 5 in the United States and the only such institution to confer
04:51:51 6 degrees in the 18th century as a public institution."

04:51:56 7 Well, I did tell you that I did not attend UNC
04:52:00 8 Chapel Hill. I went to the University of Virginia as an
04:52:05 9 undergrad, and Thomas Jefferson is the founder of our
04:52:12 10 university, yes. And then it occurred to me when I was
04:52:16 11 reading the briefs and so forth prior to this hearing, the
04:52:23 12 things that I had read that were presented to the Court,
04:52:29 13 Mr. Boyle said, "We are not trying to limit people from
04:52:33 14 voting." That's the first thing he said; and I appreciate
04:52:37 15 him saying that. In fact, he went further and said that,
04:52:41 16 and I'm paraphrasing now, that we are not trying to -- we're
04:52:48 17 trying to protect all voters, particularly Democrat voters,
04:52:51 18 so their votes won't be diluted. I appreciate that also.

04:52:59 19 Now, in looking at the statute, if I'm correct, I
04:53:09 20 think the title of 163-166.16 is "Requirement for photo
04:53:19 21 identification to vote in person." That's the title of the
04:53:22 22 statute if I'm correct.

04:53:24 23 The voter ID, so what's the purpose? Well, my job
04:53:28 24 is to interpret, not to create law. That's not what --
04:53:32 25 that's not what the third branch of government does; that

04:53:36 1 being the judiciary. We interpret the law. We don't create
04:53:42 2 law.

04:53:47 3 Counsel asked me to take judicial notice of, I
04:53:51 4 believe, this affidavit from Jeffrey Moore, who was, I
04:53:56 5 guess, essentially able to manipulate an ID so that he could
04:54:03 6 show -- he could literally go, I guess, to the polls with a
04:54:09 7 fake ID, so to speak.

04:54:12 8 Well, I think counsel also presented the Court
04:54:14 9 with -- when I say "counsel," I mean Mr. Boyle -- presented
04:54:19 10 the Court with student characteristics and this was, I
04:54:21 11 guess, a document, the characteristics of students at UNC
04:54:25 12 and it just gives a few things, such as, I guess, a head
04:54:29 13 count, a number of undergraduates, graduates, professionals,
04:54:34 14 race and ethnicity, gender, residency, citizenship,
04:54:39 15 full-time, part-time, even says here first generation, and
04:54:43 16 Pell recipients, and so forth.

04:54:47 17 Now, I think the head count was about 31,258
04:54:52 18 students combined. When in this state now -- I think it's
04:55:04 19 relevant. In this state you could be a convicted felon.
04:55:13 20 You could complete all the terms of your probation, and if
04:55:21 21 you aren't able to pay your court costs, you can't vote. So
04:55:25 22 you've done everything except you don't have the money to
04:55:29 23 pay your court costs and therefore you can't vote.

04:55:36 24 Am I willing to put UNC students in the same box
04:55:40 25 with convicted felons who can't vote? Am I willing to say

04:55:47 1 that these students at UNC and these employers came to the
04:55:54 2 university with the intention of committing fraud in the
04:55:58 3 voting booth? Do I have to even answer that question, given
04:56:03 4 the fact that I think what the Court has in front of it is
04:56:10 5 if you're a registered voter, a registered voter and you
04:56:15 6 show your ID, you can vote. If you're not a registered
04:56:19 7 voter, even if you bring a UNC -- what is it, one mobile
04:56:23 8 card, Ms. Babb?

04:56:24 9 MS. BABB: That's correct, Mobile One, sorry, Your
04:56:26 10 Honor. I think it's a mobile One Card.

04:56:28 11 THE COURT: Mobile One, if you bring that card, if
04:56:30 12 you're not registered, you can't vote, correct?

04:56:32 13 MS. BABB: Yes, Your Honor.

04:56:33 14 THE COURT: You can't vote. And in the statute
04:56:34 15 itself, does it define a card? There are different things
04:56:41 16 that says you can show. But why would you be precluded from
04:56:47 17 showing a UNC mobile card -- and I may be pronouncing that
04:56:52 18 wrong or saying that wrong -- if you're a registered voter?
04:56:56 19 Because this statute says a photo ID.

04:56:59 20 So I've got to believe that these 31,000 students
04:57:02 21 at UNC are going to come on election day and they're going
04:57:07 22 to be fraudulent and they all are going to manipulate the
04:57:10 23 system even though they're registered voters, but they're
04:57:14 24 saying that this is what I have to present and that they are
04:57:17 25 committing a fraud; I don't believe that. I'm not going to

04:57:21 1 put them in the same box that here in North Carolina now if
04:57:26 2 you're a convicted felon, if you haven't paid your court
04:57:29 3 costs, you can't vote. Well, I respect that, accept that.
04:57:33 4 But for an institution of learning, I have to make the
04:57:38 5 assumption that these kids, these young adults, at one of
04:57:44 6 the oldest universities, we're telling them that they can't
04:57:49 7 vote because we don't think that the -- that card that's on
04:57:55 8 their phone -- given the fact that our court system,
04:58:00 9 everything that we do in the court system now is by
04:58:02 10 electronic, what is it, eCourts and so forth, am I supposed
04:58:05 11 to make the assumption that these kids at Chapel Hill and
04:58:09 12 these employees are trying to commit fraud, number one, or
04:58:14 13 for some reason that they come to the voting booth with that
04:58:23 14 intent? I don't think so, but based on what's in front of
04:58:27 15 me as far as the statute, where does it say that they can't
04:58:29 16 use these cards? Where does it say that? It doesn't.

04:58:34 17 Now, I'm not willing to put them in the same box
04:58:39 18 with felons who haven't paid their court costs. So if
04:58:44 19 another court wants to tell them they can't vote, that's
04:58:48 20 fine, but boots on the ground, no. Respectfully, I don't
04:58:53 21 believe there is irreparable harm.

04:58:56 22 I do believe that -- and, Ms. Babb, I'm going
04:59:00 23 to -- respectfully, you are the prevailing party. So I'm
04:59:03 24 not granting the TRO, but I am going to incorporate by
04:59:06 25 reference your argument, your case law. I reserve the right

04:59:11 1 to make further findings of fact. And I am going to also --
04:59:15 2 in that order I'm going to incorporate by reference the
04:59:19 3 arguments of Mr. Ghosh and the arguments of Mr. Phillips,
04:59:22 4 so -- but no, respectfully, we all went to different
04:59:30 5 colleges, and I don't think that when you go to an
04:59:35 6 undergraduate institution such as UNC, which is a great
04:59:38 7 university, that they give you an ID and then you say, well,
04:59:44 8 I want to vote and you've done everything you're supposed to
04:59:47 9 do as far as registering and then we say now you can't vote
04:59:51 10 because we don't think this fits the standard of voting.

04:59:59 11 Well, the same 18-year-old kid can give his or her
05:00:02 12 life for this country in the military. Why shouldn't he or
05:00:11 13 she be allowed to vote if they complied? And I think they
05:00:14 14 have. I don't see anything in the statute that prevents
05:00:17 15 them from doing that.

05:00:18 16 Like I said, this Court is not going to tell them
05:00:20 17 they can't vote. I'll let another court, respectfully, tell
05:00:24 18 them; and if I'm wrong, that's why we have the appellate
05:00:26 19 courts. But boots on the ground, no, I'm not granting the
05:00:30 20 TRO.

05:00:30 21 So, Ms. Babb, like I said, I reserve the right to
05:00:34 22 make further findings of fact. However, I'm going to have
05:00:37 23 you create the order.

05:00:38 24 MS. BABB: Thank you, Your Honor.

05:00:39 25 MR. BOYLE: Your Honor, I have a draft order that

05:00:41 1 I handed -- if you'd like, I could hand it up.

05:00:44 2 THE COURT: For the?

05:00:45 3 MR. BOYLE: Denied.

05:00:46 4 THE COURT: Well, I'd rather -- I'd rather have

05:00:48 5 Ms. Babb create the order and then if you want to send that

05:00:51 6 along with it, that will be fine, but I'm going to ask her

05:00:54 7 to create that order.

05:00:55 8 MS. BABB: Thank you, Your Honor.

05:00:56 9 THE COURT: Thank you. That's it.

05:00:57 10 Sheriff, we are good until 9:30 tomorrow morning.

11 (Hearing concluded at 5:00 p.m.)

12 (End of Volume 1 of 1 at page 47.)

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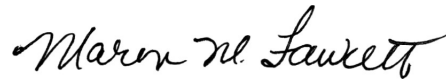
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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken on September 19, 2024, during the September 16, 2024, Civil Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 21st day of September, 2024.



Maren M. Fawcett, RPR, CRR
Official Court Reporter