

NORTH CAROLINA COURT OF APPEALS

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REPUBLICAN NATIONAL  
COMMITTEE and NORTH CAROLINA  
REPUBLICAN PARTY,

Plaintiffs-Petitioners,

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-Respondents,

DEMOCRATIC NATIONAL  
COMMITTEE,

Defendant-Intervenor-  
Respondent,

AFFIRMATIVE ACTION COALITION,

Defendant-Intervenor-  
Respondent.

From Wake County  
24CV028888-910

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**THE DEMOCRATIC NATIONAL COMMITTEE'S RESPONSE TO  
PLAINTIFFS' PETITION FOR WRIT OF SUPERSEDEAS  
AND MOTIONS FOR TEMPORARY STAY  
AND TEMPORARY INJUNCTION**  
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**TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:**

Defendant-intervenor-respondent the Democratic National Committee (“DNC”) respectfully submits this opposition to the Petition for Writ of Supersedeas and Motions for Temporary Stay and Temporary Injunction.

On the eve of an election, petitioners the Republican National Committee and the North Carolina Republican Party seek to disenfranchise up to 40,000 students and employees at the University of North Carolina at Chapel Hill (“UNC”) for voting how their government, including the state’s flagship public university, encouraged them to: by presenting their official, digital student identification cards to identify themselves at the polls. Although the digital cards were approved as valid voter identification in August, petitioners waited weeks to challenge that approval. And now that the trial court has denied them—on multiple independent grounds—the extraordinary relief of a temporary restraining order (“TRO”), petitioners ask this Court to hastily issue equally extraordinary relief: a writ of supersedeas that would *reverse* the status quo in North Carolina just weeks before early voting begins across the state. Like their previous one, this demand appears designed to sow chaos and mistrust in the impending elections, as well as deny university students and employees their fundamental right to vote. It should likewise be rejected.

Indeed, the petition fails on both procedural and substantive grounds.

Procedurally, denial is warranted both because (1) the trial court’s order denying petitioners’ TRO motion is not immediately appealable, and (2) petitioners

failed to seek a stay in the trial court or show it was impracticable to do so. The Court may deny the petition on either ground.

Substantively, the petition likewise fails for either of two independent reasons. First, the purpose of supersedeas is to preserve the status quo while legal questions are adjudicated. *See Craver v. Craver*, 298 N.C. 231, 237-238 (1979). Here, supersedeas would *alter* the status quo—which has been in place since August 20 (again, petitioners waited more than three weeks after that to bring this action). Second, as the trial court recognized in denying a TRO, petitioners are wrong on the merits of their claim—no North Carolina law bars digital identification cards—and the balance of equities weighs (overwhelmingly) against them.

### **Response To Petitioners' Statement Of Facts**

#### **A. North Carolina's Photo-Identification Requirement**

Early in-person voting in North Carolina will begin just weeks from now, on 17 October 2024. *See Vote Early in Person*, NCSBE, [www.ncsbe.gov/voting/vote-early-person](http://www.ncsbe.gov/voting/vote-early-person) (all web pages cited herein visited September 25, 2024). In fact, Chapel Hill's early-voting sites are ready to go now. NCSBE, *Early Voting Sites for the November 5, 2024 Election*, <https://tinyurl.com/4hpknd8v> (visited Sept. 25, 2024).

To vote in person in North Carolina, a registered voter must present acceptable voter identification, which includes a “student identification card issued by a constituent institution of The University of North Carolina,” N.C. Gen. Stat. § 163-166.16(a)(1)(g), and an “employee identification card issued by a state or local government entity,” *id.* § 163-166.16(a)(1)(h)—such as UNC—provided that the State

Board of Elections (“Board”) has approved those cards, *id.* §§ 163-166.17, 163-166.18. Institutions must submit cards to the Board for approval as voter identification, so that the Board can ensure they meet the enumerated criteria. *Id.* §§ 163-166.17(a), 163-166.18(a).

By statute, the Board “shall” approve UNC-issued student and employee identification cards so long as certain criteria are met. N.C. Gen. Stat. §§ 163-166.17(a), 163-166.18(a). Those criteria include requiring that the card contain a photograph and an expiration date, and providing that misuse of the card is punished. *Id.* Institutions also must provide copies of student and employee identification cards to the Board “to assist with training.” *Id.* §§ 163-166.17(a)(1)(g), 163-166.18(a)(1)(g).

#### **B. UNC’s Mobile Photo-Identification Card**

Over four years ago, the Board approved the *plastic* UNC “One Card”—which UNC then issued to all its students and employees—as an acceptable form of voter identification. *See* Intervenors’ Appendix (“App.”) at 23, 26-31. But as technology developed, UNC transitioned away from plastic One Cards, launching a digital version—the “mobile One Card”—as a new form of identification in 2023. *See* App. 23, 33-34.

Like digital credit cards, UNC’s mobile One Cards are a more secure form of their plastic equivalent. Because they are stored on a cardholder’s phone, mobile One Cards are less vulnerable to being lost or stolen. (The phones on which they are stored can be lost or stolen, of course, but stolen phones are easier to track than stolen plastic cards and the wallets and purses that carry those cards.) And unlike a plastic card, mobile One Cards are locked away behind, and cannot be displayed without, the

owner's passcode, biometric identifiers, or other security information. *See Apple Pay Security and Privacy Overview*, Apple (Apr. 12, 2024), <https://support.apple.com/en-us/101554>. They also can be “instantly and remotely ... revoked” if a phone is stolen or misplaced, App. 23, 36.

Moreover, students and employees cannot obtain a mobile One Card until (1) their photographs are reviewed by software and staff, App. 3, 39, and (2) they obtain a mobile credential secured by the same technology used for digital credit cards, which is “contained in highly secure data centers.” App. 3. And to add a mobile One Card to a cardholder's Apple Wallet (a secure digital wallet application available on the Apple iPhone), the cardholder must enter her UNC user ID and password, and complete two-factor authentication. App. 46. Given all this, UNC has touted mobile One Cards as a “secure mobile solution” as well as a “new and convenient” way to “access campus buildings, make payments and purchases, and more!” App. 23, 33.

For the 2024-2025 school year, UNC ceased issuing plastic One Cards to new students and employees, making mobile One Cards mandatory unless a student or employee qualifies for an exception and pays a fee. *See* App. 32, 51. When a mobile One Card is added to the cardholder's Apple Wallet, any existing plastic One Card belonging to that person is deactivated. App. 53. Accordingly, individuals with mobile One Cards do not also have working plastic identification cards.

### **C. The Mobile One Card As Voter Identification**

In June 2024, UNC submitted its mobile One Card for Apple Wallet for approval by the Board as voter identification, explaining how the card satisfies each statutory requirement. *See* App. 23, 38. That application and the Board's



consideration of it was made public as early as July 31, 2024. *See* NCBSE File, <https://tinyurl.com/bduzearf>.<sup>1</sup>

After rejecting other universities' applications to have their mobile student identification cards approved, because those cards failed to meet the statutory requirements, the Board approved UNC's application last month. *See State Board Meeting*, 7:00-23:30 (August 20, 2024), <https://tinyurl.com/44bkb9vu>. As one Board member explained at the time, UNC "jumped through a lot of hoops"—including robust security criteria—before its mobile identification card could be approved. *Id.* 19:50.

Following the Board's approval, UNC began advising students and employees that the mobile One Card for Apple Wallet could be used as voter identification. App. 23, 57. Students and employees plan to vote using their mobile One Card as voter identification, in reliance on UNC's representation that the cards are approved for that use. *Id.*

#### **D. This Lawsuit**

On September 12, 2024—nearly two months after UNC's application went public, three weeks after the Board's August 20 approval, and only weeks before the start of early in-person voting—petitioners filed a complaint against the Board and a motion for a TRO or expedited preliminary injunction to prevent the use of mobile One Cards as voter identification. Pet. Ex. A ("Compl."). The DNC filed an unopposed request to intervene, which was granted. Pet. Ex. E.

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<sup>1</sup> Android phone users can use a mobile One Card through the GET Mobile App, but that version was not submitted or approved for use as voter identification.

After a hearing, the trial court denied petitioners' TRO motion on multiple independent grounds. *See* Pet. Ex. F ("Order"). First, it concluded that petitioners' claim "has no merit" because North Carolina statutes "contain no ... requirement" that voter-identification cards be a "physical, tangible object." *Id.* at 5. Second, it found that petitioners failed to show that they are "aggrieved parties as required by N.C.G.S. § 150B-43." Order at 5. More specifically, the court explained that petitioners "provide[d] zero support for the notion that approval of the Mobile One Card will allow any unqualified voters to vote," and emphasized the "substantial evidence of the [mobile One Card's] security and reliability" and that the digital card "cannot help an unqualified voter register to vote" because it only "verif[ies] the identity of an already-registered voter." *Id.* Third, the court found that the balance of equities "weigh[ed] substantially in Defendants' favor," in part because "[l]ate judicial tinkering with election laws" would be especially inappropriate when petitioners "inexplicably waited more than three weeks to challenge" the decision. *Id.* at 6-7.

The trial court did not rule on petitioners' request for an expedited preliminary injunction, and petitioners did not ask the court to do so at the hearing. Petitioners likewise did not move the court to stay its decision at the hearing. *See* N.C. R. App. P. 23(a)(1). Instead, the day after the hearing, petitioners noticed their appeal and filed the present petition and motions. When petitioners also sought to expedite briefing, both the Board and the DNC agreed to file responses by petitioners' requested deadline.

**Reasons Why The Writ Should Not Issue And The Motions For Temporary Stay And Temporary Injunction Should Be Denied**

Petitioners seek a writ of supersedeas and a stay of the trial court's order or a "temporary injunction halting all acceptance of any electronic voter identification for the purpose of casting a ballot." Pet. 24. The North Carolina Supreme Court has explained that supersedeas "is only granted in case of necessity." *McArthur v. Commonwealth Land & Timber Co.*, 164 N.C. 383, 384 (1913). Moreover, it is available only if a stay was sought and denied below or "extraordinary circumstances make it impracticable to obtain" one, N.C. R. App. P. 23(a)(1). Likewise, federal decisions—which are "pertinent for guidance" here, *Turner v. Duke Univ.*, 325 N.C. 152, 164 (1989)—establish that a "stay pending appeal is extraordinary relief," *Barr v. E. Bay Sanctuary Covenant*, 140 S.Ct. 3, 5 (2019) (Sotomayor, J., dissenting) (quotation marks omitted); accord, e.g., *Plaquemines Parish v. Chevron United States, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023). And "[w]here there is doubt, it should" benefit those "who oppose grant of th[at] extraordinary relief." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers). Injunctions pending appeal, too, are an "extraordinary" remedy. *Nken v. Holder*, 556 U.S. 418, 428 (2009).

More specifically, in evaluating whether to grant a stay pending appeal, courts consider: (1) whether the applicant has made "a strong showing that [it] is likely to succeed on the merits" of the appeal; (2) whether the applicant would suffer "irreparabl[e] injury" if the stay is denied; (3) whether the stay would "substantially injure the other parties interested in the proceeding," and (4) whether a stay would serve the public interest. See *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*,

481 U.S. 770, 776 (1987)). Courts considering injunctive relief must likewise “balance the competing claims of injury” and “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008).

## **I. THE PETITION IS PROCEDURALLY FLAWED**

The petition should be denied under Rule 23 of the North Carolina Rules of Appellate Procedure, for two independent reasons. First, the denial of petitioners’ TRO motion is not immediately appealable. Second, petitioners failed to seek a stay in the trial court or show it was impracticable to do so.

### **A. The Court’s Order Denying Petitioners’ Motion For A Temporary Restraining Order Is Not An Appealable Interlocutory Order**

Under North Carolina law, a writ of supersedeas is issued “to stay the execution or enforcement of any ... order ... when an appeal has been taken ... to obtain review of the ... order.” N.C. R. App. P. 23(a)(1); *see also, e.g., City of New Bern v. Walker*, 255 N.C. 355, 356 (1961). Put another way, “supersedeas may issue only in the exercise of, and as ancillary to, the revising power of an appellate court; its office is to preserve the status quo pending the exercise of appellate jurisdiction.” *Craver*, 298 N.C. at 237-238.

This standard is not met here. The denial of a TRO motion is not subject to appellate review—and hence supersedeas could not “preserve the status quo pending the exercise of appellate jurisdiction,” *Craver*, 298 N.C. at 237-238—unless that denial would cause a substantial right to be adversely affected pending appeal. *See* N.C. Gen. Stat. §§ 1-277, 7A-27(b)(3); *see also Bessemer City Express, Inc. v. City of*

*Kings Mountain*, 155 N.C. App. 637, 640 (2002); *Little v. Stogner*, 140 N.C. App. 380, 383 (2000). To affect a substantial right, the denial of a TRO would have to cause immediate loss, such as effectively deciding the merits of the case. See *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400 (1983); *Virginia v. Tenneco, Inc.*, 538 F.2d 1026, 1029-1030 (4th Cir. 1976). But such an effect is rare, because TROs last no more than 10 days. See *Office of Personnel Mgmt. v. Am. Fed'n of Gov't Emps., AFL-CIO*, 473 U.S. 1301, 1305-1306 (1985); *Drudge v. McKernon*, 482 F.2d 1375, 1376 (4th Cir. 1973) (per curiam).

By contrast, in *Kennedy v. North Carolina State Board of Elections*, No. P24-624 (N.C. App., filed September 6, 2024), this Court issued a writ of supersedeas because otherwise state law would have required the State Board of Elections to immediately send out over 130,000 absentee ballots with the candidate plaintiff's name on them (which the plaintiff was seeking to have removed), see App. 86. There are no comparable circumstances here. Early voting does not begin until October 17, by which point any TRO would have long expired.

Petitioners assert, however (without citing any relevant law), that the substantial rights that would be lost without immediate appellate review are (1) the right to vote, and (2) the right to “protect the integrity of every North Carolinian’s valid vote” in the 2024 general election. Pet. 11 n.4. That assertion is not grounded in any actual *evidence* that voter fraud is likely to occur in the next ten days (again, before in-person voting even begins). But even if there were such evidence, the trial court’s order does not prevent eligible, registered voters from casting their ballots in

the 2024 general election. It simply lets stand the Board's existing guidance regarding which photo IDs may be used to verify a registered voter's identity. State law provides a procedure to challenge a person who is ineligible to vote and attempts to do so. N.C. Gen. Stat. § 163-87. Emergency interlocutory relief is thus not needed to vindicate the interest petitioners posit.

In short, petitioners have not established that they are entitled to immediate review of the trial court's order. A writ of supersedeas is thus not available. *See* N.C. R. App. P. 23(a)(1); *City of New Bern*, 255 N.C. at 356; *Craver*, 298 N.C. at 237-238.

**B. Petitioners Failed To Follow The Required Procedure For Seeking A Writ Of Supersedeas**

A party petitioning for supersedeas must show that either (1) a stay was sought in the court to which issuance of the writ is sought, or (2) extraordinary circumstances made it impracticable to do so. N.C. R. App. P. 23(a)(1), (c); *see also Rodriguez v. Sampson Cnty. Mem'l Hosp., Inc.*, 322 S.E.2d 559 (N.C. 1984) (mem); *Johnson v. McMillan*, 182 N.C. App. 766 (2007) (unpublished). These rules "are mandatory and not directory." *State v. Hart*, 361 N.C. 309, 311 (2007) (citation omitted). They have been adopted by the North Carolina Supreme Court after the reasoned determination that they are necessary, and that it is "equally necessary to enforce them and to enforce them uniformly." *Capps v. NW Sign Indus. of N.C., Inc.*, 186 N.C. App. 616, 619 (2007) (quoting *Pruitt v. Wood*, 199 N.C. 788, 789-790 (1930)).

Petitioners did not move for a stay of the trial court's order. They try to elide that failure by equating their TRO motion with a stay motion. *See* Pet. 14-15. But the two are different. *See* N.C. R. Civ. P. 62(c), 65(b). The recent *Kennedy* case

illustrates that. There, after the trial court orally denied the plaintiff's TRO motion, the plaintiff moved for a 48-hour stay to allow time for appeal. The trial court stayed its denial of the TRO motion, directing the State Board not to distribute ballots for 24 hours. App. 85. No similar motion to *stay* was made here. The Court should reject petitioners' attempts to read the motion-to-stay requirement out of Rule 23 for every case involving a TRO.

Petitioners also assert (Pet.15) that seeking a stay from the trial court would have been "futile." Futility, however, is not an excuse for failure to seek a stay. *See* N.C. R. Civ. P. 23(a)(1), (c). The North Carolina Supreme Court could have adopted a futility exception, but it did not.

Finally, there were no extraordinary circumstances that made it impracticable for petitioners to seek a stay from the trial court. To the contrary, petitioners could have sought a stay as soon as the court orally ruled from the bench that it was denying a TRO. Or they could have moved for a stay after the hearing. Having foregone these options, for no apparent reason, they cannot now obtain supersedeas.

## **II. PETITIONERS ARE NOT LIKELY TO SUCCEED ON THE MERITS**

Procedural failings aside, the petition should be denied because petitioners are not likely to succeed in challenging the Board's approval of mobile One Cards as acceptable voter identification.

### **A. The "UNC One Card" Meets The Requirements Of The Voter-ID Statute**

1. Under North Carolina law, if "a registered voter presents to vote in person, the ... voter shall produce" one of several "forms of identification that contain

a photograph of the ... voter.” N.C. Gen. Stat. § 163-166.16(a). One acceptable form is photo identification issued by UNC to its students and/or employees. *Id.* § 163-166.16(a)(1)(g), (h). Petitioners nonetheless claim that the UNC mobile One Card is *not* an acceptable form of photo identification, because it is not a physical card. But “[t]he purpose of the identification require[ment] ... is to confirm the person presenting to vote is the registered voter on the voter registration records.” N.C. Gen. Stat. § 163-166.16(g). Nothing about that textual purpose, nor anything else in the statutory text, requires UNC-issued photo identification to be a “tangible, physical item,” Compl. ¶ 44, to qualify as voter identification.

To the contrary, the relevant text provides that “[t]he State Board *shall approve* the use of student identification cards issued by ... The University of North Carolina ... if [certain] criteria are met.” N.C. Gen. Stat. § 163-166.17(a) (emphasis added); *see also id.* § 163-166.18(a) (same for UNC-issued employee-identification cards). Those criteria include detailed security requirements—including that the card contain a photograph and an expiration date, and that misuse of the card be punishable. *See id.* §§ 163-166.17(a)(1), 163-166.18(a)(1). And it is undisputed that all of those criteria were met. Significantly, none of the criteria requires that the card be printed on paper or plastic, i.e., that it be a “tangible, physical item,” Compl. ¶ 44. Thus, the State Board was not only permitted but in fact required to accept UNC’s proposed student identification.

Petitioners contend that the word “card” supplies the tangibility requirement. But contrary to the premise underlying this contention (*see* Compl. ¶ 41), “card” is



not defined anywhere in the statute. And absent a “statutory definition,” courts look to “common usage” to interpret a statutory term. *Jernigan v. Hanover Fire Ins. Co. of N.Y.*, 235 N.C. 334, 335 (1952). That approach defeats petitioners’ argument, because the word “card” is commonly used, including by North Carolina state institutions, to describe digital records.

For example, the digital form of identification at issue here is called the “UNC One Card,” and it is described on UNC’s website as a “campus ID card.” App. 23, 59. Similarly, the policy agreement between UNC and One Card holders states that the card “is a multipurpose identification card” that “may be physical or mobile” and defines “any student, employee, or affiliate of UNC-Chapel Hill who acquires a UNC One Card, physical or mobile” as a “cardholder.” App. 23, 61.

To take another example, during the COVID-19 pandemic, several North Carolina health groups—“including NCDHHS, UNC Health, ... and others”—were “members of the coalition that developed SMART Health Cards,” which are “digital card[s]” enabling North Carolinians to prove their vaccination status. App. 23, 66-71. Elsewhere in the General Statutes, the legislature has likewise used the term “card” in circumstances that plainly encompass digital cards. *See, e.g.*, “The Financial Transaction Card Crime Act,” N.C. Gen. Stat. § 14-113.8 *et seq.*

Still other examples abound. In fact, a Lexis News search for variants of the terms “digital card” OR “digital identification card” turned up over 5,000 results from English-language publications in the United States over the last decade. App. 23, 75.

2. In addition to conflicting with ordinary meaning, petitioners' argument that a non-textual tangibility requirement should be judicially added to the statute violates "the long-standing rule[] of interpretation and construction in this state" that "the expression of one thing is the exclusion of another." *Mangum v. Raleigh Bd. of Adjustment*, 196 N.C. App. 249, 255 (2009). "Under this canon of statutory construction, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list." *Town of Midland v. Harrell*, 385 N.C. 365, 375-376 (2023). Here, the statute lists criteria that, if satisfied, render an identification card acceptable. Because a tangibility requirement is "not contained in the list," *id.*, any such requirement is excluded.

Petitioners' posited tangibility requirement likewise violates the closely related canon that "a matter not covered is to be treated as not covered," *Woody v. AccuQuest Hearing Ctr., LLC*, 284 N.C. App. 540, 548 (2022). As the North Carolina Supreme Court has explained, courts construing a statute may not "insert words that are not used." *N.C. Farm Bureau Mut. Ins. Co. v. Dana*, 379 N.C. 502, 510 (2021). Applying the same rule, Maryland's highest court held that its board of elections could not mandate legibility as a condition of accepting a signature because the statute requiring the signature did not expressly demand legibility. *Montgomery Cnty. Volunteer Fire-Rescue Ass'n v. Montgomery Cnty. Bd. of Elections*, 15 A.3d 798, 808 (Md. 2011). Similarly here, the Board not only acted lawfully by accepting UNC's digital identification card, but also lacked discretion to reject the card based on an atextual tangibility requirement.

Petitioners' complaint made four arguments to overcome the lack of any textual or common-sense basis to say that a UNC-issued "card" *must* be tangible. Each lacks merit, and (as noted below) some have been waived on appeal.

First, petitioners asserted that, "as with other permissible identification cards, the law contemplates that UNC will have equipment for *printing* the identification cards," which petitioners said implies that the cards must be tangible. Compl. ¶ 42 (emphasis added); *see also id.* ¶ 35. But unlike the statutory section governing a different type of voter-identification card—a section that *does* refer to "equipment necessary to print voter photo identification cards," N.C. Gen. Stat. § 163-82.8A(b)—the statutory sections governing UNC-issued identification cards refer to "equipment for *producing*" the cards, *id.* § 163-166.17(a)(1)(c) (emphasis added); *see also id.* § 163-166.18(a)(1)(c). Petitioners' attempt to equate "producing" with "print[ing]" violates the interpretive rule that "[d]ifferent words used in the same statute should be assigned different meanings," *In re M.I.W.*, 365 N.C. 374, 379 (2012); *see also N.C. Farm Bureau Mut. Ins. Co. v. N.C. Dep't of Revenue*, 2023 WL 2754645, \*8 (N.C. Super. Apr. 3, 2023). Perhaps recognizing this error, petitioners abandon this argument on appeal, instead contending only that "[t]he need for equipment to *produce* the student and employee identification cards necessarily implies the production of a physical, tangible identification card." Pet. 18. But they do not explain why that is true, and it is not: computer equipment is plainly used to produce mobile One Cards.

Second, petitioners argued, and broach on appeal, that the statute's reference to cards being "issued" suggests that "there is a physical, tangible item created." Compl. ¶ 45; see Pet. 18. But to "issue" means merely "to put forth officially" or "to send out or distribute officially." *Mining Energy, Inc. v. Dir., Office of Workers' Comp. Programs*, 391 F.3d 571, 575 (4th Cir. 2004); see also *Griswold v. United States*, 59 F.3d 1571, 1580 (11th Cir. 1995). And many non-tangible items are "issued." For example, courts issue opinions on their websites, companies electronically issue stock, and military officers issue verbal orders. Indeed, the General Assembly recently recognized that mobile drivers' licenses could be "issued" by the DMV. N.C. Sess. Law 2024-30 § 1(b).

Third, petitioners contended that a state regulation's reference to a "photograph appearing *on* the photo identification' implies that [the identification] is a physical, tangible item." Compl. ¶ 48 (quoting 08 NCAC 17 .0101). But the word "on" does not imply tangibility. Indeed, the statute at issue here refers to material "on the State Board's Web site," which is by definition digital. N.C. Gen. Stat. § 163-166.17(c) (emphasis added). Regardless, petitioners do not make this argument in their petition, and thus have waived it on appeal.

Fourth, petitioners argued, and continue to suggest, that mobile One Cards cannot qualify as voter identification because of prior Board guidance stating that "[a]n image of a photo ID, either as photocopy or a photo on a mobile device, is not one of the permitted forms of photo ID when voting in person." Compl. ¶ 51 (quoting Karen Brinson Bell, Numbered Memo 2023-03 at 3 (updated Feb. 23, 2024),

<https://tinyurl.com/2sf8zf8c>); *see also* Pet. 9. This misunderstands both the guidance and how digital identification cards work. The guidance bars individuals from photocopying or taking a photo of their identification card and presenting that photocopy or picture of their physical ID at the polls. But digital identification cards are not photographs. *See State Board Meeting, supra* p.6. Just as a digital credit card or airline boarding pass accessible through Apple Wallet is not a picture of the physical credit card or boarding pass, digital identification cards are not stored on the mobile device and are accessible only through a secure application on the phone.

4. Petitioners argue that the mobile One Card is less secure than physical identification and thus susceptible to being used to commit voter fraud, Pet. 20, citing an accompanying affidavit containing instructions on how to (supposedly) forge a mobile One Card. This argument is wrong, irrelevant, and unsupported (even if the Court considers the affidavit despite the objection to its untimely submission, *see* Hearing Tr. 18).

Petitioners do not provide any compelling evidence, in their affidavit or otherwise, that voter fraud is likely to occur with digital photo identification—and that is why the court did not engage with it, Hearing Tr. 43. They do not point, for example, to past incidences of such fraud, or to any fraud committed with forged mobile One Cards. Nor do petitioners explain why the challenge procedures available under North Carolina law, *see* N.C. Gen. Stat. §§ 163-85, 163-87, are insufficient to prevent ineligible voters from casting their ballots.

Petitioners' argument, meanwhile, has nothing to do with whether the statute permits digital identification cards. Even if mobile One Cards could be forged—as can physical identification cards (which, in fact, have fewer protections)—that does not bear on whether they qualify as “student identification card[s]” (or “employee identification card[s]”) within the meaning of General Statutes §§ 166.16(a)(1)(g) and 163-166.16(a)(1)(h). Surely if it were revealed that a North Carolina driver's license, a tribal enrollment card, or a military identification card—all of which are acceptable forms of photo identification, *id.* § 166.16(a)—had ever been forged (as is almost certainly the case), that would not suddenly delete those forms of identification from the statute.

In sum, there is no basis for imposing an atextual tangibility requirement for UNC-issued identification cards to be approved as an acceptable form of voter identification.

**B. The Relief Petitioners Seek Is Barred By Both Federal Law And The North Carolina Constitution.**

With just weeks to go until early voting starts, petitioners ask this Court to risk disenfranchising potentially thousands of registered and qualified UNC voters who plan to rely on their mobile One Cards to vote, even though they were told by two state institutions—the Board and UNC—that they could rely on those identification cards to vote. Such a denial of “one of the most cherished rights in our system of government,” *Blankenship v. Bartlett*, 363 N.C. 518, 522 (2009), would violate the Fourteenth Amendment's Due Process Clause, *see* U.S. Const. amend. XIV, and North Carolina's Free Elections and Law of the Land Clauses, N.C. Const.

art. I, §§ 10, 19, which the North Carolina Supreme Court “has consistently interpreted ... to provide the utmost protection for the foundational democratic freedom[] of ... voting,” *Kennedy*, 2024 WL 4119196, at \*1 (alteration in original). For this reason as well, petitioners are not likely to succeed with their claim.

Moreover, petitioners’ requested relief, which would disproportionately burden young and Democratic voters, would violate the state constitution’s equal-protection guarantee. *See* N.C. Const. art. I, §§ 1, 19. “The right to vote on equal terms is a fundamental right” under the Law of the Land Clause, and rules that deprive some voters of the franchise violate it. *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747 (1990). Again, this is an independent basis to conclude that petitioners have not shown the requisite likelihood of success.

### **III. THE BALANCE OF HARMS AND PUBLIC INTEREST FAVOR DENIAL OF ANY TEMPORARY STAY OR INJUNCTION**

The remaining traditional stay factors support denying petitioners’ motion. As to the second and third factors (balance of harms), petitioners will suffer no irreparable injury if denied the extraordinary remedy they seek, while many third parties could as just explained be harmed by a stay, via the loss of their fundamental right to vote. As to the fourth stay factor, the public has a compelling interest in protecting the right to vote and avoiding the confusion and chaos that petitioners’ requested relief could cause.

#### **A. Denying The Petition Will Preserve The Status Quo And Cause No Irreparable Injury**

1. Petitioners’ repeated assertion (Pet. 12, 14, 15) that a stay is necessary to “preserve” the status quo is wrong. The status quo is that UNC’s digital photo

identification cards *are* a valid form of voter identification in North Carolina, per the Board's challenged ruling.

Petitioners try to avoid this inconvenient fact by stating (Pet.15) that “[a] physical card was required in the 2024 primary.” That is both irrelevant to the *current* status quo—the Board's challenged ruling postdated the primary—and in any event incorrect; there has never been a physical-card requirement. Petitioners relatedly describe the Board's February 2024 guidance as creating a “status quo in the 2024 primary election” that an “image of a photo ID, either as a photocopy or a photo on a mobile device, is not one of the permitted forms of photo ID when voting in person,” and then argue the Board “abandoned” that guidance when it approved UNC's digital identification card. Pet. 9. But as discussed, *see supra* pp.17-18, the guidance only barred (and bars) individuals from presenting a photocopy or picture of their physical identification at the polls. Again, digital identification cards are not photographs (just as digital credit cards are not), so approving them does not abandon the guidance barring photographs of identification cards. *See State Board Meeting, supra* p.6; *see also supra* pp.17-18.

2. Petitioners have not otherwise shown that use of the mobile One Card as approved voter identification causes irreparable harm to them or to the voters they purport to represent. Their vague references to “jeopardizing the validity of the 2024 election and disenfranchising voters” (Pet. 16) ring hollow, because they cannot explain how allowing UNC students and employees who are *already* “registered



voter[s],” N.C. Gen. Stat. § 163-166.16(a), to identify themselves with their mobile One Cards threatens the validity of the election.

Petitioners also assert (Pet. 15) that digital photo identification is “susceptible to being used to commit voter fraud.” But they rely on an affidavit in which an individual attests to how he might attempt to forge a digital student identification. *See Moore Aff.* The trial court did not credit the evidence, and in any event the identification card their affiant forged is visibly fake, lacking the signature Apple Wallet checkmark and prompt beneath the image. *Compare Aff. Ex.1 with Aff. Ex.6.* This is exactly the kind of forgery that election officials can detect—for example, by checking that voters open their mobile One Cards through the Apple Wallet application. Beyond a rough photocopy, petitioners presented no evidence that this forged identification could actually appear on a phone, in a voter’s Apple Wallet application. *See generally* Hearing Tr.

More generally, the purpose of the photo-identification requirement is as discussed “to confirm the person presenting to vote is *the registered voter* on the voter registration records.” N.C. Gen. Stat. § 163-166.16(g) (emphasis added). An ineligible voter could not use a mobile One Card to vote because she would not be registered. Nor could she use someone else’s mobile One Card to vote, because she would not match the photograph on the card. And she could not show a doctored photo of a card (as petitioners’ affiant attempts to do), because as just explained, mobile One Cards are displayable only through Apple Wallet, not through photo

applications, and doctored ones will lack signature credentials displayed through the Apple Wallet application.

3. Petitioners' delay further undermines their claim to irreparable injury, as their asserted plea for immediate relief is a problem "of their own making," *Kennedy*, 2024 WL 4119196, at \*2. As mentioned, UNC's application for the mobile One Card to be approved voter identification was made public in July, and the application was approved in August. Yet petitioners waited until mid-*September* to bring this lawsuit, weeks before early in-person voting begins.

Petitioners' delay also defeats their argument (Pet. 15) that "the need for poll workers and election officials to be trained on proper legal requirements, and the pending October 17 deadline for in-person voting" qualify as "extraordinary circumstances making it impracticable to obtain a stay by other means." The equitable doctrine of laches bars relief for a party which sits on its hands until it becomes "unjust to permit the prosecution of the claim." *Town of Cameron v. Woodell*, 150 N.C. App. 174, 177 (2002). Indeed, precisely because of that delay, poll workers are *already* being trained on accepting digital photo identification, and to reverse course this close to early voting would itself cause chaos and confusion.

### **B. Denying The Petition Is In The Public Interest**

Weighed against the "potential harm to the defendant," *Williams v. Greene*, 36 N.C. App. 80, 86 (1978), whatever abstract harm petitioners have identified is trivial and insufficient to warrant last-minute changes to the rules governing the impending election. "[P]rotect[ing] voters from interference ... in the voting process" is the bedrock of our free elections. *Harper v. Hall*, 384 N.C. 292, 361 (2023). "By definition,

‘[t]he public interest ... favors permitting as many qualified voters to vote as possible.’” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

As the trial court explained, moreover, the “bedrock tenet of election law” is that “[w]hen an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” Order at 7 (quoting *Merrill v. Milligan*, 142 9 Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring)); see also *Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam). North Carolina courts thus must consider “the proximity of a forthcoming election” before interfering with its rules. *Id.* at 7 (quoting *Pender Cty. v. Bartlett*, 361 N.C. 491, 510 (2007)).

Here, an eleventh-hour judicial declaration that mobile One Cards are invalid as voter identification would lead to voter confusion, contradicting assurances from both UNC and the Board that the cards were valid identification, see *supra* p.6—assurances bolstered by a trial-court order affirming them (which, as explained, petitioners did not even seek to stay). Reversing course now would as discussed risk “disenfranchis[ing] countless voters” *Kennedy*, 2024 WL 4119196, at \*1, who relied on government assurances that they can use their mobile One Card to vote in the upcoming election. Unless they happen to have another form of acceptable photo identification or are able to obtain one from the university, such voters could be turned away by election officials at the polls just for using their university’s official

identification card for voting. Others may not even turn out to vote, as “voter confusion has a strong potential to negatively impact voter turnout,” *Holmes v. Moore*, 270 N.C. App. 7, 35 (2020), *rev’d on other grounds*, 384 N.C. 426 (2023).

Finally, it bears mention that this case is no isolated last-minute request for election-related relief. To the contrary, in the last few weeks, petitioners have also brought several other challenges to North Carolina’s settled election laws and procedures, flooding the state’s courts with baseless theories of voter fraud and other supposed irregularities. *See* Hearing Tr. 31. Each case, moreover, follows the approach the trial court refused to countenance in this case, in which petitioners sit on their hands until the last moment to request late-stage judicial interference (skipping factual development) and thereby foment electoral chaos. This Court, too, should reject that strategy.

\* \* \*

In a few weeks, UNC students and employees will go to the polls with their mobile One Cards so that they can exercise one of our most fundamental rights. They will do so based on their government’s assurances that these cards meet North Carolina’s statutory requirements for voter identification—requirements that contain no tangibility rule. Petitioners’ request for an eleventh-hour reversal of the Board’s decision, and of the superior court order affirming it, would (if granted) not only disrupt the status quo, but also lead to confusion and disarray in the upcoming election. It should be denied.

**Conclusion**

The petition and motions should be denied.

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

Electronically Submitted

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing document was served upon the parties by email on 25 September, 2024, addressed as follows:

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This the 25th day of September, 2024.

Electronically Submitted  
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NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

REPUBLICAN NATIONAL  
COMMITTEE and NORTH CAROLINA  
REPUBLICAN PARTY,

Plaintiffs-Petitioners,

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-Respondents,

DEMOCRATIC NATIONAL  
COMMITTEE,

Defendant-Intervenor-  
Respondent,

AFFIRMATIVE ACTION COALITION,

Defendant-Intervenor-  
Respondent.

From Wake County  
24CV028888-910

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**APPENDIX**

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

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  
the NCSBE; and KAREN BRINSON  
BELL, in official capacity as  
Executive Director of the NCSBE,

Defendants,

and

DEMOCRATIC NATIONAL  
COMMITTEE,

Intervenor-Defendant.

**INTERVENOR-DEFENDANT THE  
DEMOCRATIC NATIONAL  
COMMITTEE'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER  
OR EXPEDITED PRELIMINARY  
INJUNCTION**

## INTRODUCTION

This lawsuit is an eleventh-hour bid to confuse and potentially disenfranchise up to 40,000 individuals who attend or work at North Carolina’s flagship state university, just weeks before they head to the polls for early voting. Plaintiffs ask the Court to punish students and employees at the University of North Carolina at Chapel Hill (“UNC”) for using the digital identification cards that UNC issued and encouraged them to use as voter identification, on the baseless theory that North Carolina law implicitly prohibits digital voter identification cards.

The North Carolina State Board of Elections (“Board”) determined after careful scrutiny of the statutory requirements for voter identification that UNC-issued digital photo identification cards—the default form of UNC campus identification, accessible only through a secure application on a cardholder’s mobile phone—qualify as voter identification, just as UNC’s plastic photo identification cards long have. After sitting in wait for weeks while the state and local organizations implemented that decision and assured students that they could rely on their mobile identification cards to vote, plaintiffs filed this last-minute request for an emergency injunction of that ruling. Such an injunction could disenfranchise thousands of registered and qualified North Carolina voters, and should be denied.

To start, plaintiffs’ challenge is not likely to succeed on the merits. Plaintiffs cannot point to any statutory provision that bars mobile identification cards as an acceptable form of voter identification, and UNC’s mobile “One Card” meets the detailed content and security requirements of the voter-identification law.

Moreover, the relief plaintiffs seek is foreclosed by both federal law and North Carolina's Constitution. Plaintiffs' extreme unlikelihood of success is reason enough to deny their motion.

In addition, plaintiffs will suffer no irreparable harm if registered voters are allowed to display their photographs on a mobile phone rather than a plastic identification card. And any trivial harm plaintiffs identify is far outweighed by the grave harm to UNC students and employees, who could be confused, misled, and disenfranchised by a late-stage judicial reversal of assurances their state made to them. This balance of harms is an independent reason to deny plaintiffs' motion.

Finally, plaintiffs' delay in bringing this lawsuit until the eve of an election should independently bar the extraordinary equitable relief they seek.

### **BACKGROUND**

On December 19, 2018, North Carolina enacted a law requiring registered voters to present one of several acceptable forms of photographic identification in order to vote in person. See N.C. Gen. Stat. § 163-166.16. After years of litigation, the requirement took effect shortly before the 2023 municipal elections. See *Holmes v. Moore*, 384 N.C. 426 (2023). Under the law, acceptable forms of identification include a "student identification card issued by a constituent institution of The University of North Carolina," N.C. Gen. Stat. § 163-166.16(a)(1)(g), and an "employee identification card issued by a state or local government entity," *id.* § 163-166.16(a)(1)(h)—which includes UNC—provided that the Board approves those cards. The Board "shall" approve UNC-issued student and employee

identification cards so long as enumerated criteria are met. *Id.* §§ 163-166.17(a), 163-166.18(a). Institutions must submit new identification cards for approval and verify that the cards meet the enumerated criteria. *Id.* These criteria include detailed security requirements, including that the card contain a photograph and an expiration date, and that misuse of the card is punished. *Id.* Institutions also must provide copies of student and employee identification cards to the Board “to assist with training purposes.” *Id.* §§ 163-166.17(a)(1)(g), 163-166.18(a)(1)(g).

In 2019, the Board approved the plastic UNC One Card—which UNC issued to all students and employees at that time—as an acceptable form of voter identification. *See* Affidavit of William A. Robertson (“Robertson Aff.”), ¶ 3 & Ex. 1, UNC, *One Cards Approved As 2020 Voting ID For Employees, Students* (Dec. 10, 2019), <https://tinyurl.com/4r49932z>. But in 2023, UNC transitioned away from plastic One Cards, launching a mobile One Card as a new form of student and employee identification. *See* Robertson Aff. ¶ 4 & Ex. 2, UNC, *Mobile One Card Launches on Campus* (Aug. 23, 2024), <https://tinyurl.com/5dfsjdsc>. The mobile identification cards provide an additional layer of security; because they are stored on a cardholder’s phone, they are harder to lose, can be displayed only by the phone’s owner, and can be “instantly and remotely ... revoked,” Robertson Aff. ¶ 5 & Ex. 3, UNC, *Mobile One Card*, <https://tinyurl.com/5x8k2mhx>. UNC students and employees cannot obtain a mobile identification card until their photographs are reviewed by software and staff and they obtain a secure mobile credential accessible only through secure systems. *See* Robertson Aff. ¶ 6 & Ex. 4, UNC *Mobile One Card*

Application, at 2-3, 9. Moreover, the “mobile credential that serves as a student identification card is secured by the HID global system” which is “contained in highly secure data centers” and is the same technology used for credit and debit cards. *Id.* at 3. UNC touted this “secure mobile solution” as a “new and convenient” way to “access campus buildings, make payments and purchases, and more!” Ex. 2. When a digital One Card is added to a student’s or employee’s Apple Wallet (a secure digital wallet application available on the iPhone), the individual’s plastic One Card is deactivated. *Id.*

For the 2024-2025 school year, UNC ceased issuing plastic One Cards to new students and employees, making digital One Cards mandatory unless a student or employee qualifies for an exception and pays a fee. *See* Robertson Aff. ¶ 7 & Ex. 5, UNC, *Get My Card*, <https://tinyurl.com/bde3bdpm>. In June, UNC submitted its digital One Card for Apple Wallet for approval by the Board as voter identification, explaining how the digital card satisfies each statutory requirement. *See* Ex. 4. The application explained that digital One Cards are accessible only through the secure Apple Wallet application, which cannot display a One Card until the person’s identity has been verified. *See id.* at 2-3, 9.<sup>1</sup>

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<sup>1</sup> Although students with Android phones can use a mobile One Card for campus access through a third-party ID-management application, UNC submitted only the One Card for Apple Wallet for Board approval, *see* Robertson Aff. ¶ 8 & Ex. 6, UNC, *Android Device FAQs and Support*, <https://tinyurl.com/mvupdbtn>, indicating its seriousness about ensuring digital IDs are optimally secure before seeking approval for use as voter ID.

After rejecting other universities' applications to have their mobile student identification cards approved because they failed to meet the statutory requirements (such as the requirement that the identification display an expiration date), the Board approved UNC's application in August. *See State Board Meeting*, 7:00–23:30 (Aug. 20, 2024), <https://tinyurl.com/44bkb9vu>. As one Board member explained, UNC “jumped through a lot of hoops”—including robust security criteria—before its mobile identification card could be approved. *Id.* at 19:50. UNC accordingly began advertising that the digital One Card could be used as voter identification. Robertson Aff. ¶ 9 & Ex. 7, UNC, *Mobile UNC One Card for Apple Wallet Approved for Voter ID Use* (Aug. 23, 2024), <https://tinyurl.com/22kb5p7d>. Students have relied on UNC's representation that the mobile One Card is approved for use as voter identification in North Carolina, and they plan to vote with their mobile One Card in reliance on that representation. Ex. B, Affidavit of Vijaykrishna Bajaj ¶¶ 12-13.

Last week, the Republican National Committee (“RNC”) and North Carolina Republican Party (“NCRP”) filed a complaint and motion for a temporary restraining order or expedited preliminary injunction, seeking to prevent use of the digital One Card as voter identification.

### **LEGAL STANDARD**

A temporary restraining order (“TRO”) or preliminary injunction “is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation” that is not lightly granted. *A.E.P. Indus., Inc. v. McClure*, 308

N.C. 393, 401 (1983). Such orders should issue only if a plaintiff is (1) “able to show likelihood of success on the merits” and (2) “likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *Id.* at 401 (citations omitted). Mandatory injunctions, such as the one plaintiffs seek here compelling the State Board to revise its guidance and reverse a prior decision, “are disfavored as an interlocutory remedy.” *Roberts v. Madison Cnty. Realtors Ass’n, Inc.*, 344 N.C. 394, 400 (1996). Such orders demand an even greater showing—plaintiffs must prove “serious irreparable injury to the petitioner if the injunction is not granted, no substantial injury to the respondent if the injunction is granted, and predictably good chances of success on the final decree by the petitioner.” *Id.*

## **ARGUMENT**

### **I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS.**

#### **A. The “UNC One Card” Meets The Requirements Of The Voter-ID Statute.**

1. Under North Carolina law, if “a registered voter presents to vote in person, the ... voter shall produce” one of several “forms of identification that contain a photograph of the ... voter.” N.C. Gen. Stat. § 163-166.16(a). One acceptable “form[],” *id.*, is photo identification issued by UNC to its students and/or employees, *id.* § 163-166.16(a)(1)(g), (h). “The purpose of the identification require[ment] ... is to confirm the person presenting to vote is the registered voter on the voter registration records.” *Id.* § 163-166.16(g). Contrary to plaintiffs’ allegation, nothing about that textual purpose, nor anything else in the statutory



text, requires UNC-issued photo identification to be a “tangible, physical item,” Compl. ¶ 44, to qualify as voter identification.

To the contrary, the relevant text provides only that “[t]he State Board shall approve the use of student identification cards issued by ... The University of North Carolina ... if [certain] criteria are met.” N.C. Gen. Stat. § 163-166.17(a); *see also id.* § 163-166.18(a) (same for UNC-issued employee-identification cards). The criteria include detailed security requirements—including that the card contain a photograph and an expiration date, and that misuse of the card is punished. *See id.* §§ 163-166.17(a)(1); 163-166.18(a)(1). None of the criteria requires that the card be printed on paper or plastic, i.e., that it be a “tangible, physical item,” Compl. ¶ 44.

2. Plaintiffs contend that the word “card” supplies the tangibility requirement. But contrary to the premise underlying this contention (*see* Compl. ¶ 41), “card” is not defined anywhere in the statute. And absent a “statutory definition,” courts in this state look to “common usage” to interpret a statutory term. *Jernigan v. Hanover Fire Ins. Co. of N.Y.*, 235 N.C. 334, 335 (1952). That approach defeats plaintiffs’ argument, because the word “card” is commonly used, including by North Carolina state institutions, to describe digital records.

For example, the digital form of identification at issue here is called the “UNC One Card” and is described on UNC’s website as a “campus ID card.” Robertson Aff. ¶ 10 & Ex. 8, UNC, *UNC One Card*, <https://onecard.unc.edu>. Similarly, the policy agreement between UNC and One Card holders states that the One Card “is a multipurpose identification card” that “may be physical or mobile.”

Robertson Aff. ¶ 11 & Ex. 9, UNC One Card Cardholder Agreement Policy. And the policy defines “any student, employee, or affiliate of UNC-Chapel Hill who acquires a UNC One Card, physical or mobile” as a “cardholder.” *Id.*

To take another example, during the COVID-19 pandemic, several North Carolina health groups—“including NCDHHS, UNC Health, ... and others”—were “members of the coalition that developed SMART Health Cards,” which are “digital card[s]” enabling North Carolinians to prove their vaccination status. Robertson Aff. ¶ 12 & Ex. 10, Kimberly Cataudella, *Lost Your Vaccine Card? You May Get a Digital Replacement*, Raleigh News & Observer (Jan. 29, 2022), <https://tinyurl.com/49ffhetk>. Elsewhere in the General Statutes, the legislature has used the term “card” in circumstances that plainly encompass digital cards. *See, e.g.*, “The Financial Transaction Card Crime Act,” N.C. Gen. Stat. § 14-113.8 *et seq.*

Other examples abound. To illustrate, a Lexis News search for variants of the terms “digital card” OR “digital identification card” turns up over 5,000 results from English-language publications in the United States over the last decade. Robertson Aff. ¶ 13 & Ex. 11.

3. Plaintiffs’ argument that a non-textual tangibility requirement should be judicially added to the statute violates “the long-standing rule[] of interpretation and construction in this state” that “the expression of one thing is the exclusion of another.” *Mangum v. Raleigh Bd. of Adjustment*, 196 N.C. App. 249, 255 (2009). “Under this canon of statutory construction, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list.”

*Town of Midland v. Harrell*, 385 N.C. 365, 375-376 (2023). Here, the statute lists criteria that, if satisfied, render an identification card acceptable. Because a tangibility requirement is “not contained in the list,” *id.*, any such requirement is excluded.

Plaintiffs’ posited tangibility requirement likewise violates the closely related canon that “a matter not covered is to be treated as not covered,” *Woody v. AccuQuest Hearing Ctr., LLC*, 284 N.C. App. 540, 548 (2022). As the North Carolina Supreme Court has explained, courts construing a statute may not “insert words that are not used.” *N.C. Farm Bureau Mut. Ins. Co. v. Dana*, 379 N.C. 502, 510 (2021). Applying the same rule, the Supreme Court of Maryland held that its board of elections could not mandate legibility as a condition of accepting a signature because the statute requiring the signature did not expressly demand legibility. *Montgomery County Volunteer Fire Rescue Association v. Montgomery Cnty. Bd. of Elections*, 15 A.3d 798, 808 (Md. 2011). Similarly here, the Board not only acted lawfully by accepting UNC’s digital identification card, but also lacked discretion to reject the card based on an atextual tangibility requirement.

4. Plaintiffs make four arguments to overcome the lack of any textual or common-sense basis to say that a UNC-issued “card” *must* be tangible. Each lacks merit.

First, plaintiffs assert that, “as with other permissible identification cards, the law contemplates that UNC will have equipment for *printing* the identification cards,” which plaintiffs say implies that the cards must be tangible. Compl. ¶ 42

(emphasis added); *see also id.* ¶ 35. But unlike the statutory section governing a different type of voter-identification card—a section that *does* refer to “equipment necessary to print voter photo identification cards,” N.C. Gen. Stat. § 163-82.8A(b)—the statutory sections governing UNC-issued identification cards refer to “equipment for *producing*” the cards, *id.* § 163-166.17(a)(1)(c) (emphasis added); *see also id.* § 163-166.18(a)(1)(c). Plaintiffs’ attempt to equate “producing” with “print[ing]” violates the interpretive rule that “[d]ifferent words used in the same statute should be assigned different meanings,” *In re M.I.W.*, 365 N.C. 374, 379 (2012); *see also N.C. Farm Bureau Mut. Ins. Co. v. N.C. Dep’t of Revenue*, 2023 WL 2754645, \*8 (N.C. Super. Apr. 3, 2023).

Second, plaintiffs argue that the statute’s reference to cards being “issued” suggests that “there is a physical, tangible item created.” Compl. ¶ 45. But to “issue” means merely “to put forth officially” or “to send out or distribute officially.” *Mining Energy, Inc. v. Dir., Office of Workers’ Comp. Programs*, 391 F.3d 571, 575 (4th Cir. 2004); *see also Griswold v. United States*, 59 F.3d 1571, 1580 (11th Cir. 1995). Many non-tangible items are “issued.” For example, courts issue opinions on their websites, companies electronically issue stock, and military officers issue verbal orders. Indeed, the General Assembly recently recognized that mobile drivers’ licenses could be “issued” by the DMV. N.C. Sess. Law 2024-30 § 1(b).

Third, plaintiffs contend that a state regulation’s reference to a “photograph appearing *on* the photo identification” implies that [the identification] is a physical, tangible item.” Compl. ¶ 48 (quoting 08 NCAC 17 .0101). But the word “on” does not

imply tangibility. Indeed, the statute at issue here refers to material “*on* the State Board’s Web site,” which is by definition digital. N.C. Gen. Stat. § 163-166.17(c) (emphasis added).

Fourth, plaintiffs argue that the Board’s prior guidance that “[a]n image of a photo ID, either as photocopy or a photo on a mobile device, is not one of the permitted forms of photo ID when voting in person” bars digital One Cards. Compl. ¶ 51 (quoting Karen Brinson Bell, Numbered Memo 2023-03 at 3 (updated Feb. 23, 2024), <https://tinyurl.com/2sf8zf8c>). This misunderstands both the guidance and how digital identification cards work. The guidance bars individuals from photocopying or taking a photo of their identification card and presenting that photocopy or picture of their physical ID at the polls. But as the Board’s general counsel explained to the Board, digital identification cards are not photographs. *See State Board Meeting, supra* p.5. Just as a digital credit card or airline boarding pass accessible through Apple Wallet is not a picture of the physical credit card or boarding pass, digital identification cards are not stored on the mobile device and are accessible only through a secure application on the phone.

In sum, there is no basis for imposing an atextual tangibility requirement for approving UNC-issued identification cards as an acceptable form of voter identification.

**B. The Relief Plaintiffs Seek Is Barred By Both Federal Law And The North Carolina Constitution.**

With just weeks to go until early voting starts, plaintiffs ask this Court to risk disenfranchising potentially thousands of registered and qualified UNC voters

who plan to rely on their mobile identification to vote. It will soon be too late (and in some cases, may be too burdensome) for these people to obtain alternative identification; they likely will have to stay home. Such denial of “one of the most cherished rights in our system of government,” *Blankenship v. Bartlett*, 363 N.C. 518, 522 (2009), would violate the Fourteenth Amendment’s Due Process Clause, *see* U.S. Const. amend. XIV, and North Carolina’s Free Elections and Law of the Land Clauses, N.C. Const. art. I, §§ 10, 19, which our supreme court “has consistently interpreted ... to provide the utmost protection for the foundational democratic freedom[] of ... voting,” *Kennedy v. N.C. State Bd. of Elections*, 2024 WL 4119196, at \*1 (N.C. Sept. 9, 2024) (alteration in original).

Moreover, plaintiffs’ requested relief, which would disproportionately burden young and Democratic voters, would also violate the state constitution’s equal-protection guarantee. *See* N.C. Const. art. I, §§ 1, 19. “The right to vote on equal terms is a fundamental right” under the Law of the Land Clause, and rules that deprive some voters of the franchise violate it. *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747 (1990).

**C. Plaintiffs Have Not Adequately Pleaded Any Entitlement To Declaratory Or Injunctive Relief, Let Alone The Extraordinary Remedy Of Mandamus.<sup>2</sup>**

Plaintiffs’ request for mandamus is manifestly insufficient. Mandamus is available only to require state officers to perform required ministerial duties. *In re*

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<sup>2</sup> Plaintiffs seek “an expedited writ of mandamus and [a] preliminary and permanent injunction.” Compl. 23-24. This request is redundant. *See Ponder v. Joslin*, 262 N.C. 496, 504 (1964).

*T.H.T.*, 362 N.C. 446, 453-454 (2008). A duty is ministerial, moreover, only when it is “absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Meyer v. Walls*, 347 N.C. 97, 113 (1997). And mandamus may invalidate an exercise of discretion only if “it clearly appears” that “there has been an abuse of discretion.” *Ponder*, 262 N.C. at 504.

Plaintiffs have failed to show that the Board is under *any* legal obligation to bar digital photo-identification cards; its obligation is to “approve” UNC-issued identification cards “if” the requirements set forth in Gen. Stat. § 163-166.17(a) (for student cards) or § 163-166.18(a) (for employee cards) are met. If there is ambiguity as to whether the list implicitly contains a tangibility requirement, moreover, the Board retains discretion to “make such reasonable rules and regulations ... as it may deem advisable so long as they do not conflict with” the election laws. N.C. Gen. Stat. § 163-22(a). As explained, plaintiffs have not shown that the Board’s decision to approve UNC’s One Card conflicts with any other requirement. Further, plaintiffs have an adequate alternative remedy. State law allows plaintiffs to challenge voters who they believe lack an adequate form of voter ID. *See* N.C. Gen. Stat. § 163-87(5), or challenge a practice that they believe violates state law in a protest, *id.* § 163-182.9. Mandamus is therefore unavailable. *See Burgin v. N.C. State Bd. of Elections*, 214 N.C. 140, 145 (1938).

## II. THE BALANCE OF HARMS FAVORS DENIAL OF AN EMERGENCY INJUNCTION.

Plaintiffs will suffer no (let alone serious) irreparable harm if denied the last-minute injunction they seek, nor would denying an injunction threaten any right of

theirs. Plaintiffs contend (Mot. ¶ 27) that allowing election officials to accept digital One Cards would cause them “palpable” harm because it “would violate fundamental principles of free election.” But the bedrock of free elections is access to the polls, including “protect[ing] voters from interference ... in the voting process.” *Harper v. Hall*, 384 N.C. 292, 361 (2023). “By definition, [t]he public interest ... favors permitting as many qualified voters to vote as possible.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Plaintiffs cannot explain how allowing UNC students and employees who are already “registered voter[s],” N.C. Gen. Stat. §163-166.16(a), to identify themselves with their mobile One Cards makes the election less free for plaintiffs or anyone else.

Plaintiffs assert (Mot. ¶ 27) that accepting UNC’s digital One Card will “dilute or annul every legal voter[’]s[] clearly established statutory and constitutional rights.” But the photo-identification requirement’s purpose is “to confirm the person presenting to vote is the registered voter on the voter registration records.” N.C. Gen. Stat. § 163-166.16(g). There is no basis for plaintiffs’ implication that digital One Cards will enable ineligible persons to vote. An ineligible voter could not use her digital One Card to vote because she would not be registered. Nor could she use someone else’s digital One Card to vote, because she would not match the photograph on the card. And she could not show a doctored photo of a card, because One Cards are displayable only through Apple Wallet, not through photo applications, *see supra* p. 4-5. Plaintiffs have not shown how using a mobile One Card would dilute votes, nor why properly trained election officials



could not mitigate any such risk—for example, by checking that voters open the mobile One Cards through the Apple Wallet application.

Plaintiffs' delay in seeking relief further supports the lack of any irreparable harm here, as their cry for immediate relief is a problem “of their own making.” *Kennedy*, 2024 WL 4119196, at \*2. Their attempt at obtaining an eleventh-hour reversal of the Board's decision, which UNC, its students, and election officials have been implementing for weeks, would not only disrupt the status quo, but also throw the election into further confusion and disarray.

Weighed against the “potential harm to the defendant if injunctive relief is granted,” *Williams v. Greene*, 36 N.C. App. 80, 86 (1978), whatever abstract harm plaintiffs have identified is trivial and insufficient to warrant misleading voters in elections that are weeks away. In considering late-stage challenges to election procedures, in particular where the relief sought would risk “misleading” voters so close to the election, the grave harm of potential disenfranchisement is paramount and must be “appropriately weigh[ed].” *Kennedy*, 2024 WL 4119196, at \*1. Here, a judicial declaration that digital One Cards are not valid voter identification, after contrary assurances from both UNC and the Board, *see Robertson Aff.* ¶ 6 & Ex. 6, would risk “disenfranchis[ing] countless voters who mistakenly believe,” in reliance on government assurances, that they can access the polls with their digital card, *Kennedy*, 2024 WL 4119196, at \*1. Unless they happen to have another form of acceptable photo identification, such voters could be turned away by election officials at the polls or forced to cast provisional ballots. And others may not even

show up to vote, as “voter confusion has a strong potential to negatively impact voter turnout,” *Holmes v. Moore*, 270 N.C. App. 7, 35 (2020), *rev’d on other grounds*, 384 N.C. 426 (N.C. 2023).

Put simply, allowing registered voters to vote using their digital One Cards would cause plaintiffs no irreparable harm, while an order issued weeks before the election barring the use of One Cards as voter identification could confuse, mislead, and even disenfranchise thousands of eligible voters. That (im)balance of harms militates strongly against an emergency injunction.

### **CONCLUSION**

Plaintiffs’ motion for a TRO or expedited preliminary injunction should be denied.

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Respectfully submitted, this 17th day of September, 2024.

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**CERTIFICATE OF SERVICE**

The foregoing document was electronically filed and served by electronic mail upon the following:

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This 17th day of September, 2024.

/s/ William A. Robertson  
William A. Robertson

**INDEX OF EXHIBITS TO  
INTERVENOR-DEFENDANT THE DEMOCRATIC NATIONAL  
COMMITTEE'S OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER OR EXPEDITED PRELIMINARY INJUNCTION**

<b>Exhibit No.</b>		<b>Document</b>
A		Affidavit of William A. Robertson
	1	One Cards approved as 2020 voting ID for employees, students
	2	Mobile One Card Launches on Campus
	3	Mobile One Card
	4	UNC-CH Digital Card
	5	Get My Card
	6	Android Device FAQs and Support
	7	Mobile UNC One Card for Apple Wallet Approved for Voter ID Use
	8	UNC One Card Website
	9	UNC One Card Cardholder Policy Agreement
	10	N&O, <i>Lost Your Vaccine Card? You May Get a Digital Replacement</i>
	11	Lexis News Search for Digital ID card
B		Affidavit of Vijaykrishna Bajaj

# EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
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.

**AFFIDAVIT OF WILLIAM A.  
ROBERTSON**

William A. Robertson, being first duly sworn, deposes and says:

1. My name is William A. Robertson. I am over the age of 18 and under no disability. The facts stated in this affidavit are known to me personally, unless otherwise specifically stated, and I am competent to testify to them.

2. I am counsel for Intervenor the Democratic National Committee ("DNC") in this matter.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the following article published the University of North Carolina at Chapel Hill's ("UNC") website: UNC, *One Cards Approved As 2020 Voting ID For Employees, Students*, (Dec. 10, 2019). I obtained a copy of this article from UNC's website on September 16, 2024.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the following article published UNC's One Card website: UNC, *Mobile One Card Launches on Campus* (Aug. 15, 2023). I obtained a copy of this article from UNC's One Card website on September 16, 2024.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the following webpage published UNC's One Card website: UNC, *Mobile One Card*. I obtained a copy of this webpage from UNC's One Card website on September 17, 2024.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the UNC Mobile One Card Application to the North Carolina State Board of Elections. This information is publicly available on the North Carolina State Board of Elections (the "State Board") webpage containing meeting documents for the State Board's August 20, 2024 board meeting.

7. Attached hereto as **Exhibit 5** is a true and correct copy of the UNC, *Get My Card* webpage. I obtained a copy of this webpage on September 16, 2024.

8. Attached hereto as **Exhibit 6** is a true and correct copy of the following webpage published UNC's One Card website: UNC, *Android Device FAQs and Support*. I obtained a copy of this webpage from UNC's One Card website on September 17, 2024.

9. Attached hereto as **Exhibit 7** is a true and correct copy of the following article published UNC's One Card website: UNC, *Mobile UNC One Card for Apple Wallet Approved for Voter ID Use* (Aug. 23, 2024). I obtained a copy of this article from UNC's One Card website on September 16, 2024.



10. Attached hereto as **Exhibit 8** is a true and correct copy of the main webpage for UNC's One Card website. I obtained a copy of this webpage from UNC's One Card website on September 16, 2024.

11. Attached hereto as **Exhibit 9** is a true and correct copy of the UNC One Card Cardholder Agreement Policy. I obtained a copy of this webpage from UNC's policies.unc.edu website on September 16, 2024.

12. Attached hereto as **Exhibit 10** is a true and correct copy of Kimberly Cataudella, *Lost Your Vaccine Card? You May Get a Digital Replacement*, Raleigh News & Observer (Jan. 29, 2022). I obtained a copy of this article from newsobserver.com on September 16, 2024.

13. Attached hereto as **Exhibit 11** is a true and correct copy of a Lexis News search for variants of the terms "digital card" OR "digital identification card," which turned up over 5,000 results from English-language publications in the United States over the last decade. I obtained the results of this search on September 17, 2024.

14. A true and correct copy of the video recording of the State Board's August 20, 2024 meeting is available at the following link:  
<https://tinyurl.com/44bkb9vu>.

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Further the affiant sayeth naught. This the 17<sup>th</sup> day of September, 2024.

William A Robertson

William A. Robertson

STATE OF NORTH CAROLINA

WAKE COUNTY

Subscribed and sworn to (or affirmed) before me this day by William A. Robertson, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me, and executed the foregoing instrument for the purposes set forth therein and in the capacity indicated.

Date: 8/17/24

Patricia G Douglas

Notary Public (Signature)

[official seal]

Patricia G Douglas

Notary Public (Print Name)

My Commission Expires: 5/2/29

PATRICIA G DOUGLAS  
Notary Public  
Wake County, NC  
My Commission Expires May 2, 2029

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# EXHIBIT 1

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## UNIVERSITY NEWS

# One Cards approved as 2020 voting ID for employees, students

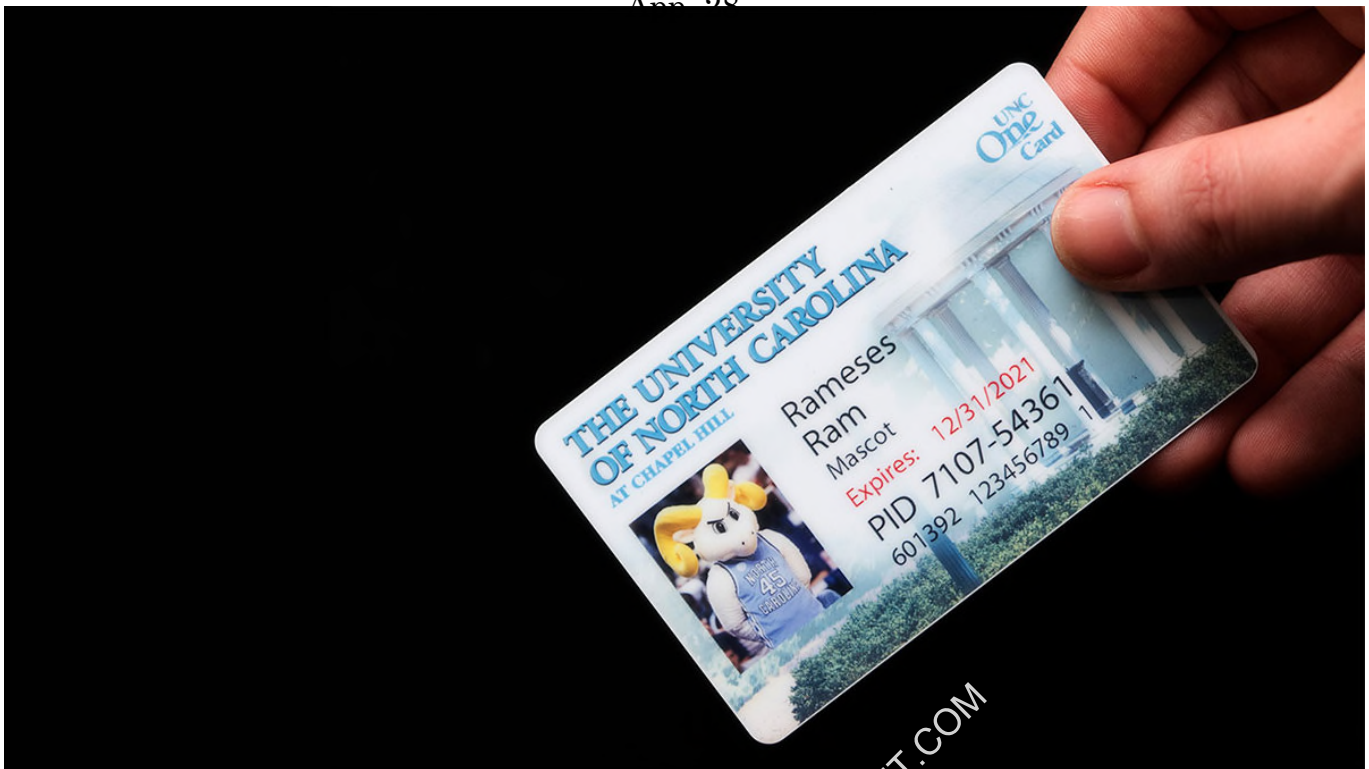
Voters may use any acceptable form of ID, including driver's licenses, U.S. passports, tribal enrollment cards or military and veterans ID cards.

By The Well, Tuesday, December 10th, 2019

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I Accept



One Cards and other photo IDs issued by UNC System institutions will be acceptable forms of identification for the 2020 elections in North Carolina, State Elections Director Karen Brinson Bell announced Nov. 26.

“I’m pleased to share that the North Carolina State Board of Elections approved our request to allow students, faculty and staff to use their UNC One Cards as voting ID in future elections,” Interim Chancellor Kevin M. Guskiewicz said after the announcement. “Carolina is committed to

Interim UNC System President William Roper issued the following statement about the decision: “I am pleased that student and employee identification cards at each of our 17 institutions have now been approved by the N.C. State Board of Elections. This approval will allow any voting-eligible employee or student to exercise their civic duty. We wish to thank all of those who worked hard for months behind the scenes to make this happen.”

Beginning in 2020, voters in North Carolina will be asked to present photo identification to vote, though certain exceptions apply. Voters may use any acceptable form of ID, including driver’s licenses, U.S. passports, tribal enrollment cards or military and veterans ID cards. Voters who do not have an acceptable ID may get a free North Carolina voter ID from their county board of elections.

Carolina’s original request to allow One Cards as voter IDs was denied by the elections board in March because the University’s process allowed for individual photo upload. The law was rewritten to require a University staff member to obtain

approval by the State Board of Elections allowing them to be used as voter IDs.

Next year, UNC-Chapel Hill students, faculty and staff may opt to use their UNC One Card as a voter ID. However, starting in 2021, One Cards will need to be stamped with an expiration date to be used as a voter ID. Cards issued starting in July 2020 will have 10-year expiration dates. One Card holders who want to use them as voter IDs will need to get a new card stamped with an expiration date.

**CATEGORIES** [University News](#)

**KEEP READING**

Message from Interim Chancellor Kevin M. Guskiewicz about concerns about the Confederate Monument

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**FOCUS ON  
HOUSING**

The initiative will work with communities across the state to improve affordable housing access and availability.

**SPACE  
HISTORY**

Weeks after becoming the youngest woman to cross the Kármán line, the proud Carolina senior is “still processing it

**WITH  
LIFESAVING  
DONATION**

In August, Samantha Lewis offered a stem cell donation that was years in the making.

all.”

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Hill

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# EXHIBIT 2

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## FINANCE AND OPERATIONS One Card

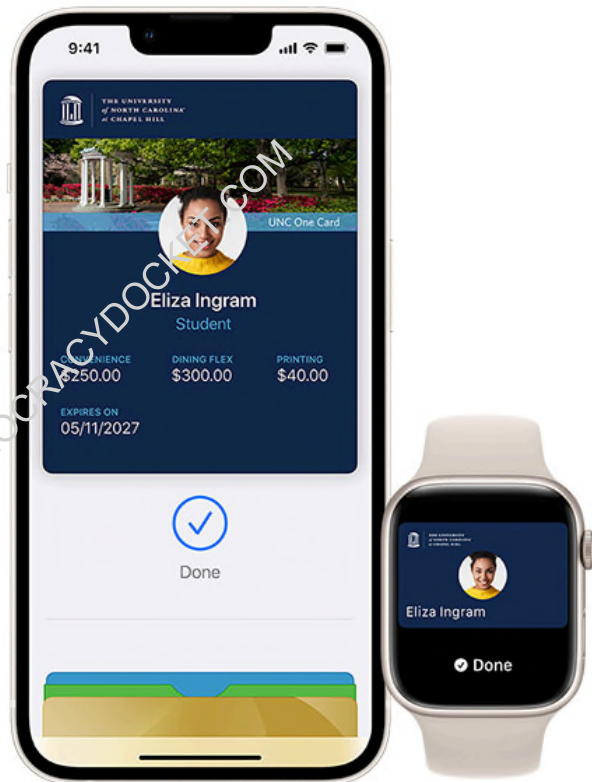
### Mobile One Card Launches on Campus

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*August 15, 2023*

Starting today, the UNC One Card can now be added as a mobile ID to compatible iPhone and Apple Watch devices. Students, employees and affiliates will be able to use the mobile One Card to access campus buildings, make payments and purchases, and more!

“We are excited to offer this secure mobile solution to our campus community,” said Scott Myers, executive director of Auxiliary Services. “We continuously look for new technologies, and we think that students and employees will appreciate this new and convenient way to use their One Cards from their phones.”



The mobile One Card is considered a valid form of University ID and provides an additional level of convenience and accessibility. Once added to Apple Wallet, the mobile One Card can be used anywhere the physical card is used, both on and off campus (except as voter ID.) Using contactless technology, cardholders can present

their iPhone or Apple Watch to card readers to pay for food and vending, open campus doors, and access parking lots and athletic events. You don't have to wake the device or open an app.

Cardholders can view meal plan, Flex and other account balances directly on their mobile One Card. Mobile One Cards can also be instantly and remotely issued, revoked or reactivated, offering an added level of control and fraud protection for cardholders.

To add your One Card to your iPhone or Apple Watch, follow the step-by-step instructions at [Mobile One Card](#). You can add the One Card to both your iPhone and Apple Watch, but only one format of the card (physical or mobile) will be permitted.

**Once a card is added to Apple Wallet, the physical card will no longer work.**

However, cardholders are encouraged to keep their physical card to use as a valid voter ID.

Building and parking lot access is no longer provided through the GET or Mobile ID apps. Cardholders should add the mobile One Card to their device to continue accessing locked and gated entrances on their phones.



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# EXHIBIT 3

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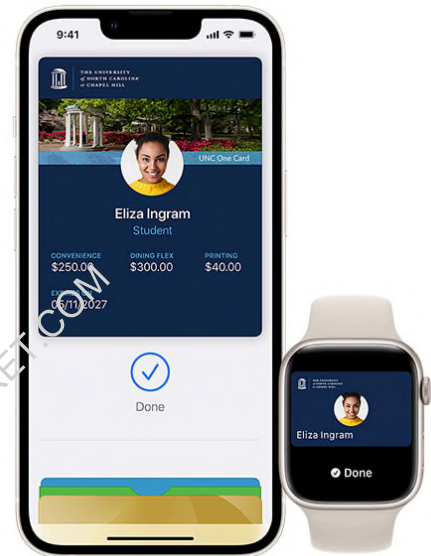
## FINANCE AND OPERATIONS One Card

### Mobile One Card

The mobile One Card is your official UNC-Chapel Hill ID located on your iPhone or Apple Watch. Once added to Apple Wallet, you can use the mobile One Card to access campus buildings, make payments and purchases, and more.

The mobile One Card is considered a valid form of University ID and provides an additional level of convenience and accessibility. Once added to Apple Wallet, the mobile One Card can be used anywhere the physical card is used, both on and off campus. Using contactless technology, cardholders can simply tap their iPhone or Apple Watch to card readers to pay for food and vending, open campus doors, and access parking lots and athletic events. The mobile One Card for Apple Wallet on iPhone is also approved as voter ID in North Carolina.

Cardholders can view meal plan, Flex and other account balances directly on their mobile One Card. Mobile One Cards can also be instantly and remotely issued, revoked or reactivated, offering an added level of control and fraud protection for cardholders.



### How do I get the mobile One Card on my Apple devices?

1. If you have not previously been issued a One Card, visit [Get My Card](#) and complete the steps to obtain your One Card.
2. Ensure that you have an [approved photo](#) on file. A new, updated photo will be required if the cardholder photo on file is more than five years old.
3. Download and configure the [GET Mobile app](#).
4. Select "University of North Carolina at Chapel Hill" from the list of institutions, login with your Onyen and password, and complete the DUO authentication.
5. Select the "Add to Apple Wallet" button, then select whether you would like to add your One Card to your iPhone or Apple Watch.

You can add the One Card to both your iPhone and Apple Watch, but only one format of the card (physical or mobile) will be permitted. **Once a card is added to Apple Wallet, the physical card will no longer work.** However, cardholders are encouraged to keep their physical for use as a valid voter ID.

For additional information on eligible devices and using the One Card in Apple Wallet, visit [Apple Device FAQs and Support](#).

The mobile One Card is not currently available for Google Wallet on Android devices. For more information on using your One Card on Android devices via the GET Mobile app, visit the [Android Device FAQs and Support](#).

# EXHIBIT 4

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# STUDENT IDENTIFICATION APPROVAL REQUEST FORM 2023-2024



NC State Board of Elections • P.O. Box 27255 • Raleigh, NC 27611-7255 • (866) 522-4723

Please return completed form to [VoterID@ncsbe.gov](mailto:VoterID@ncsbe.gov)

## 1 Information About Your Institution

This institution is a:  Constituent Institution of the University of North Carolina \*  
 Eligible Private University or College     Community College\*  
*\* Use this form for student IDs only; use the [Employee ID Approval Form](#) for approval of staff IDs.*

The University of North Carolina at Chapel Hill

Name of Institution

Mobile UNC One Card

Name/Type of Card

Orange

County or Counties with Campuses

## 2 ID Card Requirements

Indicate that this is a new request for approval or that the identification has not changed since its approval on March 15, 2019.



Check this box if you are seeking approval of a digital ID card or mobile credential. **If you check this box, you must attach additional documentation to this form describing how the digital ID or mobile credential meets the requirements in 1. through 8.**

**New Request.** The following requirements have been met and will not knowingly be violated with regard to student identification cards issued during the approval period: (you must check each box for this option to be complete)

- 1. The identification cards that are issued by the university or college contain photographs of students obtained by the university or college or its agents or contractors, and the photograph obtained is a frontal image that includes the student's face and represents a clear, accurate likeness of the student to whom the identification card is issued. **If the photograph used is not produced by the university or college or its agents, you must certify in detail the process used by the university or college to ensure the photograph is that of the student to whom the identification card is issued and must certify the process is designed to confirm the identity of the student to whom the identification card is issued. ( You must attach additional documentation to this form describing the process used if the photograph is not produced by the university or college or its agents.)**
- 2. The identification cards are issued after an enrollment or other process that includes one or more methods of confirming the identity of the student using information that may include, but is not limited to, the social security number, citizenship status, and birthdate of the student.
- 3. Access to the equipment for producing the identification cards is restricted through security measures.
- 4. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.
- 5. University or college officials would report any misuse of student identification card equipment they have knowledge of to law enforcement if G.S. 163-275(19) was potentially violated.
- 6. ID cards issued by the university or college during the approval period will contain an expiration date.
- 7. The university or college will provide copies of student identification cards to the State Board for training purposes.
- 8. The college or university will provide to students who are issued the student identification card a copy of, or an electronic link to, the Voting as a College Student Infosheet that details the information required by G.S. 163-166.17(a)(1)h.

**If you have any concerns about whether your institution meets any of the requirements, please attach additional documentation explaining the processes used.**

**Statement of No Changes.** No changes have been made to the student identification cards that were approved by the State Board on March 15, 2019. *Current cards and cards approved on Mar. 15, 2019 must have an expiration date.*

## 3 Attestation

I have attached additional documentation to this form.

I certify that the information provided on this form, and any additional documentation attached to this form, are true and correct and that I am the Chancellor, President, or Registrar of the university or college.

X

Signature

X Lauren M. DiGrazia

Print Name

06/12/2024

Date

Assistant Provost & University Registrar

Print Title (Chancellor, President, or Registrar)



The University of North Carolina at Chapel Hill  
Approval for Student Identification Cards- Mobile Credential Only

**At present, mobile credentials are only available for students who use Apple phones.**

**Requirement 1- Photo submission process**

The identification cards that are issued by UNC-CH contain photographs of students submitted by students to UNC-CH through a secure process. Self-submitted photographs must meet quality and composition criteria designed to ensure that submissions are suitable for identification card use. UNC-CH staff review submitted photographs and reject those that fail to meet the criteria.

The criteria given to individuals submitting photos are below:

“Your photo must

- Show you looking directly at the camera with a neutral expression or smiling.
- Have your face clearly visible and shoulders square to the viewer.
- Have a white or solid, light-colored background.
- Include only your head and upper shoulders (complete head must be in photo)
- Pixelated or grainy photos not accepted.
- Face should be visible (dark or light photos will not be accepted)
- Do not show other people, animals etc. or parts thereof.
- Orientation of photo must be correct (if photo is sideways, it will not be accepted)
- No filters accepted or watermarks (this includes black and white photos)
- No picture of a picture please
- Avoid headgear or sunglasses (an exception is made for reasons of religious observance)”

To submit a photograph for use on a student identification card, students must log onto a UNC-CH website using a unique identifier assigned and maintained by UNC-CH. That unique identifier is assigned after students provide their full legal name, gender, and birthdate. Students then use their unique identifier to obtain individual login credentials. They must use their individual login credentials to upload and associate their photograph with their unique identifier. They also must upload identification with the photo, including a U.S. Driver’s License, U.S. Visa, U.S. Passport, U.S. State issued ID, or a U.S. Military ID.

To receive a mobile credential that serves as a student identification card, students submit an official photo identification, such as a license, military ID, or passport. An AI program compares the official photo identification and the student’s physical appearance in the current photo submitted prior to providing the mobile credential. UNC staff also review the identification and the photo. A mismatch in the photo and the identification would trigger an error.

**Requirement 2-The identification cards are issued after an enrollment or other process that includes one or more methods of confirming the identity of the student using information that may include, but is not limited to, the social security number, citizenship status, and birthdate of the employee.**



As with physical identification cards, mobile credentials that serve as student identification cards are not issued until after the application and enrollment process is complete.

**Requirement 3- Access to the equipment for producing the identification cards is restricted through security measures.**

Access to the mobile credential is through secured systems. The equipment involved is all digitally accessed through a contract with a vendor, who has been approved by the University's data governance and Privacy offices as having secure data practices. The mobile credential that serves as a student identification card is secured by the HID Global system, the same producer of the chips in the physical identification cards. The mobile credential is issued via a secure HID Global Systems application programming interface. These systems are cloud based and contained in highly secure data centers. The same technology is used in the chip securing the UNC One Cards as the chip in credit and debit cards.

**Requirement 4- Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.**

As with the physical identification cards, only authorized personnel are involved in the process of creating the mobile credential. Anyone attempting to change internal control processing for creating or editing the mobile credential would similarly be subject to discipline. Only vendor personnel would have the capability to change the credential. HID is bound by the security requirements of the University's instantiated contract.

**Requirement 5- University or college officials would report any misuse of student identification card equipment to law enforcement if G.S. 163-275(19) was potentially violated.**

Tampering with the mobile credential would be a crime and reported to law enforcement as soon as University personnel were aware or made aware by the vendor. This would be similar to a data or other technology security breach as the equipment is not physically housed at the University.

**Requirement 6- ID cards issued by the university or college during the approval period will contain an expiration date.**

There is an expiration date displayed on the mobile credential under the photograph of the user.

**Requirement 7- The university or college will provide copies of student identification cards to the State Board for training purposes.**

An image of a sample mobile credential is attached.

**Requirement 8- The college or university will provide to students who are issued the student identification card a copy of, or an electronic link to, the Voting as a College Student Infosheet that details the information required by G.S. 163-166.17(a)(1)h.**

The One Card Office will provide an electronic link on its website to the Voting as a College Student Infosheet after the mobile credential is approved.

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# EMPLOYEE IDENTIFICATION APPROVAL REQUEST FORM 2023-2024



NC State Board of Elections • P.O. Box 27255 • Raleigh, NC 27611-7255 • (866) 522-4723

Please return completed form to [VoterID@ncsbe.gov](mailto:VoterID@ncsbe.gov)

## 1 Information About Your Entity

This entity is a:  State Government Entity  Local Government Entity  Charter School

The University of North Carolina at Chapel Hill

Name of Entity  
Mobile UNC One Card

Name/Type of Card  
Orange

County

## 2 ID Card Requirements

Indicate that this is a new request for approval or that the identification has not changed since its approval on March 15, 2019.



Check this box if you are seeking approval of a digital ID card or mobile credential. If you check this box, you must attach additional documentation to this form describing how the digital ID or mobile credential meets the requirements in 1. through 8.

**New Request.** The following requirements have been met and will not knowingly be violated with regard to employee identification cards issued during the approval period: (you must check each box for this option to be complete)

- 1. The identification cards that are issued by the state or local government entity or charter school contain photographs of the employees obtained by the state or local government entity or charter school employing entity or its agents or contractors, and the photograph obtained is a frontal image that includes the employee's face and represents a clear, accurate likeness of the employee to whom the identification card is issued. **If the photograph used is not produced by the state or local government entity or charter school, you must certify in detail the process used by the state or local government entity or charter school to ensure the photograph is that of the employee to whom the identification card is issued and must certify the process is designed to confirm the identity of the employee to whom the identification card is issued. ( You must attach additional documentation to this form describing the process used if the photograph is not produced by the state or local government entity or charter school.)**
- 2. The identification cards are issued after an employment application or other process that includes one or more methods of confirming the identity of the employee using information that may include, but is not limited to, the social security number, citizenship status, and birthdate of the employee.
- 3. Access to the equipment for producing the identification cards is restricted through security measures.
- 4. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.
- 5. State or local or charter school officials would report any misuse of identification card equipment they have knowledge of to law enforcement if G.S. 163-275(19) was potentially violated.
- 6. ID cards issued by the entity during the approval period will contain an expiration date.
- 7. The state or local government entity or charter school will provide copies of employee identification cards to the State Board to assist with training purposes.

**If you have any concerns about whether your institution meets any of the requirements, please attach additional documentation explaining the processes used.**

**Statement of No Changes.** No changes have been made to the employee identification cards that were approved by the State Board on March 15, 2019. *Current cards and cards approved on Mar. 15, 2019 must have an expiration date.*

## 3 Attestation

I have attached additional documentation to this form.

I certify that the information provided on this form and any additional documentation attached to this form are true and correct and that I am the head elected official or lead human resources employee of the entity.

X Rebecca Menghini

Digitally signed by Rebecca Menghini  
Date: 2024.06.07 14:14:35 -04'00'

6/7/2024

Signature

Date

X Rebecca Menghini

Vice Chancellor, Human Resource & Equal Opportunity & Compliance

Print Name

Print Title (head elected official or lead HR)

The University of North Carolina at Chapel Hill  
Approval for Employee Identification Cards- Mobile Credential Only

**At present, mobile credentials are only available for employees who use Apple phones.**

**Requirement 1- Photo submission process**

The mobile credentials that serve as identification cards issued to employees of UNC-CH contain photographs of employees submitted by employees to UNC-CH through a secure process.

Employees submit their own photographs to UNC-CH for use on their mobile credentials that serve as an employee identification card. Self-submitted photographs must meet quality and composition criteria designed to ensure that submissions are suitable for identification card use. UNC-CH staff review submitted photographs and reject those that fail to meet the criteria.

The criteria given to individuals submitting photos are below:

“Your photo must

- Show you looking directly at the camera with a neutral expression or smiling.
- Have your face clearly visible and shoulders square to the viewer.
- Have a white or solid, light colored background.
- Include only your head and upper shoulders (complete head must be in photo)
- Pixelated or grainy photos not accepted.
- Face should be visible (dark or light photos will not be accepted)
- Do not show other people, animals etc. or parts thereof.
- Orientation of photo must be correct (if photo is sideways it will not be accepted)
- No filters accepted or watermarks (this includes black and white photos)
- No picture of a picture please
- Avoid headgear or sunglasses (an exception is made for reasons of religious observance)”

To submit a photograph for use on a mobile credential that serves as an employee identification card, employees must log onto a UNC-CH website using a unique identifier assigned and maintained by UNC-CH as well as the DUO authentication system. Employees receive their individual login information after entering their Person ID Number, an identification number assigned after employees provide their full legal name, gender, and birthdate. Photographs submitted by employees are associated with this unique identifier and saved electronically.

To receive a mobile credential that serves as an employee identification card, employees submit an official photo identification, such as a license, military ID, or passport. An AI program compares the official photo identification and the employee’s physical appearance in the current photo submitted prior to providing the mobile credential. UNC staff also review the identification and the photo. A mismatch in the photo and the identification would trigger an error and the mobile credential would not be issued.



**Requirement 2-The identification cards are issued after an employment application or other process that includes one or more methods of confirming the identity of the employee using information that may include, but is not limited to, the social security number, citizenship status, and birthdate of the employee.**

As with physical identification cards, mobile credentials that serve as employee identification cards are not issued until after the hiring or other on-boarding process is completed.

**Requirement 3- Access to the equipment for producing the identification cards is restricted through security measures.**

Access to the mobile credential is through secured systems. The equipment involved is all digitally accessed through a contract with a vendor, who has been approved by the University's data governance and Privacy offices as having secure data practices. The mobile credential that serves as an employee identification card is secured by the HID Global system, the same producer of the chips in the physical identification cards. The mobile credential is issued via a secure HID Global Systems application programming interface. These systems are cloud based and contained in highly secure data centers. The same technology is used in the chip securing the UNC One Cards as the chip in credit and debit cards.

**Requirement 4- Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.**

As with the physical identification cards, only authorized personnel are involved in the process of creating the mobile credential. Anyone attempting to change internal control processing for creating or editing the mobile credential would similarly be subject to discipline. Only vendor personnel would have the capability to change the credential. HID is bound by the security requirements of the University's instantiated contract.

**Requirement 5- State or local government or charter school officials would report to law enforcement any misuse of employee identification card equipment that they have knowledge of.**

Tampering with the mobile credential would be a crime and reported to law enforcement as soon as University personnel were aware or made aware by the vendor. This would be similar to a data or other technology security breach as the equipment is not physically housed at the University.

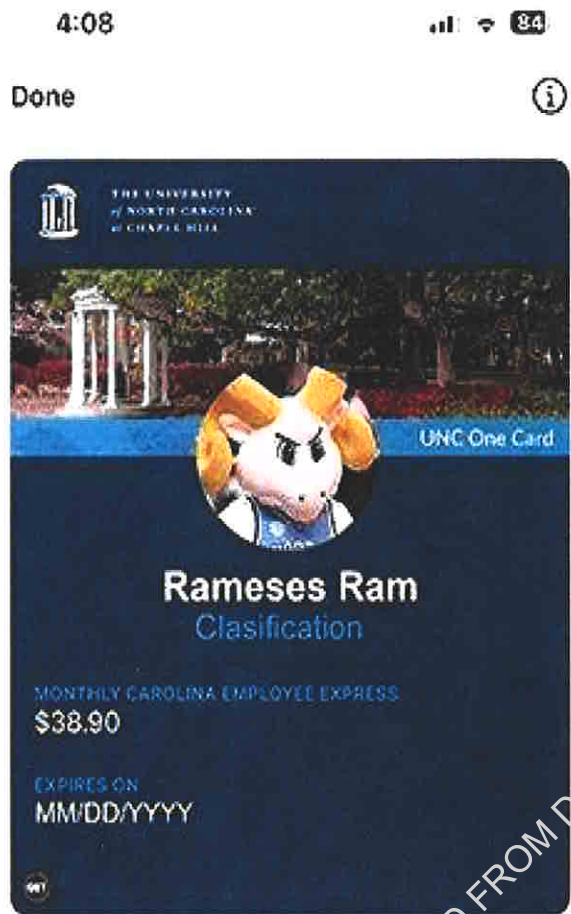
**Requirement 6- ID cards issued by the entity during the approval period will contain an expiration date.**

There is an expiration date displayed on the mobile credential under the photograph of the user.

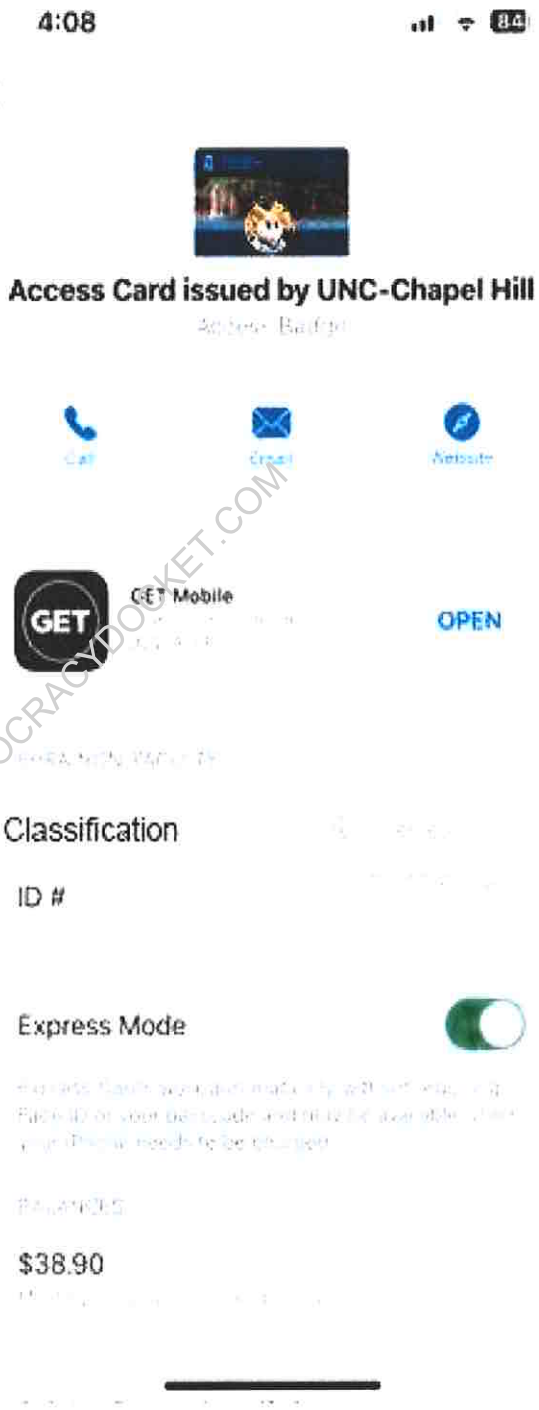
**Requirement 7- The state or local government entity or charter school will provide copies of employee identification cards to the State Board to assist with training purposes.**

An image of a sample mobile credential is attached.

Front



Back



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**From:** [Lewis, Kristen Simonsen](#)  
**To:** [Wakely, Lindsey](#); [Menghini, Becci](#)  
**Cc:** [SBOE\\_Grp - Legal](#)  
**Subject:** Re: [External] Re: Mobile UNC One Card for Voting Purposes  
**Date:** Wednesday, July 31, 2024 2:49:29 PM

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That's correct, a user has to enter their ONYEN (and do the DUO authentication) for the Get Mobile App in order to have the Get Mobile App transmit the One Card into the Apple Wallet.

Here is the One Card user agreement:

<https://policies.unc.edu/TDClient/2833/Portal/KB/ArticleDet?ID=131704>

---

**From:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>  
**Sent:** Wednesday, July 31, 2024 2:28 PM  
**To:** Lewis, Kristen Simonsen <kslewis@email.unc.edu>; Menghini, Becci <becci\_menghini@unc.edu>  
**Cc:** SBOE\_Grp - Legal <Legal@ncsbe.gov>  
**Subject:** RE: [External] Re: Mobile UNC One Card for Voting Purposes

Thanks you Kristen. We appreciate your quick response.

I've been experimenting with the Get Mobile App. It looks like after downloading the App, a student or employee can select the University of North Carolina at Chapel Hill, but the student or employee will be prompted to enter their ONYEN ID and password in order to proceed. Is this correct? Does this mean a student or employee will not be able to download the One Card into their Apple Wallet without first entering their unique ONYEN and password?

Is it possible to get a copy of the One Card user agreement that students and employees must sign?

---

**From:** Lewis, Kristen Simonsen <kslewis@email.unc.edu>  
**Sent:** Wednesday, July 31, 2024 2:16 PM  
**To:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Menghini, Becci <becci\_menghini@unc.edu>  
**Cc:** SBOE\_Grp - Legal <Legal@ncsbe.gov>  
**Subject:** [External] Re: Mobile UNC One Card for Voting Purposes

**CAUTION:** External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Thanks, Lindsey, happy to answer any questions. It's about the same process for both

students and employees.

Students are loaded into the University's One Card system once they arrive for orientation. Employees are loaded into the system when the One Card Office receives their assignment for their employee orientation or on their first day of employment.

Both are required to sign a One Card user agreement electronically with their ONYEN and Duo. After the signature is completed, they are approved to upload their ID and photo. They have to put an app on their phone called CBORD GET Mobile App. After the photo is approved, the button for the One Card is available for them in the GET Mobile App. It does not appear before the photo is approved. They must click on that button to download the One Card into their Apple Wallet.

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**From:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>

**Sent:** Wednesday, July 31, 2024 11:57 AM

**To:** Lewis, Kristen Simonsen <[kslewis@email.unc.edu](mailto:kslewis@email.unc.edu)>; Menghini, Becci <[becci\\_menghini@unc.edu](mailto:becci_menghini@unc.edu)>

**Cc:** SBOE\_Grp - Legal <[Legal@ncsbe.gov](mailto:Legal@ncsbe.gov)>

**Subject:** Mobile UNC One Card for Voting Purposes

Good morning,

We are reviewing the UNC-Chapel Hill application for approval of the Mobile UNC One Card for voting purposes. I do have a follow up question stemming from the supplemental materials submitted as part of the attached application.

For requirement 2, you note that the mobile credential that serves as the identification card is not issued until after the student application and enrollment process is complete, or after the employee hiring or other on-boarding process is complete. Can you describe in detail how the student or employee is issued the mobile credential? How is the student or employee notified of the issuance and how the student or employee download or otherwise gain the ability to display the card on their phone or other device?

We appreciate any further information you can provide.

Sincerely,

**Lindsey Wakely**

*Deputy General Counsel*

O: (919) 814-0729





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# EXHIBIT 5

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## FINANCE AND OPERATIONS One Card

### Get My Card

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Welcome Tar Heel!

Your [UNC One Card](#)  will get you started on your journey here at Carolina. The One Card is a multipurpose identification card that also serves as a card for library and meal plan use, building access, copy and print services and access to campus events.

02:15

### Obtaining Your Card

You must be a part of the Carolina Community (faculty, staff, enrolled student or affiliate).

If you are not sure about the status of your paperwork, contact your HR representative or call the UNC One Card Office to see if you are in the appropriate system.

### Follow These Steps *(in order)*

1. Make sure that you have your [ONYEN](#), [UNC-Chapel Hill email](#) and [DUO set up](#), otherwise you won't be able to log in.
2. Complete the [One Card electronic signature](#) to sign the One Card Use Agreement.
3. [Upload a photo for your One Card](#) and a valid photo ID – driver's license, state ID card, or passport.
4. Download and set up the [UNC GET App](#). This app is for viewing meal plan and account balances, ordering meals and loading funds to your Carolina Convenience Accounts.
5. After your uploaded photo has been approved, open the [UNC GET App](#).
6. Select the "Add to Wallet" button, then select next.

All newly issued One Cards will be mobile One Cards. Physical cards will be issued on a case-by-case basis. Should you need a physical card, please come to the third floor of Student Stores Building and bring the One Card fee and a driver's license, passport or military ID.

## Students! While you are here...

**Meal Plan Portal:** Add, cancel, or change your meal plan online. Meal plans are loaded on to One Cards when the semester starts.

**Wells Fargo UNC Debit Card:** The University of North Carolina at Chapel Hill and Wells Fargo have teamed up to offer you optional banking convenience with the custom-designed UNC Debit Card, exclusively for Tar Heels. Use it for your day-to-day financial needs on and off campus when it's linked to a Wells Fargo Everyday Checking account. Enjoy no-fee access to Wells Fargo ATMs nationwide. Make everyday purchases and pay bills at participating retailers and service providers. Take advantage of this optional benefit today.

<b>Fee Information</b>		
<b>User Type</b>	<b>Mobile Card</b>	<b>Physical Card</b>
Full-Time Students	Included in Student Fee	\$10.00
Classroom Studies, Part-Time Students	\$10.00	\$10.00
Faculty and Staff (Full Time/Permanent)	Included with Employment	\$10.00
Temporary Employees (Adjunct, Postdoc, etc.)	\$10.00	\$10.00
Affiliates	\$10.00 or by departmental agreement	\$10.00

# EXHIBIT 6

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## FINANCE AND OPERATIONS One Card

### Android Device FAQs and Support

---

**Q: What is the mobile One Card for Android?**

**A:** The mobile One Card is just like your physical One Card, now on your Android phone!

**Q: Can I have a physical One Card and a mobile One Card?**

**A:** You can add the One Card to your Android device, but only one format of the card (physical or mobile) will be permitted.

**Once a card is added to your device, the physical card will no longer work.**

**Q: Can I switch back to a physical card after being issued a mobile One Card?**

**A:** To reactivate a physical One Card, email the One Card Office at [onecard@unc.edu](mailto:onecard@unc.edu) with your PID and request that your mobile One Card be disabled.

**Q: What do I need?**

**A:** You will need an Android device with the following:

- An Android phone that runs Lollipop (5.1) or higher, with NFC turned on.
- The latest version of the GET Mobile app.
- DUO Authentication to confirm your identity.
- Ensure that your handset has NFC and it is enabled for use.

**Q: How do I get my UNC One Card on my Android devices?**

- A:**
1. Ensure that you have an approved photo on file. The photo must be less than 5 years old. If you are not sure if you have an approved photo, contact the One Card Office at [onecard@unc.edu](mailto:onecard@unc.edu).
  2. On your supported device, Open the [GET Mobile app from the Google Play Store](#).
  3. Choose University of North Carolina at Chapel Hill from the dropdown list.
  4. Log in using your Onyen and password, then complete the DUO authentication.
  5. Select the Add to Phone button.
  6. Your UNC One Card will now be provisioned to your device. Do not delete the GET app. If you delete the app, your UNC One Card will be removed as well.

**Q: GET indicates "Mobile ID Installed (not ready)." What do I do?**

**A:** Check the app permissions. To see permissions, press and hold the GET Mobile app, select App info from the popup and select permissions. All permissions should be set to "enabled".

**Q: How do I use my UNC One Card on my Android devices?**

**A:** To access your One Card, your device does not need to be unlocked, but the screen should be awake. Ensure NFC is turned on by going to your device's Settings. Android devices can vary in the placement of the NFC antenna. Tap the top of the phone to

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the reader. If this does not work, tap the back body of the phone to the reader. Some devices require the user to log in to the GET Mobile app once daily to utilize the mobile One Card.

**Q: What Android devices are supported?**

**A:** All Android phones that run Lollipop (5.1) or higher and are NFC capable. Android watches are not supported at this time. You cannot have a mobile One Card on both an Android and an Apple device.

**Q: How can I view my PID?**

**A:** To view your PID, open the GET Mobile App. Tap on scan card to see the ID.


**Q: Does my device need to be awake to use the One Card?**

**A:** You do not need to unlock your device (unless you have enabled Require Device Unlock), but the screen will need to be lit and awake in order to use your One Card.

**Q: Can I view my meal plan, Carolina Convenience, Flex Dollars, Employee Express Plan and Expense Account balances?**

**A:** These balances can be viewed on the GET Mobile app.

**Q: Can I use the mobile One Card for Android as voter ID?**

**A:** No. The mobile One Card is currently unavailable for Google Wallet on Android devices. Once mobile One Card for Google Wallet is available, the University will pursue approval for use as voter ID. Students and employees who use mobile One Card on Android but need a voter ID may request a physical voter ID card at the One Card Office. To learn more about voting options and photo ID requirements for voting in North Carolina, visit [Voting as a College Student](#) .

**Q: I have added the One Card to my Android device, but it is not working.**

**A:** Please try the following:

- Ensure you are presenting your mobile One Card properly at the reader — straight up and down typically works best.
- If you are presenting your mobile One Card and the reader is not reacting, open the GET Mobile app.
- After logging into GET Mobile, try to present your mobile One Card to the reader again. Some devices require the user to log in to the GET Mobile app once daily in order to utilize your mobile One Card.
- Ensure you have properly provisioned the mobile credential. In the GET mobile app, you should see the status of Mobile ID enabled.

If you are still encountering issues, please contact the One Card Office at [onecard@unc.edu](mailto:onecard@unc.edu) for support.

**Q: How do I transfer my UNC One Card if I get a new device?**

**A:** Remove your One Card from your old device. Once you have completed this, you will simply choose your new mobile ecosystem and repeat the process of provisioning through the GET app on your new device.

**Q: What happens if I lose my Android device? If I find it afterward?**

**A:** Visit the [One Card Portal](#) and select Suspend Card to disable or re-enable your One Card.

**Q: Can I use my mobile One Card if my Android device has a dead battery?**

**A:** This website uses cookies and similar technologies to enhance your navigation, analyze site usage, and assist in our marketing efforts. By using this website, you consent to UNC-Chapel Hill's cookie usage in accordance with their [Privacy Notice](#).

**Q: Can I use the mobile One Card without a cellular signal?**

**A:** Your One Card can be used even if the Android device does not have network connectivity as your One Card is stored on your device.

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# EXHIBIT 7

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FINANCE AND OPERATIONS  
One Card

## Mobile UNC One Card for Apple Wallet Approved for Voter ID Use

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*August 23, 2024*

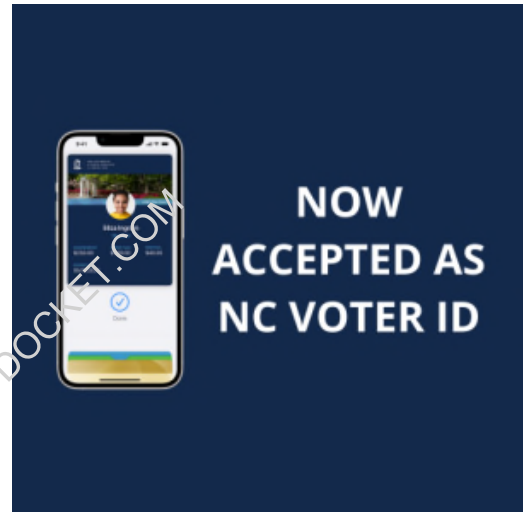
The North Carolina Board of Elections has recently approved the mobile UNC One Card in Apple Wallet on iPhones as an acceptable form of in-state voter ID for UNC-Chapel Hill students, faculty and staff.

Since 2020, the UNC One Card has been an acceptable form of voter ID in North Carolina. However, prior to the recent ruling, only physical One Cards were accepted at polling locations. Other forms of acceptable voter ID include driver's licenses, U.S. passports, tribal enrollment cards, military/veteran ID cards and free county board of elections ID cards.

Launched in 2023, the mobile UNC One Card allows your UNC-Chapel Hill ID to be located on your iPhone through the Apple Wallet feature. The mobile One Card is currently unavailable for Google Wallet on Android devices but can be added to your device through the GET Mobile app. Once the mobile One Card for Google Wallet is available, the University will pursue approval for use as voter ID.

Students and employees who do not use mobile One Card for Apple Wallet but need a voter ID may request a voter ID card at the One Card Office. The Carolina community is encouraged to visit the North Carolina Board of Election's voter ID webpage for more information about what other forms of ID will and will not be accepted.

For more information about the mobile One Card, contact the One Card Office at [onecard@unc.edu](mailto:onecard@unc.edu) or (919) 962-8024.



# EXHIBIT 8

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GET MY CARD | MANAGE MY CARD | CARD FEATURES AND USES | MOBILE ONE CARD | OTHER SERVICES | ABOUT

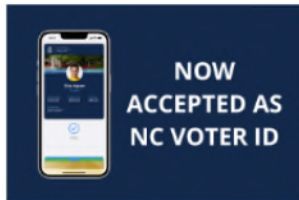
NEWS

## The Most Accepted Card on Campus

[One Card Login](#)

Conveniently located on the third floor of UNC Student Stores, the UNC One Card Office provides an interactive campus ID card with superior innovative technologies in financial and access transactions to our diverse customer base, including faculty, staff, students, and affiliates.

### News



#### Mobile UNC One Card for Apple Wallet Approved for Voter ID Use

August 23, 2024

The North Carolina Board of Elections has recently approved the mobile UNC One Card in Apple Wallet on iPhones as an acceptable form of in-state voter ID for UNC-Chapel Hill students, faculty and staff.



#### Faces of F&O: Melinda Bakken

June 27, 2024

As director of Campus Card Services and Person ID, Melinda Bakken works with students, employees and units across campus to support their campus card needs.

### Notifications

- Did you get a new phone during the break and your One Card isn't working? Here are your options:
  - Email [onecard@unc.edu](mailto:onecard@unc.edu) from your UNC email address with your PID and let us know that you have a new phone.
  - come by the One Card Office, located on the 3rd Floor of Student Stores.
- Please complete the [Meal Plan Appeal Form](#) for all meal plan cancellations and changes.

### Quick Access



[My Account Login](#)



[Download One Card App](#)



[Add Value to a Card](#)



[Report a Lost or Stolen Card](#)



[Meal Plan Portal](#)



[Wells Fargo UNC Debit Card](#)

See our [Other Services](#) page to find information about cards for temporary access to buildings, departmental copy cards, custom cards and badges, the Employee Express Plan and more.

# EXHIBIT 9

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# UNC One Card Cardholder Agreement Policy

## Summary

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The University of North Carolina at Chapel Hill ("UNC") One Card is a multipurpose identification card that also serves as a card for library and meal plan use, building access, copy and print services and access to campus events. This Cardholder Agreement document explains how to get a One Card, how to report a lost or stolen One Card, and financial responsibilities that come with having a UNC One Card.

## Body

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### Title

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University of North Carolina at Chapel Hill Policy on One Card Cardholder Agreement

## Introduction

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### Purpose

The University of North Carolina at Chapel Hill ("UNC" or "University") One Card is a multipurpose identification card that also serves as a card for library and meal plan use, building access, copy and print services and access to campus events. This Cardholder Agreement document explains how to get a One Card, how to report a lost or stolen One Card, and financial responsibilities that come with having a UNC One Card.

### Scope of Applicability

This document applies to any individual who acquires a UNC One Card. The UNC One Card may be physical or mobile.

## Policy

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### Policy Statement

Upon receiving a UNC One Card, the Cardholder agrees to the terms and conditions found in PART ONE of this Agreement. In addition to the terms and conditions found in PART ONE, any Cardholder who elects to use the UNC One Card for financial transactions also agrees to the terms and conditions found in PART TWO of this Agreement.

## PART ONE: Terms and Conditions for Identification Card Purposes

Upon receiving the UNC One Card, the Cardholder agrees to the following terms and conditions:

### 1. Property of UNC

The UNC One Card is property of the University. The Cardholder is eligible for either a physical One Card or a Mobile One Card. Only one form of One Card will be active.

The Cardholder is obligated to provide or display the UNC One Card upon request by any University official or security personnel. The UNC One Card is valid only while the Cardholder is a registered student, active employee, or affiliate, or until the UNC One Card expires or is revoked. When the UNC One Card is no longer valid, the physical card should be returned to the UNC One Card Office or the Mobile Credential will be revoked.

### 2. Authorization for personal use only; Penalties for unauthorized use

The Cardholder must comply with all laws, ordinances, codes, rules, regulations, and University policies that are applicable for use or possession of the UNC One Card, including those of federal, state, and local agencies having jurisdiction and/or authority over the University or the Cardholder.

The Cardholder must not loan or otherwise transfer their UNC One Card to another person; doing so results in a violation of University policies, and, in the case of a student Cardholder, a violation of UNC's Honor Code. Any person who attempts to obtain or use, or assists in obtaining or using, a UNC One Card for fraudulent identification may be subject to disciplinary action, including, but not limited to, having the UNC One Card disabled by the UNC One Card Office.

### 3. Requirements to obtain a UNC One Card

The individual requesting a UNC One Card must submit an up-to-date photo in the individual's current likeness. The photo may be uploaded online or taken in the UNC One Card Office. All uploaded photos will go through an approval process to determine if they meet the photo requirements posted on the UNC One Card website. If the individual requesting a UNC One Card does not upload a photo or the uploaded photo is rejected for failure to meet the posted requirements, a photo will be taken in the UNC One Card Office. A valid U.S. driver's license, U.S. passport, U.S. visa, U.S. military ID, or U.S. state-issued identification card is required when requesting a UNC One Card. Currently enrolled students may obtain a replacement card if they provide additional verification as reasonably requested by the UNC One Card Office.

## 4. Obligation to report lost or stolen UNC One Card

The Cardholder is obligated to report a lost or stolen UNC One Card as soon as possible. This report can be made through the UNC One Card website or in person at either of the following locations:

- UNC One Card Office  
207 South Road  
3rd floor Student Stores Building, CB 1530  
Chapel Hill, NC 27599

If you have questions or need directions to the UNC One Card Office, you may call 919-962-8024.

- UNC Police  
Public Safety Building  
285 Manning Drive  
Chapel Hill, NC 27514

If you have questions or need directions to the Public Safety Building, you may call 919-962-8100.

## 5. Fees

The Cardholder is responsible for paying all applicable fees concurrent with the issuance of the UNC One Card. A list of fees can be found on the UNC One Card website. No charge will be imposed to replace current physical UNC One Cards that cease to function due to normal daily usage. Characteristics indicating normal usage are a worn stripe, frayed or peeling plastic overlay, or horizontal breakage/cracking. Characteristics not indicating normal usage are broken edges or corners, hole punches, and vertical breakage/cracking. A charge will be imposed for a replacement UNC One Card which is not damaged by normal use. The determination of whether a UNC One Card has been damaged by normal usage will be made at the sole discretion of the UNC One Card Office.

## 6. Right to amend terms and conditions

The University reserves the right to amend any term or condition contained in this Agreement. A current version of this Agreement is available upon request from the UNC One Card Office.

## PART TWO: Terms and Conditions for Stored-value Card Use

The UNC One Card may, at the Cardholder's option, be used to pay for various goods and services at locations that accept the UNC One Card. The following terms and conditions will not apply until the Cardholder first uses the UNC One Card for a financial transaction. Loading funds onto the UNC One Card for future use constitutes a financial transaction.

### 1. Liability for all financial transactions, including unauthorized transactions

The Cardholder is responsible for all financial transactions generated by the use of their UNC One Card and agrees to pay for those transactions. If the UNC One Card is lost or stolen, the Cardholder is obligated to report the loss to the UNC One Card Office or UNC Police using the process specified in PART ONE, Section 4, of this Agreement. As determined in the sole discretion of the UNC One Card Office, the Cardholder may be responsible for: (i) up to \$50.00 in unauthorized purchases if the loss is reported within two (2) business days; (ii) up to \$500.00 in unauthorized purchases if the loss is reported after two (2) business days but within sixty (60) business days; or (iii) an unlimited dollar amount in unauthorized purchases if the Cardholder does not report the loss to the UNC One Card Office or UNC Police within sixty (60) business days.

### 2. Availability of periodic transaction reports

The UNC One Card Office administers all accounts. Information about the Cardholder's account balance or transaction record is available at the UNC One Card Office upon request by the Cardholder and with the presentation of proper identification, on the CBORD Get App, or through the UNC One Card website. The UNC One Card Office reserves the right to limit a transaction record to ninety (90) days immediately preceding the request.

### 3. Account balances and receipts

The Cardholder's account balance will display on cash registers and most other machines accepting the UNC One Card for financial transactions. The Cardholder's account balance can be checked on the CBORD Get App or through the UNC One Card website.

### 4. Inactive account charges and no interest earned on account

There is a 25¢ service fee for each full calendar month in which there is no activity on an account. If the balance is less than 25¢ but greater than zero, the charge for that month will be the balance amount. Activity on an account is defined as any financial transaction using that account, including adding value to that account. The Cardholder understands and agrees that no interest or other earnings will be paid to the Cardholder or credited by the University to their UNC One Card account.

### 5. Refund of Carolina Convenience and faculty/staff expense account balances

Cardholders with a balance on their Carolina Convenience or Faculty/Staff Expense accounts of \$10.00 or more may request a refund on their account balance with the following stipulations. An employee Cardholder may apply for a refund at any time during their employment, or up to thirty (30) calendar days following termination of employment. A student Cardholder may make a refund request through their University email account or in-person at the end of the academic year, at the end of the semester in which the Cardholder graduates, or at any other time during the semester if the Cardholder officially withdraws from enrollment at the University. If a student Cardholder requests a refund at any time other than the end of an academic year, the Cardholder may be required to produce documentation of their graduation or official withdrawal. Requests for a refund may be made through email using a University email account or in-person at the UNC One Card Office during its regular hours of operation. A Cardholder refund will only be sent by check made payable and mailed to the Cardholder's United States address in ConnectCarolina.

### 6. Abandoned accounts

An account that is abandoned by a Cardholder for any reason will be subject to the standard monthly 25¢ service fee (see PART TWO, Section 4) that is applied to an account with no transaction activity during the prior calendar month. After two years of inactivity, any remaining funds will be presumed abandoned pursuant to the North Carolina Unclaimed Property Act, North Carolina General Statutes § 116B-53, et seq.. The University escheats abandoned property in accordance with the provisions of Chapter 116B of the North Carolina General Statutes. The UNC One Card office will attempt to contact the Cardholder at the last known address on file with the University. After that attempt, the remaining unclaimed balance, less a \$25.00 administrative fee, will be sent to the North Carolina State Treasurer's Office.

## Exceptions

None.

# Definitions

**Cardholder:** any student, employee, or affiliate of UNC-Chapel Hill who acquires a UNC One Card, physical or mobile, under the terms and conditions of this Agreement.

# Related Requirements

## External Regulations and Consequences

- North Carolina Unclaimed Property Act, North Carolina General Statutes § 116B-53
- Chapter 116B of the North Carolina General Statutes

## University Policies, Standards, and Procedures

- UNC Honor Code
- Finance Policy 309: Escheats Policy
- Finance Procedure 309.1: Procedure for Reconciling, Reporting, and Escheating Abandoned Property

# Contact Information

UNC One Card Office  
3rd Floor, Student Stores Building  
207 South Road  
Campus Box #1530  
Chapel Hill, NC 27599

Phone: 919-962-8024

Website

# Details

## Details

**Article ID:** 131704

**Created**

Thu 4/8/21 9:14 PM

**Modified**

Mon 5/1/23 9:43 AM

**Responsible Unit** ⓘ

One Card Office

**Issuing Officer** ⓘ

Melinda Bakken

**Issuing Officer Title** ⓘ

Director of Campus Card Services and Personal IDs

**Policy Contact** ⓘ

Melinda Bakken

**Next Review** ⓘ

05/01/2023 12:00 AM

**Last Review** ⓘ

05/11/2022 12:00 AM

**Last Revised** ⓘ

05/11/2022 12:00 AM

**Effective Date** ⓘ

05/11/2022 12:00 AM

**Origination** ⓘ

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# EXHIBIT 10

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**DON'T MISS OUT** 99¢ FOR 4 months Our best offer of the year! **ACT NOW**



First-ever digital ID for voting approved by NC elections board, as GOP members object



Under the Dome: NC DMV rolls out self-service kiosks



Where to get COVID, flu + RSV shots in NC (and when doctors say you should get vaccinated)



Skip the DMV line with self-service kiosks at these grocery stores in Raleigh + Charlotte

CORONAVIRUS

# Lost your vaccine card? You may get a digital replacement. Here's what to do in NC.

BY KIMBERLY CATAUDELLA

UPDATED JANUARY 29, 2022 2:55 PM |

Gov. Cooper visits Carrboro restaurant requiring vaccines

00:05

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Gov. Roy Cooper visited Pizzeria Mercato in Carrboro, NC on Thursday, Aug. 26, 2021, to talk about his support for businesses requiring proof of vaccination from their customers. BY JULIA WALL



Only have a minute? Listen instead

Powered by **Trinity Audio**

00:00

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If you lost your vaccine card, you probably won't be able to get an exact duplicate paper card, but there are still ways to show proof of vaccination.

Printed or digital versions of your proof of vaccination serve as valid replacements for your misplaced vaccine card, according to the [North Carolina Department of Health and Human Services](#).

Summer Tonizzo, press assistant for NCDHHS, said that the following options should, in most cases, serve as valid replacements for the physical paper card:

- A digital photo of your CDC Vaccination Record card
- Printed and/or digital versions of your vaccine information from your provider's record
- Printed versions of your vaccine information from the [NC Immunization Registry](#)

Note: If you were vaccinated at a national chain pharmacy, like Walgreens, CVS or Costco, you should contact that provider directly. If you received doses through an NC hospital network or at a health department event, you can use a portal to access your vaccine information.

Here are more details on replacing a lost vaccine card in North Carolina.

### **IF YOU WERE VACCINATED AT A PHARMACY IN NC**

NCDHHS recommends **contacting your vaccine provider directly** to inquire about a lost vaccine card, especially if you received your vaccine from a pharmacy participating in the **Federal Retail Pharmacy Program**.

A **full list of partners** participating in this program, such as Walmart and CVS, can be found at [cdc.gov/vaccines](https://cdc.gov/vaccines).

Scroll toward the bottom of the webpage and check out the **“North Carolina” section**.

### **IF YOU WERE VACCINATED AT AN NC HOSPITAL, DOCTOR'S OFFICE**

Information about your doses might be available in the **COVID-19 Vaccine Management System Portal**: [covid19.ncdhhs.gov/vaccines/access-vaccine-portal](https://covid19.ncdhhs.gov/vaccines/access-vaccine-portal).

You may be able to **download and print** a new card showing proof of vaccination if you received doses at a North Carolina-specific spot, such as a local independent pharmacy, doctor’s office, health department, hospital or community event.



A man holds his COVID vaccination card while waiting to get his shot at an event by the Episcopal Farmworker Ministry targeting members of the Hispanic community in August 2021. Scott Sharpe [ssharpe@newsobserver.com](mailto:ssharpe@newsobserver.com)

## HOW TO USE NC’S VACCINE MANAGEMENT SYSTEM PORTAL

Follow these steps, which [NCDHHS laid out on its website](#), to access your vaccine information using the COVID-19 Vaccine Management System Portal:

1. **Go to the portal**, which can be found at [covid-vaccine-portal.ncdhhs.gov/s/login](https://covid-vaccine-portal.ncdhhs.gov/s/login).
2. **Log in**. If you’re logging in for the first time, visit [covid-vaccine-portal.ncdhhs.gov/s/forgot-username](https://covid-vaccine-portal.ncdhhs.gov/s/forgot-username).
3. Visit the **“My Dashboard”** tab.
4. Select **“COVID-19 Vaccine Information.”**
5. Click the **“Generate Vaccine PDF”** button. You can save this PDF to your devices and/or print it out.
6. **Scan the QR code** for vaccine information. Smartphone cameras can detect and open QR codes when held to them. The QR code will pull up the person’s vaccine

- App. 69 -  
information (in English) when scanned.

For more help:

- **Check out the one-page guide:** This detailed guide with images can be found at [covid19.ncdhhs.gov/media/2614/open](https://covid19.ncdhhs.gov/media/2614/open).
- **Watch the instructional video:** You can find it at [youtube.com/watch?v=9UL2mTRYCt4](https://youtube.com/watch?v=9UL2mTRYCt4).
- **Call the COVID-19 Vaccine Help Center:** They're available 7 a.m. to 7 p.m. weekdays and 8 a.m. to 4 p.m. weekends at (888) 675-4567.
- **Send a message:** The online form is available at [bit.ly/3ALu5uk](https://bit.ly/3ALu5uk).

### **IF YOU'RE A RECENT COLLEGE GRADUATE**

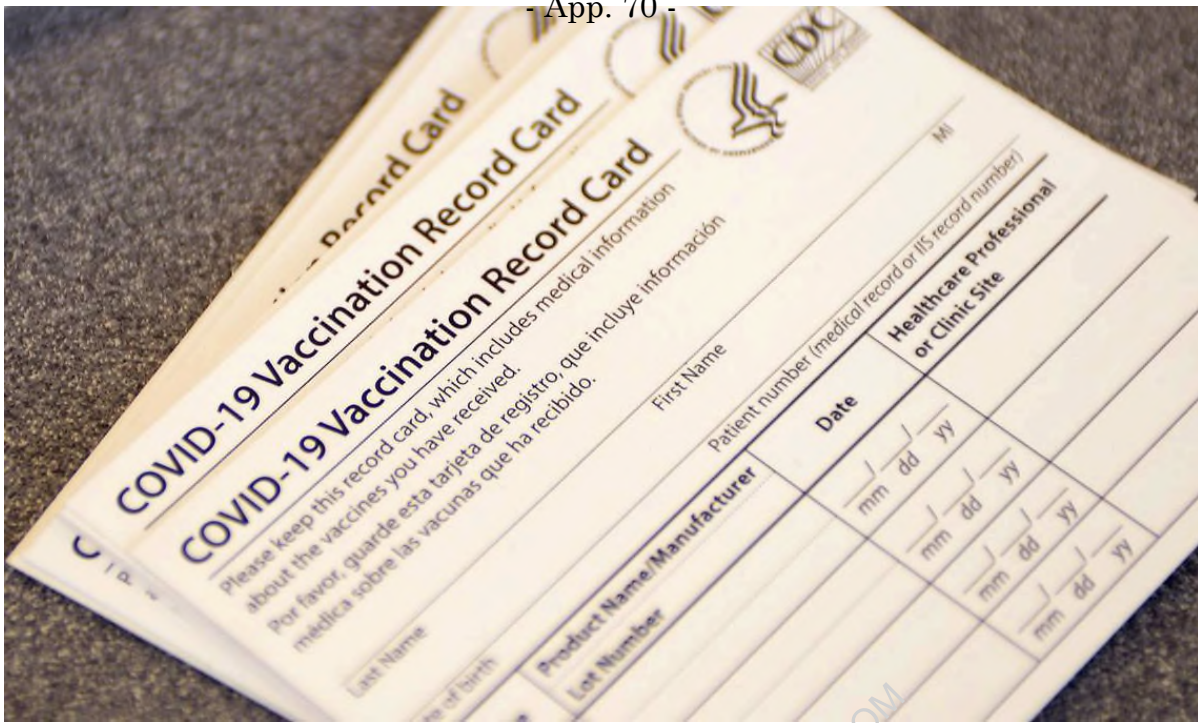
If you recently graduated from an NC university and used your student email when getting vaccinated, you may not have the ability to get into this portal anymore. The N&O talked to NCDHHS to help you sort this out.

Here's what to do if you **no longer have access to your account's email address**:

1. Call the COVID-19 Vaccine Help Center: (888) 675-4567.
2. An agent will verify your identity using personal data points and vaccine-related information.
3. The agent will ask for your new email address.
4. The agent will assign the ticket to a technical team member, who has the ability to update the email address for your account.

If you can't find your vaccination information in this portal or have other questions, [NCDHHS recommends](#) directly contacting your vaccine provider and/or your local health department.





COVID\_19 vaccination record cards wait to be filled with client names. Jeff Siner  
[jsiner@charlotteobserver.com](mailto:jsiner@charlotteobserver.com)

## USING MYCHART FOR PROOF OF VACCINATION FROM UNC HEALTH, DUKE HEALTH

MyChart allows you to **add your vaccine card** to [Apple Wallet](#), [Samsung Pay](#) and others, letting you keep your proof of vaccination in your pocket, purse or hand at all times.

### UNC Health:

UNC Health will **not distribute new vaccine cards**, but there are other ways to get your immunization records, including for COVID-19.

Access UNC MyChart (where you can find your immunization records) by visiting [myuncchart.org](https://myuncchart.org).

Here are some other ways to get immunization information from UNC Health:

- If you don't have UNC MyChart and want to activate your account, visit [myuncchart.org/MyChart/accesscheck.asp](https://myuncchart.org/MyChart/accesscheck.asp). You can also call UNC HealthLink at (888) 996-2767.
- Contact UNC Health Medical Records at (984) 974-3226 to inquire about [Epic@UNC](mailto:Epic@UNC) immunization records.

### Duke Health:

Duke Health also directs patients to Duke MyChart: [dukemychart.org](https://dukemychart.org).

Here, you can pull up your vaccination record by going to “My Record,” then click on “COVID-19.” You should find your vaccination record and, if applicable, COVID-19 test results.

If you don’t have Duke MyChart and want to activate your account, visit [dukemychart.org/Home/accesscheck.asp](https://dukemychart.org/Home/accesscheck.asp).

## SMART HEALTH CARDS

SMART Health Cards provide **digital proof of vaccination**. Like MyChart, each SMART Health Card will have a QR code that will generate a PDF copy of your vaccine results, and most will have the SMART logo.

A SMART Health Card lives on your **smartphone** and will not replace the paper vaccine card that you received when you got vaccinated, but the digital card can provide vaccination proof.

To get more information about your SMART Health Card, including how you can get one, visit [smarthealth.cards/en/faq.html](https://smarthealth.cards/en/faq.html).

North Carolina has SMART Health Cards **in use**. Numerous in-state health organizations — including NCDHHS, UNC Health, Duke Health and others — are **members of the coalition** that developed SMART Health Cards implementation guides. The coalition is called VCI, which stands for Verifiable Clinical Information.

This story was originally published January 27, 2022, 3:50 PM.

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**KIMBERLY CATAUDELLA TUTUSKA**

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Kimberly Cataudella (she/her) is a service journalism reporter for The News & Observer.

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# EXHIBIT 11

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Exclusions

- ### Secure Digital Card Size Worth \$13 Billion By 2030: IndustryARC

iCrowdNewsire (English) | Aug 15, 2024 | 1633 words

... demand for secure **digital cards** with advanced security features in the business and government sectors. Cloud Integration and Backup Solutions Cloud integration and backup solutions present a unique market opportunity within the secure **digital card** market. ... video recording and the growing need for larger storage solutions projects market growth, finds IndustryARC. ... **Digital Card** by Card Type (Secure **Digital Card**, Microsoft Card, MinisU Card, SUX, SLJHC, Others), by Storage Capacity (Low ... the need for additional storage solutions like SD cards in the Asia-Pacific region. Secure **Digital Card** 2024-2030: Scope of the Report Get Access to the Full Research Report: <https://www.industryarc.com/Report/1536/Secure-digital-card-market.html>. ... Secure **Digital Card** Report Key Takeaways: - Increasing demand for High-Resolution Content Increasing demand for High-Resolution Content are a major market driver propelling the Secure **Digital Card** market forward. The rise of high-megapixel cameras. ... - Businesses and government entities handle sensitive information, making them prime targets for cybercriminals, secure **digital cards** with advanced encryption features like AES-256 offer an additional layer of protection for data stored on the card. This ...
- ### Google Wallet to get passport-based digital ID cards in the US soon

Android Headlines | Sep 12, 2024 | 355 words | Jean Leon

... Google Wallet to get passport-based **digital ID cards** in the US soon ... get passport-based **digital ID cards** in the US soon appeared first on Android Headlines. Link to the original story ...
- ### Google Wallet may get support for California ID cards soon

Android Headlines | Aug 06, 2024 | 390 words | Jean Leon

... Wallet users in California could save their **digital ID cards** in the US ... certain states have developed their own apps so that citizens can save a digital copy of their ID cards. California is one of them, and now it seems that its local DMV is starting to ... get started. Then, they must tap on the ID Card option and follow the instructions to add their mVIL **digital ID card**. A description on the Wallet app states that people can use their saved ID at select TSA terminals at SFO, SJC, LAX. However, the ... supported by the Google Wallet app. Additionally, the **digital cards** will be generated from a photo of the physical document. The scanned documents will be available in an "Everything Else" tab within the Wallet app. It is not yet known when this feature will ...
- ### World's First ID Card Network Closes Key Strategic Funding to Expand to Millions of Digital ID Cards

PR Newswire | Jul 15, 2022 | 510 words

... World's First ID Card Network Closes Key Strategic Funding to Expand to Millions of **Digital ID Cards**. ... PR Newswire Unum ID, the **digital ID card** network, has raised a \$2M strategic round led by 1414 Ventures and Outliers, with participation from Draper Associates, Tappan Hill Ventures, and others. This round of funding will cement Unum ID's position as the ... leader in reusable identity, supercharging growth from thousands to millions of verified **digital ID cards** to crack the cold start problem of reusable identity. Our dream is that you'll never have to fill out a form again, you'll present a verified digital ... software install required. Users receive **digital ID cards** from issuers in under 10 seconds, and can leverage those cards to sign up instantly at any relying party. It's as simple as clicking "Continue with 1-Click" and consenting to share the required data. ... out for a unified ID to consolidate separate records into one. You have 157 passwords, 215 usernames, 3 credit cards, and 12 bank accounts - but there's only one you. You should have one digital ID. You should have Unum ID. Unum ID is the **digital ID**.
- ### Assam: AAPP appeals for issue of digital ID cards to pharmacists

The Sentinel | Mar 11, 2024 | 232 words | Sentinel Digital Desk

... Assam: AAPP appeals for issue of **digital ID cards** to pharmacists. ... be issued **digital ID cards**. This measure aims to streamline and modernize the credential application process for pharmacists ...
- ### INTERNATIONAL PATENT: MICROSOFT TECHNOLOGY LICENSING, LLC FILES APPLICATION FOR "SYSTEM FOR CREATING AND ACCESSING DIGITAL CARDS STORED IN DECENTRALIZED CONTENT STORAGE"

IPR Fast News | Dec 26, 2023 | 337 words

... INTERNATIONAL PATENT: MICROSOFT TECHNOLOGY LICENSING, LLC FILES APPLICATION FOR "SYSTEM FOR CREATING AND ACCESSING **DIGITAL CARDS** STORED IN DECENTRALIZED CONTENT STORAGE". ... card. The **digital card** can also be called an, and/or refer to, other **digital cards**. The **digital card** can also include properties or attributes that may be added from the digital item that is being referred to. The **digital card** can be stored in a data ... GENUEV, Dec. 26 - MICROSOFT TECHNOLOGY LICENSING, LLC (One Microsoft Way/Redmond, Washington 98052-6399) filed a patent application (PCT/US2023/019051) for "SYSTEM FOR CREATING AND ACCESSING **DIGITAL CARDS** STORED IN DECENTRALIZED CONTENT STORAGE" on ... (MICROSOFT TECHNOLOGY LICENSING, LLC One Microsoft Way/Redmond, Washington 98052-6399), GARARATI, Sarojee (MICROSOFT TECHNOLOGY LICENSING, LLC One Microsoft Way/Redmond, Washington 98052-6399) Abstract: A reference to a digital item is stored as a **digital** ...
- ### Donald Trump Launches 'Mugshot Edition' Digital Cards With Suit Scraps and Gala Dinner Invitations

Newsx Blogs | Dec 12, 2023 | 536 words | Crypto Breaking News

... a real physical Trump card. Purchase 47 **digital cards** and we will mail you a beautiful trading card. It is an authentic piece of the suit I wore when I took that now-famous mugshot. He noted that he will be "autographing some of them." Trump already ... launched two non-fungible token (NFT) collections. In December last year, he launched a **digital card** collection featuring art of his life and career[2]. His second[3] NFT **digital card** collection was launched in April, which was 18 days after he was indicted ... with 34 felony counts of allegedly falsifying business records. In August, Trump's mugshot photo[4] sparked a surge in sales for his existing **digital cards**, driving a staggering 42% increase within 24 hours. In July, the former U.S. president revealed ... ? Let us know in the comments section below. Source: Btcoint[6] com the post Donald Trump Launches 'Mugshot Edition' **Digital Cards** With Suit Scraps and Gala Dinner Invitations[7] appeared first on Crypto Breaking News[8] | [1] <https://truthsocial.com>. ... collection | [4] <https://news.bitcoin.com/trump-mugshot-fuels-nft-sale-as-presidents-digital-cards-jump-42/> | [5] <https://news.bitcoin.com/trump-reveals-ft-income-crypto-holdings-in-new-disclosure/> | [6] <https://www.cryptobreaking.com/gobtcov/> | [7] ...
- ### iPhone Welcomes Legal Digital Identification Cards to Apple Wallet

Newsx Blogs | Mar 14, 2023 | 201 words | LeVar Thomas

... iPhone Welcomes Legal **Digital Identification Cards** to Apple Wallet.
- ### BankDhofar Taps Entrust Digital Card Solution

Wireless News(Close-up Media) | Aug 31, 2024 | 566 words

... BankDhofar Taps Entrust **Digital Card** Solution. ... BankDhofar, an Omani bank, has selected Entrust, a company delivering identity-centric security solutions for governments and enterprises worldwide, to implement its **Digital Card** Solution (DCS) to provide customers with **digital card** capabilities for ... with digital payment capabilities, BankDhofar has implemented the Entrust **Digital Card** Solution for Tap to Pay services and tokenization enablement - making Dhofar the first bank in Oman to enable Tap to Pay services to its customers. According to a ... allows users to securely add their existing Visa Debit and Credit Card details to their NFC capable Android phones. Once set up, the mobile phone becomes a **digital card**, enabling contactless payment transactions with a simple tap on POS terminals. This ... innovative solution eliminates the need to carry physical cards, offering a seamless payment experience for customers. According to the companies, with the Entrust **Digital Card** solution and the NFC issuer wallet for Visa VTS and MDES, BankDhofar is now ...
- ### Government Employees Insurance Assigned Patent for Providing Digital Identification Cards

Targeted News Service | May 23, 2019 | 263 words

... Government Employees Insurance Assigned Patent for Providing **Digital Identification Cards**. ... "The disclosed embodiments include methods and systems for providing **digital identification cards** are disclosed. In one aspect, the disclosed embodiments may provide **digital identification cards**, such as proof of insurance cards, to mobile devices that: ... are compliant with one or more standards set by identification-requiring organizations, such as a department of motor vehicles. Certain disclosed embodiments may update **digital identification cards** based on changes to user information or formatting. ... identification cards for mobile applications." The co-inventors are Peter Meach, Elkridge, Maryland; Matthew Slocum, North Bethesda, Maryland; Anthony James, Gaithersburg, Maryland; and Dennis Sautzer, Chevy Chase, Maryland. The full text of the patent can ... ALEXANDRIA, VA, May 23 - Government Employees Insurance, Chevy Chase, Maryland, has been assigned a patent (No. 10,296,960, initially filed March 28, 2016) developed by four co-inventors for "methods and systems for providing **digital** ...

# EXHIBIT B

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
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.

**AFFIDAVIT OF VIJAYKRISHNA  
BAJAJ**

Vijaykrishna Bajaj, being first duly sworn, deposes and says:

1. My name is Vijaykrishna Bajaj. I am over the age of 18 and under no disability. The facts stated in this affidavit are known to me personally, unless otherwise specifically stated, and I am competent to testify to them.
2. I am an undergraduate student at the University of North Carolina at Chapel Hill ("UNC"). This academic year, I am a first-year student.
3. I am a United States citizen.
4. I am not serving a felony sentence, including any period of probation, post-release supervision, or parole.

5. I live in Orange County, North Carolina, and will have resided there for at least 30 days prior to November 5, 2024.

6. I am registered to vote in Orange County, North Carolina for North Carolina's 2024 general election. I submitted a voter registration form this year.

7. After I enrolled at UNC for my first semester, I was instructed to obtain a digital student identification card (the "One Card"). Per university policy, my One Card was made available on my mobile phone.

8. My One Card is my primary source of identification at UNC. It also gives me access to athletic events, university buildings, campus recreation facilities, the libraries, and dining halls.

9. Having my One Card available on my phone is convenient for my day to day activities on campus. I do not have to worry about carrying a physical student-ID, losing it, or having it stolen.

10. My understanding is that UNC's policy is to issue physical identification cards only on a case-by-case basis. I was not encouraged by UNC to get a physical identification card, and UNC did not indicate to me that a physical card would provide any benefits that my One Card does not.

11. I did not obtain a physical identification card. I was informed that if I wanted to obtain a physical card, I would have to pay a fee.

12. In fact, UNC represented to students through its website that the new One Card is approved for use as voter identification card in North Carolina.

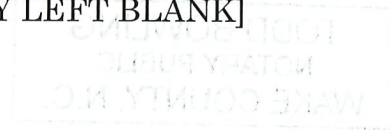
13. I will be voting in the 2024 general election, including for several candidates who are members of the Democratic Party. I am planning to use my One Card as my photo identification when I go to vote.

14. My only other form of state-approved voter ID is my passport. Given the sensitivity and difficulty to replace a passport, I prefer to keep my passport securely stored at my parents' home in Round Rock, TX. I do not expect to have access to my passport during the 2024 election.

15. It would be burdensome for me to obtain a different form of state-approved voter ID in time for the November 2024 election.

16. Preventing me from using my One Card to vote could disenfranchise me in the 2024 general election.

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Further the affiant sayeth naught.

This the 15th day of September, 2024.

Vijay Krishna Bajaj

STATE OF NORTH CAROLINA  
ORANGE COUNTY

Subscribed and sworn to (or affirmed) before me this the 15th day of September, 2024 by Vijaykrishna Bajaj, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me, and executed the foregoing instrument for the purposes set forth therein and in the capacity indicated.

**TODD BOWLING**  
**NOTARY PUBLIC**  
**WAKE COUNTY, N.C.**  
[official seal]

Todd Bowling  
Notary Public (Signature)

Todd Bowling  
Notary Public (Print Name)

My Commission Expires: 03/19/2029

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DATE: September 5, 2024

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WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

NORTH CAROLINA

BY: S. Smallwood

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

24CV027757-910

ROBERT F. KENNEDY, JR,

Plaintiff,

v.

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

Defendant.

**ORDER ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND, IN THE ALTERNATIVE, AN EXPEDITED PRELIMINARY INJUNCTION**

THIS MATTER came on to be heard and was heard on September 5, 2024, before the undersigned upon Plaintiff's Motion for Temporary Restraining Order and, in the Alternative, an Expedited Preliminary Injunction, filed on September 3, 2024. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. In attendance for Plaintiff were Phillip Strach, Jordan Koontz, Matthew Gorga, and Aaron Harding. In attendance for Defendants were Special Deputy Attorneys General Mary Carla Babb and Terence Steed.

In this litigation, Plaintiff has asserted two causes of action against Defendants, seeking a declaration that: (1) Plaintiff has met the statutory requirements for a candidate

to withdraw under N.C.G.S. § 163-113, and Defendants have violated this statute by determining it was impractical to remove his name from North Carolina's 2024 general election ballot; and (2) Defendants' refusal to remove him from the ballot amounts to compelled speech, in violation of Article I, Section 14 of the North Carolina Constitution.

Plaintiff seeks an order enjoining Defendants from printing any ballots with his name on them and requiring Defendants to take any necessary steps to ensure ballots with his name on them are not mailed to any voter. Plaintiff further requests this Court enter an order requiring Defendants to take all steps necessary to ensure that ballots without Plaintiff's name on them are printed and mailed to voters "prior to all applicable statutory deadlines."

For the reasons stated below, Plaintiff's motion is denied.

#### **PROCEDURAL HISTORY**

Plaintiff filed the Complaint in this matter on August 30, 2024, and the present Motion on September 3, 2024.

On September 5, 2024, the Court heard Plaintiff's Motion. Prior to the hearing, counsel for Defendants submitted a Response to the Motion setting forth their position. With the Response, Defendants submitted two affidavits for the record, one from Defendant State Board's Executive Director, Karen Brinson Bell, and the other from a Wake County Board of Elections member, Gerry Cohen.

Upon considering the pleadings, other materials submitted, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

### INJUNCTIVE RELIEF

A temporary restraining order is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). Injunctive relief “may not issue unless the movant carries the burden of persuasion as to each of these prerequisites.” *A.E.P. Industries*, 308 N.C. 393, at 413, 302 S.E.2d at 766. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). Even if the movant carries his burden, “it still remains in the trial court’s discretion whether to grant the motion” for injunctive relief. *Id.* Injunctive relief “may be classified as ‘prohibitory’ and ‘mandatory.’ The former are preventive in character, and forbid the continuance of a wrongful act or the doing of some threatened or anticipated injury; the latter are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.” *Roberts v. Madison Cty. Realtors Ass’n*, 344 N.C. 394, 399-400, 474 S.E.2d 783, 787 (1996) (citations and quotation omitted). A mandatory injunction “will ordinarily be granted only where the injury is immediate, pressing, irreparable, and clearly established.” *Auto. Dealer Res., Inc. v. Occidental Life Ins. Co.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972) (citing *Highway Com. v. Brown*, 238 N.C. 293, 77 S.E.2d 780 (1953)).

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

**The Balancing of the Equities Weighs in Defendants' Favor**

Without touching upon the merits, the Court has balanced the equities, as required by law. After weighing the potential harm to Plaintiff if injunctive relief is not issued against the potential harm to Defendants if injunctive relief is granted, the Court concludes that the balance of the equities weighs substantially in Defendants' favor. For that reason, Plaintiff has failed to meet his burden, and the motion is denied.

The Court finds that Plaintiff will suffer no practical, personal, or pecuniary harm should his name remain on the ballot. In contrast, if the State were enjoined and required to reprint ballots, the harm to Defendants, county boards of elections, and voters would be substantial. Voting for the 2024 general election begins in North Carolina with the distribution of absentee-by-mail ballots, and state law requires those ballots to be distributed beginning sixty days prior to a statewide general election. *See* N.C.G.S. §§ 163-227.10(a) (for a statewide general election) and -258.9(a) (for military and overseas voters). This year, that date is Friday, September 6. The county boards are therefore on the verge of mailing absentee ballots beginning tomorrow morning. Removing Plaintiff from the ballot at this late date would force the State and counties to expend significant resources to reformat and reprint ballots. Starting afresh with ballot preparation, moreover, would require the state to violate the statutory deadline for distributing ballots, N.C.G.S. § 163-227.10(a), and, potentially, federal law as well. Finally, removing Plaintiff from the ballot and reprinting the ballots will necessarily mean that voters have at least two fewer weeks in which to vote. Together, these harms greatly outweigh the negligible harm that Plaintiff will suffer by appearing on North Carolina's ballot after the suspension of his presidential campaign in North Carolina.

Conclusion

For the foregoing reasons, Plaintiff's motion for a temporary restraining order is DENIED. At Plaintiff's request, Defendants are ordered not to proceed with mailing absentee ballots before noon on Friday, September 6, 2024.

SO ORDERED, this the 5th day of September, 2024.



Rebecca Holt, Superior Court Judge

9/5/2024 4:41:12 PM

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## North Carolina Court of Appeals

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Raleigh, NC 27602

No. P24-624

ROBERT F. KENNEDY, JR.

v.

**NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, KEVIN N. LEWIS, AND SIOBHAN O'DUFFY MILLEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS**

From Wake  
( 24CVS27757 )

### ORDER

The following order was entered:

By unanimous vote, the motion for temporary stay and petition for writ of supersedeas filed in this cause by petitioner Robert F. Kennedy, Jr. on 5 September 2024 are allowed as follows: The Petition for Writ of Supersedeas is allowed and the "Order on Plaintiff's Motion for Temporary Restraining Order, and, in the Alternative, an Expedited Preliminary Injunction" entered on 5 September 2024 by Judge Rebecca Holt is hereby stayed. Respondents are hereby enjoined from disseminating ballots listing petitioner as a candidate for President of the United States. The stay and injunction will remain in effect until the disposition of petitioner's appeal or until further order of this Court. This cause is remanded to the Superior Court of Wake County for entry of order directing the State Board of Elections to disseminate ballots without the name of petitioner Robert F. Kennedy, Jr. appearing as a candidate for President of the United States.

By order of the Court this the 6th of September 2024.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 6th day of September 2024.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Phillip J. Strach, Attorney at Law, For Kennedy, Robert F. Jr. - (By Email)  
Mr. J. Matthew Gorga, Attorney at Law - (By Email)

Mr. Jordan A. Koonts, Attorney at Law - (By Email)

Mr. Terence Steed, Special Deputy Attorney General, For North Carolina State Board of Elections, et al. - (By Email)

Ms. Mary Carla Babb, Special Deputy Attorney General - (By Email)

Aaron T. Harding, For Kennedy, Robert F. Jr. - (By Email)

Aaron Siri, Esq., For Kennedy, Robert F. Jr. - (By Email)

Elizabeth Brehm, For Kennedy, Robert F. Jr. - (By Email)

Alycia Perkins, For Kennedy, Robert F. Jr. - (By Email)

Ms. Sarah G. Boyce, Deputy Attorney General, For North Carolina State Board of Elections, et al. - (By Email)

The Honorable Clerk of Superior Court, Wake County

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905 S.E.2d 55 (Mem)  
Supreme Court of North Carolina.

Robert F. KENNEDY, Jr.

v.

NORTH CAROLINA STATE BOARD OF  
ELECTIONS; Karen Brinson Bell, in Her Official  
Capacity as Executive Director of the North Carolina  
State Board of Elections; Alan Hirsch, in His Official  
Capacity as Chair of the North Carolina State Board  
of Elections; Jeff Carmon, in His Official Capacity  
as Secretary of the North Carolina State Board of  
Elections; Stacy Eggers IV, Kevin N. Lewis, and  
Siobhan O'Duffy Millen, in Their Official Capacities as  
Members of the North Carolina State Board of Elections

No. 235P24

I

September 9, 2024

From N.C. Court of Appeals P24-624; From Wake  
24CVS27757, Tenth District

**Attorneys and Law Firms**

Phillip J. Strach, Attorney at Law, Raleigh, For Robert F.  
Kennedy Jr.

J. Matthew Gorga, Attorney at Law.

Jordan A. Koonts, Attorney at Law, Raleigh.

Terence Steed, Special Deputy Attorney General, For North  
Carolina State Board of Elections, et al.

Mary Carla Babb, Special Deputy Attorney General, For  
North Carolina State Board of Elections, et al.

Aaron T. Harding, For Robert F. Kennedy Jr.

Aaron Siri, Esq., For Robert F. Kennedy Jr.

Elizabeth Brehm, For Robert F. Kennedy Jr.

Alycia Perkins, For Robert F. Kennedy Jr.

Sarah G. Boyce, Deputy Attorney General, For North  
Carolina State Board of Elections, et al.

ORDER

\*\*1 “[O]ur state constitution ‘declare[s]’ our rights so that  
‘the great, general, and essential principles of liberty and free  
government may be recognized and established.’” *Bouvier v.  
Porter*, 386 N.C. 1, 2, 900 S.E.2d 838, 842 (2024) (alteration  
in original) (quoting N.C. Const. art. I). The text recognizes  
that “[a]ll political power is vested in and derived from  
the people,” N.C. Const. art. I, § 2, and that the people  
“have the inherent, sole, and exclusive right of regulating the  
internal government,” *id.* art. I, § 3. “The people exercise  
this ‘exclusive right’ through one of our most fundamental  
political processes—elections.” *Bouvier*, 386 N.C. at 3, 900  
S.E.2d at 842.

“Since 1776 the state constitution has recognized the  
importance of elections and their integrity in the Declaration  
of Rights.” *Id.* The Free Elections Clause requires that “[a]ll  
elections shall be free.” N.C. Const. art. I, § 10. This language  
is plain: “it protects voters from interference and intimidation  
in the voting process,” *Harper v. Hall*, 384 N.C. 292, 361, 886  
S.E.2d 393, 438 (2023), and guarantees that “(1) each voter is  
able to vote according to his or her judgment, and (2) the votes  
are ... accurately counted.” *Bouvier*, 386 N.C. at 3, 900 S.E.2d  
at 842. “This Court has consistently interpreted the North  
Carolina Constitution to provide the utmost protection for the  
foundational democratic freedom[ ] of ... voting.” *Libertarian  
Party of N.C. v. State*, 365 N.C. 41, 55, 707 S.E.2d 199, 208–  
09 (2011) (Newby, J., dissenting).

To protect this important right, the elections process should  
ensure that voters are presented with accurate information  
regarding the candidates running for an elected office. *See  
McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346–47,  
115 S. Ct. 1511, 1519, 131 L.Ed.2d 426 (1995) (quoting  
*Buckley v. Valeo*, 424 U.S. 1, 14–15, 96 S. Ct. 612, 46  
L.Ed.2d 659 (1976)) (“In a republic where the people are  
sovereign, the ability of the citizenry to make informed  
choices among candidates for office is essential, for the  
identities of those who are elected will inevitably shape the  
course that we follow as a nation.”). Where a ballot contains  
misleading information or inaccurately lists the candidates,  
it risks interfering with the right to vote according to one’s  
conscience.

Defendants filed a petition for writ of supersedeas seeking  
to stay enforcement of the Court of Appeals’ 6 September

2024 interlocutory order and simultaneously filed a petition for discretionary review seeking review of the same order.

Interlocutory determinations by the Court of Appeals, including orders remanding the cause for ... other proceedings, shall be certified for review by the Supreme Court only upon a determination by the Supreme Court that failure to certify would cause a \*57 delay in final adjudication which would probably result in substantial harm.

N.C.G.S. § 7A-31(c) (2023). We conclude that defendants have not met their heavy burden under this standard, and accordingly we deny their petition for discretionary review and also deny their petition for writ of supersedeas.

\*\*2 Neither party in this case disputes that plaintiff submitted a resignation of candidacy. N.C.G.S. § 163-113 (2023). Therefore, by law, a vote for plaintiff in this election will not count. *Id.* But if plaintiff's name appears on the ballot, it could disenfranchise countless voters who mistakenly believe that plaintiff remains a candidate for office. The trial court did not appropriately weigh this consideration in its ruling, instead focusing on the minimal harm to plaintiff himself and the significant resources the State would need to expend to create an accurate ballot for this election.

Moreover, although N.C.G.S. § 163-165.3(c) requires the State Board to promulgate rules for the reprinting of ballots “where practical” in response to replacement candidates or other late changes, we are unpersuaded by the practical objections defendants raise in their submissions to this Court. To a large extent, any harm suffered by defendants in light of the Court of Appeals’ order is of their own making. Indeed, defendant Bell candidly admitted that she was aware on Friday, 23 August 2024, that plaintiff had suspended his campaign and intended to remove his name from ballots in battleground states. Additionally, a representative of plaintiff's presidential campaign emailed the State Board on 23 August 2024 to inquire about removing plaintiff's name from ballots, putting the State Board on notice that plaintiff intended to remove his name. Rather than following up with plaintiff or the We The People Party, defendant Bell instructed the County Boards of Election to continue the

ballot preparation process, which they did over the weekend. By Monday, 26 August 2024, plaintiff contacted the State Board regarding the process for withdrawing. Nevertheless, the State Board did not instruct the County Boards to pause ballot preparation. On Tuesday, 27 August 2024, the State Board received plaintiff's formal withdrawal request but gave no further instructions other than stating that the We The People Party needed to submit a formal withdrawal request. And perhaps most strikingly, after the State Board received the We The People Party's formal withdrawal request on Wednesday, 28 August 2024, and scheduled an emergency board meeting, director Bell instructed the County Boards to continue printing ballots. When the State Board held its emergency meeting on Thursday, 29 August 2024, it voted 3-2 that removing plaintiff's name would not be practical in light of the current state of ballot production.

Thus, despite being on notice of plaintiff's intention to withdraw his name from the ballot for nearly a week, the State Board directed the County Boards to continue ballot production, including over the weekend, rather than communicating and cooperating forthrightly with plaintiff and the We The People Party. We decline to grant defendants extraordinary relief when they are responsible for their own predicament. *Cf., e.g., Creech v. Melnik*, 347 N.C. 520, 529, 495 S.E.2d 907, 913 (1998) (“One who seeks equity must do equity. The fundamental maxim, ‘He who comes into equity must come with clean hands,’ is a well-established foundation[al] principle upon which the equity powers of the courts of North Carolina rest.”).

We also note that defendant Bell indicated in her affidavit that ballot content was not “finalized” until, at the earliest, 21 August 2024. She stated that for a “handful” of ballot styles, parties had until 22 August 2024 to fill nomination vacancies. Therefore, by the time plaintiff announced the suspension of his campaign and his intention to remove his name from ballots in battleground states, the ballot preparation was in its infant stages. At this time, the State Board could have communicated with plaintiff or the We The People Party to clarify plaintiff's intentions before ballot production had progressed too far. Yet, as noted, defendant Bell and the State Board forged ahead and directed County Boards to continue ballot preparation. The State Board's substantial harm arguments thus ring hollow.

\*\*3 \*58 We acknowledge that expediting the process of printing new ballots will require considerable time and effort by our election officials and significant expense to the State.

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But that is a price the North Carolina Constitution expects us to incur to protect voters' fundamental right to vote their conscience and have that vote count. *N.C. Const. art. I, § 10; Bouvier*, 386 N.C. at 3, 900 S.E.2d at 842.

For all these reasons, the Court of Appeals properly issued its writ of supersedeas to prevent the dissemination of inaccurate ballots and to ensure that voters in our state are able to vote their conscience and have those votes counted. Accordingly, defendant's petition for writ of supersedeas and petition for discretionary review are denied.

By order of the Court in Conference, this the 9th day of September 2024.

Justices Earls, Dietz, and Riggs, dissent.

Justice BERGER concurring.

I concur with the Special Order entered by the Court today denying the State's petition for writ of supersedeas and petition for discretionary review. To the extent there is substantial harm or the potential for substantial harm, it is to the voters of North Carolina, not the State Board of Elections.

I write separately to emphasize that, if we were to reach the merits of this case, more should be done to uphold and preserve the integrity of the upcoming election. There are now hundreds of thousands of invalid ballots in existence, if not more. Thus, there is the potential, however slight, that North Carolina voters could acquire both versions of seemingly legitimate ballots during the 2024 election. Whether by unintentional acts or by those who would deliberately inject chaos into the election, the substantial confusion that could result would appear to warrant attention.

A fair counting of official ballots must be defended, *see Swaringen v. Poptin*, 211 N.C. 700, 191 S.E. 746, 747 (1937), and invalid ballots could "sow confusion and ultimately dampen confidence in the integrity and fairness of elections." *Rep. Party of Penn. v. Degraffenreid*, — U.S. —, 141 S. Ct. 732, 734, 209 L.Ed.2d 164 (2021) (Thomas, J., *dissenting*). Because elections are free when "vote[s] are accurately counted," *Harper v. Hall*, 384 N.C. at 364, 886 S.E.2d 393 (2023), we should not leave open the possibility that these invalid ballots could be commingled with official ballots.

Thus, one could argue that the order entered by the Court of Appeals enjoining the State Board of Elections "from disseminating ballots listing petitioner as a candidate for President of the United States," and also directing that the Board "disseminate ballots without the name" of petitioner does not go far enough. All previously printed ballots listing Robert F. Kennedy, Jr.'s name should be destroyed, and the director of the State Board of Elections and the director of each county Board of Elections should be required to certify destruction of these invalid ballots to maintain public confidence in the upcoming election.

Justice EARLS dissenting.

I fully join my colleague Justice Riggs in her comprehensive dissent. I write separately to emphasize a couple of additional considerations that underlie my concern that contravening state and federal laws to satisfy the shifting desires of a particular political candidate and his political party erodes the rule of law and contributes to a loss of faith in the impartiality of the state judiciary.

**\*\*4** The Constitution of the State of North Carolina declares in Article I that "all persons are created equal" (Section 1); that "All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised" (Section 7); that "all elections shall be free" (Section 10); and that "No person shall be denied the equal protection of the laws" (Section 19). Given the unequivocal state law mandate that absentee ballots in a general election must be mailed 60 days before election day (this year, September 6),<sup>1</sup> \*59 N.C.G.S. § 163-227.10(a) (for a statewide general election); N.C.G.S. § 163-258.9(a) (for military and overseas voters), and the federal law mandate that absentee ballots for federal offices must be mailed to overseas voters 45 days before election day (this year, September 21), 52 U.S.C. § 20302(a)(8); N.C.G.S. § 163-258.9(a), this Court's decision to allow the Court of Appeals unexplained mandatory injunction contravening those laws is unjustified.<sup>2</sup> It amounts to a suspension of state law not mandated by the representatives of the people, and grants a favor to one candidate not extended to other candidates, namely, additional time to decide whether to stand for office.

The right to vote is sacred, and fundamental to our system of democracy. *E.g.*, *Burdick v. Takushi*, 504 U.S. 428, 433,

112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (“It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979))); *Reynolds v. Sims*, 377 U.S. 533, 561–62, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society.”). Abridging that right for voters who vote absentee by mail, and particularly overseas voters, in order to satisfy a particular candidate, no matter what party or what political office they seek, is not consistent with free elections and equal protection of the laws. See, e.g., *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (noting that election laws may not be “inconsistent with the Equal Protection Clause of the Fourteenth Amendment”); *Burdick*, 504 U.S. at 441, 112 S.Ct. 2059 (upholding reasonable, nondiscriminatory restrictions in the election process as necessary “to maintain the integrity of the democratic system”). The rules governing elections should be the same for everyone and the courts should enforce those rules equally.

With regard to the equal protection concern, it is worth noting that other offices on the ballot in certain jurisdictions were provided notice that they had until a date certain to correct issues with who might be a candidate for those offices. There is evidence in the record, from an affidavit submitted by Board executive director Karen Brinson Bell, that Board officials contacted political party officials in mid-August to inform them of vacancies and withdrawals on the ballot. Ex. B, C, D (communications from Board general counsel Paul Cox to Democratic Party, Republican Party, and Libertarian Party officials) [hereinafter Bell Aff.]. Party officials were told in those same notices that any replacement nominees *must be certified by 22 August* in order for those names to appear on printed absentee ballots. *Id.* But it was days after that deadline, applicable to all other candidates, that Mr. Kennedy submitted his request to withdraw.<sup>3</sup> Mr. Kennedy does not explain why he is entitled to such special treatment.

**\*\*5** And nor could he. His request, if tolerated, opens the door to candidates and parties of all stripes demanding last-minute changes to already printed ballots. Importantly, the 100 county boards of election, not the state, bear the cost and responsibility of printing and distributing ballots. Bell Aff. ¶ 23; N.C.G.S. §§ 163-33(6), -165.3. Were county boards required to accommodate such late-breaking requests, the toll on budgets and limited staff **\*60** capacity could be profound. If that door is not made open to other candidates, Mr. Kennedy

receives the special treatment he demands. Such special treatment undermines our system of fair elections—where every candidate abides by the same set of rules. Cf. *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 610, 853 S.E.2d 698 (2021) (Newby, J. concurring in result) (noting the General Assembly’s “constitutional mandate to protect fair play in elections”).

If this case seems like much ado about nothing, it bears considering that 2,348 different ballot styles are in use in this state for this election. Bell Aff. ¶ 7. That figure reflects all of the contests and referenda on which voters in North Carolina’s 100 counties have a say in November, from contests for the office of US president to the local soil and water conservation district supervisor, and everything in between.<sup>4</sup> More than 2,910,000 general election ballots have already been printed to facilitate our sacred exercise of the franchise. Bell Aff. ¶ 56.

We know that ballot layout matters enormously for an accurate count of the voters’ will. See generally *Bush v. Gore*, 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000). That’s why North Carolina statutorily mandates that all ballots are “readily understandable by voters” and designed to “facilitate an accurate vote count.” N.C.G.S. § 163-165.4(1), (4). They must “[p]resent all candidates and questions in a fair and nondiscriminatory manner.” *Id.* at (2). And it’s why “the work of preparing and proofing the ballots” takes weeks, and this year began in early August. Bell Aff. ¶ 9.

Why such a lengthy process? Consider the steps in finalizing a ballot. First, obviously, officials have to know what goes on the ballots. Bell Aff. ¶ 9. Then the ballot itself must be prepared. When a voter fills in an oval next to a candidate’s name, that mark must be translated to the correct contest, candidate, or referenda in official tallies. Bell Aff. ¶ 11. State and county boards take careful steps to ensure that a voter’s ballot selection is accurately read by tabulators and voting machines. Bell Aff. ¶ 11–12. Which requires the uniform and accurate coding of those machines. Proofreading all of the ballots across the state, as required by law, takes roughly a full calendar week. Bell Aff. ¶ 12; N.C. G.S. § 163-165.3(a) (4)–(5). Only after these steps can the approved ballots be disseminated, by the sixty-day deadline required by state law: this year September 6. N.C.G.S. § 163-227.10.

As the sample ballots—that election officials had already made publicly available—show, presidential contenders are at the top. Bell Aff. ¶ 16. Deleting an entire political party from the presidential ballot item thus potentially requires



reconfiguring the layout for the entire contest, possibly the entire first ballot column, and potentially the other columns and page breaks too. Bell Aff. ¶ 51.

This brief recitation serves to underscore that, since the Court of Appeals has issued an “extraordinary remedy” to require state and county boards to re-prepare, re-print, and disseminate ballots *without* Mr. Kennedy's name, on the very day state law requires them to be sent out, depriving voters of their statutorily guaranteed voting period and at a substantial cost of money and time resources, it must be for a very, very good reason. *A.E.P. Industries v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754 (1983). And likelihood of success on the merits is certainly an important part of the calculus. Indeed, without such likelihood of success, the courts have no legal authority to otherwise disregard state and federal law. We as a Court are not free to simply balance the equities and decide who gets harmed more if, in the first place, there is no valid legal claim to justify our intervention. That is, in fact, policymaking at its best, something this Court previously has expressed a reluctance to countenance. *See, e.g., Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169, 594 S.E.2d 1 (2004) (“The General Assembly is the ‘policy-making agency’ because it is a far more appropriate forum than the courts for implementing policy-based changes to our laws.”); \*61 *Harper v. Hall*, 384 N.C. 292, 322–23, 886 S.E.2d 393 (2023) (same).

\*\*6 Here there is no valid reason justifying intervening in the election contrary to state law and established election rules for North Carolina. Mr. Kennedy filed his motion for emergency relief on 3 September 2024, a week before ballots were to be disseminated, wanting his name removed from all of North Carolina's 2,348 ballots. The superior court denied his request. After reviewing all the evidence and the arguments of counsel, the court found that Mr. Kennedy “will suffer no practical, personal, or pecuniary harm should his name remain on the ballot.” By contrast, it found the harm to North Carolina's election officials and voters “would be substantial.” Because Mr. Kennedy failed to show irreparable harm that outweighed the harm to the public, he was not entitled to his injunction as a matter of law. *See A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754 (1983); *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357, 261 S.E.2d 908 (1980). That means the superior court *did not examine* the credibility of Mr. Kennedy's underlying claims—alleged statutory and constitutional rights to have his name removed at this late stage. No valid claim, no injunction.

Mr. Kennedy appealed. Below, the Court of Appeals issued an unexplained order reversing the superior court. It directed the Board to “disseminate ballots without the name of petitioner Robert F. Kennedy, Jr. appearing as a candidate for President of the United States.”

Today, the majority in its order likewise declines to explain what entitles Mr. Kennedy to this extraordinary measure. The North Carolina judicial system has not adequately explained to the public why their ballots are to be reprinted, *after* they were already ready to be mailed, after the statutory deadline.

That fact should give grave pause. In a democracy, “government should be by ‘settled, standing laws,’ not by ‘absolute arbitrary power.’ ” Margaret Radin, *Can the Rule of Law Survive Bush v. Gore?*, in *Bush v. Gore, the Question of Legitimacy* 110, 111 (Bruce Ackerman, ed. 2002) (quoting John Locke, *Of the Extent of Legislative Power, in Two Treatises of Government* (3d ed. 1698)). Giving reasons for decisions that transcend the immediate case outcome not only limits the independent will of the judiciary, but it also informs citizens and empowers their constitutional role in our democracy. William Haltom & Mark Silverstein, *The Scholarly Tradition Revisited: Alexander Bickel, Herbert Wechsler, and the Legitimacy of Judicial Review*, 4 *Constitutional Commentary* 25, 26 (1987) (summarizing scholarship on the necessity of reasoned judicial decisions). Finally, it is the way our judicial system guarantees the equal protection of the laws, so that future cases and future litigants are governed by the same principles and treated equally. *See Blankenship v. Bartlett*, 363 N.C. 518, 521–22, 525–26, 681 S.E.2d 759 (2009); *Hoke Cnty. Bd. of Educ. v. State*, 385 N.C. 380, 387, 892 S.E.2d 594 (2023) (order) (Earls, J., dissenting) (“A court's legitimacy is earned over time. But it can be destroyed much more quickly. That is because our authority largely depends on the public's willingness to respect and follow our decisions.” (cleaned up)).

Our precedent holds that an appellate court is not bound by superior court findings of fact on appeals from an order of a superior court granting or denying a preliminary injunction. *A.E.P. Indus., Inc.*, 308 N.C. at 402, 302 S.E.2d 754; *see also Pruitt v. Williams*, 288 N.C. 368, 372–73, 218 S.E.2d 348; *Telephone Co. v. Plastics, Inc.*, 287 N.C. 232, 235, 214 S.E.2d 49 (1975); *Huskins v. Hospital*, 238 N.C. 357, 362, 78 S.E.2d 116 (1953). But the appellate court is still required to “review and weigh the evidence and find facts for itself.” *A.E.P. Indus., Inc.*, 308 N.C. at 402, 302 S.E.2d

754. That review ought to include the “considerations specific to election cases” and take into account the risk of voter confusion from late-coming court orders that change election rules. See *Purcell v. Gonzalez*, 549 U.S. 1, 4–5, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006).

The specific facts of this case cast serious doubt that Mr. Kennedy would succeed on the merits were the merits ever given serious consideration. A political party that weeks ago fought to be recognized as a political \*62 party in this state, now, literally days before ballots will be distributed, apparently decides that its presidential candidate should be removed from the ballot in certain swing states while remaining on the ballot in other states,<sup>5</sup> even though doing so would mean that the party is no longer recognized for future elections as a political party in North Carolina. N.C.G.S. §§ 163-96(a)(1), -97. Voters across the state expecting to receive their absentee ballots and seeking to participate in elections for multiple state and federal offices, are denied the benefit of state law, local governments must expend hundreds of thousands of dollars, and election workers in every county of the state must redo their ballots to allow this late-devised political strategy to be carried out. The rules of our elections allow such attempted gaming of the presidential election system when done far enough in advance, but it is not fair to the rest of the state to disregard state election laws to accommodate a late-breaking political strategy. Even a second grader knows it is not fair to change the rules in the middle of the game just because you fear you are not winning.

\*\*7 On the merits of the statutory argument, in addition to the points made in Justice Riggs’ dissent, I would note that N.C.G.S., § 163-113, relied on by Mr. Kennedy to justify relief, actually does not apply to him. This statute governs the withdrawal of candidates who have been nominated through a primary process, as the statutes referenced in that provision make clear. See N.C.G.S. §§ 163-182.15, 163-110. Mr. Kennedy is a presidential candidate, nominated through a convention process. Thus, by its express terms, the statute does not apply to Mr. Kennedy at all. It cannot be a basis for granting the relief he seeks. Put another way, Mr. Kennedy cannot use a law that does not apply to him to justify setting aside state law requirements concerning when absentee ballots must be mailed to voters.<sup>6</sup>

Next, Mr. Kennedy's constitutional argument on the merits is borderline frivolous. There is no precedent for the notion that a candidate's or a party's right to not have their speech compelled is implicated by the orderly application of state

election laws. There are rules under state law for how and when previously identified candidates can be removed from a ballot and those rules should be fairly applied to all candidates. Nothing about them compels speech, perhaps most significantly because a ballot is not the candidate's speech. “Ballots serve primarily to elect candidates, not as forums for political expression.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997) (rejecting the notion that there is “a right to use the ballot itself to send a particularized message”).

Ultimately, without an explanation or adequate justification for this mandatory injunction, \*63 the public is left in the dark about why voting laws requiring the mailing of absentee ballots are being violated; it is impossible to guarantee that future candidates will be treated equally, and consequently impossible to guarantee the rule of law. See generally Erwin Chemerinsky, *Bush v. Gore Was Not Justiciable*, 76 Notre Dame L. Rev. 1093 (2001) (arguing the case was a “self-inflicted wound”). Therefore, I respectfully dissent.

Justice RIGGS joins in this dissent.

Justice DIETZ dissenting.

\*\*8 I respectfully dissent. As explained below, I believe our election laws support the State Board of Elections’ determination. I would therefore issue a writ of supersedeas staying the Court of Appeals order.

Having said that, I want to emphasize that the majority's thoughtful analysis is entirely reasonable. As the majority observes, the single most important goal of our election process is to ensure that every vote counts. Had the State used the earlier ballots, an untold number of voters would have voted for Robert F. Kennedy, Jr. without knowing that he formally resigned as a candidate and, as a result, their vote in the presidential race would not count. Our election officials must do everything in their power to avoid that outcome.

Still, I believe this Court's role is to follow the law as it is written. In my view, our election laws permitted the State Board of Elections to decline to reprint new ballots but also compelled the Board to take other steps, explained in more detail below, to inform voters that Kennedy resigned and that a vote for him would not count.

To begin, a bit about the applicable election laws. State law unquestionably gives the nominee of a political party the right to “resign as a candidate” at any time before the State sends out absentee ballots to military and overseas voters. [N.C.G.S. § 163-113](#). But “resigning as a candidate” is not the same as having the candidate's name removed from the ballot. We know this for several reasons.

First, when the nominee of a political party resigns in this way, the same series of state laws provides a process for that political party to choose a replacement candidate. [N.C.G.S. § 163-114](#). When this occurs, the law expressly states that the new nominee does not have an absolute right to have her name added to the ballot in place of the candidate who resigned. Instead, if the new nominee is chosen after the “general election ballots have already been printed,” then the State Board of Elections must assess whether it is “practical” to make the change. [N.C.G.S. § 163-165.3\(c\)](#). If it is not practical, the candidate who resigned remains on the ballot. *Id.*

This shows that the law governing resignation of a candidate does not *impliedly* include an absolute right to be removed from the ballot because, if it did, it would conflict with the language in this accompanying provision that *expressly* says the opposite.

Second, the plain language of the resignation provision in [N.C.G.S. § 163-113](#) simply does not address changes to the ballot. But it certainly could have. The General Assembly understands how to include this language because another withdrawal statute, dealing with the primary election, includes express instructions about how the withdrawal impacts whether the candidate's name will be “printed on the primary ballot.” [N.C.G.S. § 163-106.4](#).

Finally, as a matter of general election law, a provision permitting a candidate to resign is not the same as a provision requiring the ballot to be changed or reprinted. We know this not just from the plain meaning of these words and their use in our own election laws, but by examining the laws of other states.

Many of our sister states have similar election laws that permit candidates to withdraw up until ballots are sent out, but leave it to election officials to determine whether it is feasible to reprint ballots. *See, e.g., S.C. Code Ann. § 7-13-380* (after ballots have been printed, withdrawal does not require reprinting, but the appropriate authority may do so if

it determines it is “feasible”); [Ga. Code Ann. § 21-2-134\(a\)\(1\)](#) (providing that withdrawal of candidacy voids votes for that candidate but leaving it to election officials’ discretion whether ballots should be reprinted); [\\*64 Utah Code Ann. § 20A-9-207\(3\)\(d\)](#) (providing that, where a candidate for state or local office withdraws within 65 days of an election, notice should be included in the ballot “if practicable”); [Col. Rev. Stat. § 31-10-903](#) (providing that when a candidate resigns or withdraws, the name “shall be erased or canceled, if possible, before the ballots are delivered to the voters”).

**\*\*9** All of this is to say, I do not believe Kennedy's right to be removed from the ballot is governed by the “resign as a candidate” provision in [N.C.G.S. § 163-113](#). Instead, it is governed by the separate “Late Changes in Ballots” provision in [N.C.G.S. § 163-165.3](#). That provision permits the Board of Elections to authorize “reprinting, where practical, of official ballots” as a result of “late changes.” *Id.* [§ 163-165.3\(c\)](#).

Here, the State Board of Elections properly determined that it would not be practical to reprint the ballots. Why? Because another state law, the Uniform Military and Overseas Voters Act, required absentee ballots to be sent to military and overseas voters no later than September 6. *See* [N.C.G.S. § 163-258.9\(a\)](#). This uniform law, enacted in a number of states, is designed to ensure that military personnel and overseas civilians can overcome “logistical obstacles to participating in American elections.” *Uniform Military and Overseas Voter Act, Prefatory Note*, National Conference of Commissioners on Uniform State Laws, at 1 (2010).

In testimony given under oath in an affidavit to this Court, State Elections Director Karen Brinson Bell testified that it would take a minimum of 18 to 23 days to generate, print, proof, and assemble new ballot packets. Bell Aff. ¶ 50. Taking this testimony as true, even if the Board of Elections had started the process as soon as Kennedy's press conference announcing his withdrawal, there would not have been time to prepare new ballots before the September 6 deadline in the Uniform Military and Overseas Voters Act.

In my view, the inability to comply with this legal deadline was a valid basis for the Board's determination of impracticality. The General Assembly created that state deadline (which provides even more time than a corresponding federal deadline) to ensure that the brave servicemembers defending our nation have time to vote in the elections of the democracy they are defending.

Having said that, I have questions about Karen Brinson Bell's affidavit. First, according to State Board of Elections records, the Board gave political parties until August 22 to make additions or changes to the ballot and the Board received changes or additions up to at least August 21. Bell Aff. ¶ 50, Ex. B, C, D. Thus, under the 18-day to 23-day timeframe asserted in Bell's affidavit, even the existing ballots would not be ready by the September 6 deadline.

Likewise, the affidavit states that the bulk of the preparation time is the 12 to 13 days it would take for a third-party vendor to print the ballots. But according to the same affidavit, the county boards of elections sent their original printing requests between August 24 and August 26 and by August 28 most counties had received their printed ballots from the vendor and the rest were near completion. Bell Aff. ¶¶ 37–38, 50.

Why would it take *more* time to redo these ballots than it did to create the first set of ballots two weeks ago, when elections workers presumably would work longer and harder because of the emergency nature of this ballot change? And why would reprinting ballots to remove Kennedy's name—with the Board presumably requesting expedited service from the vendor because of the looming deadline—take more than twice as long as printing the original ballots two weeks ago when there was no exigency?

Simply put, I question whether the State Board of Elections and its staff were sufficiently vigorous in assessing how long it truly would take to prepare new ballots on an expedited basis. Moreover, as the majority points out, the State Board of Elections received valid, written notice of Kennedy's resignation yet waited days before acting on it. In any event, these questions are beyond this Court's time-constrained review of an emergency petition for an extraordinary writ. *See State v. Jordan*, 385 N.C. 753, 757, 898 S.E.2d 279 (2024) (noting that appellate courts only review legal questions and “cannot \*65 find facts”). Thus, I must accept the sworn testimony in the affidavit as true. Doing so, I conclude that it was impractical to prepare new ballots without Kennedy's name before the September 6 deadline set by law.

**\*\*10** Nevertheless, I acknowledge the majority's concern that we must protect the fundamental right of voters to vote and then have that vote counted. Ballots listing Kennedy's name as a candidate for president will likely confuse voters and, worse yet, lead them to wrongly believe their vote for Kennedy will count. It will not.

But there are ways to minimize harm to voters while adhering to our existing election law provisions. Many states address last-minute withdrawals after ballots are printed by posting notices at polling places. *See, e.g., Ga. Code Ann. § 21-2-134(a)(1); La. Stat. Ann. § 18:503; Wyo. Stat. Ann. § 22-5-401(e)*. In Georgia, for example, the law provides that if a candidate resigns after ballots are printed, “prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted.” *Ga. Code Ann. § 21-2-134(a)(1)*.

I see nothing in our State's election laws that would prohibit a similar notice at polling locations. These notices also could be sent to voters who requested absentee ballots. Indeed, I think our constitutional protections of voting rights would *compel* the State Board of Elections to take these steps. Even if the Board was unwilling to do so—due to partisanship on the Board or any other reason—interested parties could bring suit to compel it, or the General Assembly could intervene and enact a law requiring it.

In sum, I view my role as enforcing the law as it is written and, as explained above, I believe our election laws support the Board's determination. Thus, while I respect the majority's well-reasoned decision, I would allow the petition for a writ of supersedeas and stay the order of the Court of Appeals.

Justice RIGGS dissenting.

The magnitude of the harm wrought by the Court of Appeals' order, both to voters of the state who have been guaranteed by their elected legislature sixty days in which to receive and cast absentee ballots and to the overworked and underpaid public servants working as election administrators in a time when such service has subjected those public servants to harassment and peril, *see Linda So & Jason Szep, U.S. Election Workers Get Little Help from Law Enforcement as Terror Threats Mount*, Reuters (Sept. 8, 2021) (identifying more than 100 threats of death or violence received by forty election workers in highly contested battleground states during the 2020 elections),<sup>1</sup> is egregious and unjustified. A currently anonymous panel of three intermediate state appellate judges have taken into their hands the power to significantly shorten the absentee voting period and to throw into disarray preparations for a presidential election in this state.



Elections—the cornerstone of our democracy—are not games or exercises in ego-stroking. With a disturbing disregard for the impact on millions of North Carolina voters, plaintiff Robert F. Kennedy, Jr., (Mr. Kennedy) seeks to have his cake and eat it, too. Forcing the state to put his name on the ballot, creating for the state costs both practical and legal, he now wants to reprint millions of ballots because he has decided to suspend his campaign without actually ending it or foreclosing the possibility of his election. *Hear the Moment RFK Jr. Suspends his Presidential Campaign*, CNN Politics at 1:07 (August 23, 2024), <https://www.cnn.com/2024/08/23/politics/video/rfk-jr-robert-kennedy-suspends-campaign-announcement-arizona-digvid>. Here, the whims of one man have been elevated above the constitutional interests of tens of thousands of North Carolina voters who have requested an absentee ballot and seek to exercise their right, under North Carolina law, to cast their ballot as soon as possible \*66 after the statutory deadline required to distribute absentee ballots.

\*\*11 The Court of Appeals’ gross overstep of its powers, in disregard of the duly-enacted law of this state and of the federal and state constitutions, has and will cause further irreparable harm to this state, magnifying the harm of Mr. Kennedy’s apparent gamesmanship. This Court’s failure to intervene to uphold the rule of law and the well-defined constitutional and statutory norms underpinning our election machinery makes this a dark day in the history of the state’s judiciary. North Carolina voters deserve better.

The North Carolina State Board of Elections (the Board) seeks from this Court a writ of supersedeas to allow the Board—in accordance with state law—to mail absentee ballots to the more than 125,500 military, overseas, and absentee voters who have already exercised their right under North Carolina law to request and cast an absentee ballot. Instead, with only a cursory explanation, this Court denies the request of the Board and effectively truncates, by at least two weeks, the absentee period for the voters of North Carolina. This ruling guarantees the maximum detrimental effect of an impetuous decision from the Court of Appeals requiring the Board to remove a candidate’s name from the ballots—creating substantial work for election administrators and reduced access to the franchise for no appreciable benefit to the electorate or to the trustworthiness of our electoral system. Because the failure of this Court to allow the writ of supersedeas irreparably harms the voters of North Carolina and detrimentally affects the Board’s ability to administer the election process in an orderly and efficient manner, I dissent.

The purpose of a writ of supersedeas is “to preserve the status quo pending the exercise of the appellate court’s jurisdiction.” *City of New Bern v. Walker*, 255 N.C. 355, 356, 121 S.E.2d 544 (1961) (per curiam). To determine whether this Court should order a writ of supersedeas, the Court considers whether the party requesting the writ has shown a likelihood of success on the merits and whether irreparable harm will occur absent a stay. See N.C. R. App. P. App’x D (providing guidance that a party requesting a writ of supersedeas should provide a factual and legal argument “that irreparable harm will result to petitioner if it is required to obey decree pending its review; [and] that petitioner has meritorious basis for seeking review”). In this case, both criteria are amply satisfied. The Board has demonstrated the likelihood of success on the merits and that the Board and, significantly, the voters of North Carolina will suffer irreparable harm if this Court fails to allow the writ.

**The Board Has Shown It is Likely to be Successful on the Merits.**

Mr. Kennedy challenged the Board’s decision denying the request to remove his name from printed ballots because, in his view, N.C.G.S. § 163-113 provides him with the statutory right to be removed from the ballot. However, N.C.G.S. § 163-113 does not provide a statutory right for a candidate to remove his name from already-printed ballots. Thus, the Board is likely to be successful on the merits.

In its entirety, N.C.G.S. § 163-113 states that:

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate unless, prior to the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, that [the] person submits to the board of elections which certified the nomination a written request that person be permitted to withdraw.

**\*\*12** N.C.G.S. § 163-113 (2023) (emphases added). The first clause issues a mandatory directive: Candidates nominated under the specified provision “shall not be permitted to resign as a candidate.” *Id.*; see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 112 (1st ed. 2012) (noting that shall is mandatory). The second clause enumerates conditions under which a nominated candidate may request permission to withdraw. See N.C.G.S. § 163-113. The statute does *not* say a nominated candidate has a right to withdraw. Nor can the indeterminate title of the provision, see *id.* (“Nominee’s **\*67** right to withdraw as candidate.”), contradict the statute’s clear language. *Carter v. United States*, 530 U.S. 255, 267, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000) (Thomas, J.) (“[T]he title of a statute is of use only when it sheds light on some ambiguous word or phrase in the statute itself.” (cleaned up)).

Further, when a candidate *does* have a statutory right to withdraw, the State election code says so explicitly. See, e.g., N.C.G.S. § 163-106.4 (2023) (granting any person who has filed a notice of candidacy “the right to withdraw it at any time” prior to a specific deadline). Such meaningful variation shows the legislature knows how to give candidates a statutory right to withdraw and did not do so here. Scalia & Garner, *Reading Law* at 170 (recognizing that a material variation in terms suggest a variation in meaning).

Not only is there no statutory right to withdraw, but Mr. Kennedy conflates withdrawal under section 163-113 with the relief he seeks: removal from already-printed ballots. That conflation is erroneous. The same words are generally presumed to carry the same meaning when they appear in different but related sections of the code. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 536, 133 S.Ct. 1351, 185 L.Ed.2d 392 (2013). In contrast, “different words used in the same statute should be assigned different meanings.” *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 704 (4th Cir. 2010). Here, the General Assembly chose different words for a reason: it repeatedly distinguishes between withdrawing from an electoral contest and removing a candidate’s name from the ballot in the General Statutes. See, e.g., N.C.G.S. § 163-106.4 (contemplating a candidate who has withdrawn yet whose name remains printed on the primary ballot); N.C.G.S. § 163-165.3 (2023) (addressing a scenario where a candidate withdraws, yet the withdrawn candidate’s name appears on the ballots and votes cast for the withdrawn candidate are assigned to the replacement candidate not named on the ballot). Presuming intentional word usage further affirms that

section 163-113 has nothing to do with having one’s name removed from a ballot.

Furthermore, interpreting “withdrawal” in section 163-113 to be synonymous with “removal” from the ballot creates a conflict with the Board’s statutory obligation to ready ballots for mail exactly sixty days ahead of the election—the exact conflict presented in this case. See N.C.G.S. § 163-227.10 (2023). Such an interpretation would also conflict with the Board’s statutory obligations to “certify that the content and arrangement of the official ballot are in substantial compliance” with state law and to “proofread the official ballot of every county, if practical, prior to final production.” N.C.G.S. § 163-165.3(a)(4)–(5). Reading these two words to have distinct meanings avoids this conflict and brings coherence to the state’s election laws. See *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 222, 128 S.Ct. 831, 169 L.Ed.2d 680 (2008) (Thomas, J.) (recognizing that the construction of statutory terms “must, to the extent possible, ensure that the statutory scheme is coherent and consistent”).

Mr. Kennedy argues that his statutory construction must be correct because he sees no benefit to being allowed to withdraw from the electoral contest if he nonetheless is forced to keep his name on the ballot. That is demonstrably inaccurate. His argument ignores the fact that he also represents his party, the We The People (WTP) party, on the ballot. A political party in North Carolina is “[a]ny group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors.” N.C.G.S. § 163-96(a)(1) (2023). Currently, the WTP party does not have a candidate for Governor on the ballot. Therefore, if Mr. Kennedy’s name as presidential candidate for the WTP party is removed from North Carolina ballots, the party, which was only recognized as a political party in North Carolina on 16 July 2024, will no longer be recognized as a political party here. See N.C. State Bd. of Elections, *State Board Recognizes We The People as Official NC Political Party*, (July 16, 2024), <https://www.ncsbe.gov/news/press-releases/2024/07/16/state-board-recognizes-we-people-official-nc-political-party>. Thus, in future elections, the WTP party would have to submit anew petitions for the formulation of a new political party to the Board. See **\*68** N.C.G.S. § 163-96(a)(2) (requiring “signatures of registered and qualified voters in this State equal in number to one-quarter of one percent [ ] of the total number of voters who voted in the most recent general election for Governor” for the Board

to recognize a new political party). Thus, the allowance of withdrawal without removal creates another pathway for the WTP party to retain party recognition and North Carolina WTP voters can still accrue benefit from Mr. Kennedy's name remaining on the ballot. The legislature plainly understood this, even if Mr. Kennedy does not.

**\*\*13** Indeed, this explanation is consistent with the rule that the party must withdraw presidential candidates from the election—it is not just up to a presidential candidate to unilaterally remove their name from the ballot in the run-up to an election. On Monday, 26 August 2024, three days after Mr. Kennedy suspended his campaign, the vice-chair of the WTP party emailed the Board about the suspension. The vice-chair inquired about the possibility of removing Mr. Kennedy's name from the ballot and “the repercussions for the party should the nominee be withdrawn.” Ultimately, on Wednesday, 28 August 2024, the WTP party sent a request to remove Mr. Kennedy, as its presidential nominee, from the North Carolina ballots but did not present an alternate representative for the party. *See* N.C.G.S. § 163-114 (2023) (providing a procedure for filling vacancies among party nominees occurring after nomination and before elections). The Board called an emergency meeting on Thursday, 29 August 2024, and voted to allow the WTP party to remove its presidential candidate, but due to the status of the ballot preparation across the state, voted to keep his name on the ballot.

Finally, the General Assembly unambiguously afforded the Board discretion to determine how to respond to late ballot changes. *See* N.C.G.S. § 163-165.3(c) (“The State Board shall promulgate rules for late changes in ballots. The rules shall provide for the reprinting, *where practical*, of official ballots as a result of replacement candidates to fill vacancies in accordance with G.S. 163-114 or other late changes.” (emphasis added)). The Board published a procedure to address late changes in ballots. *See* Late Changes to Ballots, 08 N.C. Admin Code 06B.0104 (“If the vacancy occurs before the absentee voting period begins, the responsible county board of elections, or State Board of Elections if the contest spans more than one county, may determine whether it is practical to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114.”). In accordance with this policy, the Board determined it was impractical to print new ballots and comply with the state law requiring absentee ballots to be mailed one week later, on 6 September 2024.

In sum, the plain language of N.C.G.S. § 163-113 and a fair reading of the statute within its broader statutory context contradicts Mr. Kennedy's assertion of a statutory right to be removed from the ballot at this stage of the election process. The statute does not grant Mr. Kennedy a “right” to be removed from the ballot. This straightforward statutory analysis should end the judicial branch's role in Mr. Kennedy's quest. “Where the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must construe the statute using its plain meaning.” *State v. Borum*, 384 N.C. 118, 124, 884 S.E.2d 668 (2023) (internal quotations omitted) (quoting *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134 (1990)). The Board did not violate N.C.G.S. § 163-113, and the Board is likely to be successful on the merits. Thus, this Court should grant the Board's petition for writ of supersedeas to stay the order of the Court of Appeals before it causes any additional harm to the voters of North Carolina.

#### **Mr. Kennedy's Claim of Compelled Speech is Unsupported.**

Mr. Kennedy's constitutional arguments are no more availing than his statutory arguments, and the Board is likely to succeed on the merits of these claims as well. Mr. Kennedy argues that the Board's refusal to remove his name from the North Carolina ballots amounts to compelled speech in violation of his free speech rights. We disagree with Mr. Kennedy's interpretation, and even if this were compelled speech (and it is not), **\*69** the burden imposed on voters and election administrators greatly outweighs any burden on the free speech of a candidate required to keep his name on the ballot when he explicitly is still running for the office of President of the United States. *Hear the Moment RFK Jr. Suspends his Presidential Campaign*, CNN Politics at 1:07.

In cases such as this one, inquiries into the propriety of a state election law depend upon whether the law severely burdens a parties free speech rights or only “reasonabl[y], nondiscriminator[ily] restrict[s]” those rights. *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (cleaned up) (recognizing that the mere fact a state's system limits the field of candidates from which voters might choose does not of itself compel close scrutiny from a court). The Supreme Court of the United States' guidance on this front is well-settled: Courts consider the “character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” and balances that against the “precise interest put

forward by the State as justifications for the burden imposed by its rule.” *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (citations omitted).

\*\*14 Neither the trial court nor the Court of Appeals analyzed this issue. The parties have not fully briefed the issue, and Mr. Kennedy provides no legal citation for the proposition that a candidate's name on a government-issued ballot is protected speech. Mr. Kennedy's name remains on the ballot in twenty states other than North Carolina, and he has filed lawsuits to add his name to the ballot in at least two additional states.<sup>2</sup> Mr. Kennedy still seeks the office of the presidency: in his words, he “could conceivably still end up in the White House in a contingent election.” *Hear the Moment RFK Jr. Suspends his Presidential Campaign*, CNN Politics at 1:07. Mr. Kennedy does not reconcile his desire to remain a candidate in the majority of states with his position that keeping his name on the ballot in North Carolina would irreparably injure his free speech rights. In *Anderson*, the Supreme Court of the United States concluded that constitutional challenges such as this should be resolved through “an analytical process that parallels its work in ordinary litigation.” 460 U.S. at 789, 103 S.Ct. 1564. This issue should not be resolved without any analysis in a single-page order entered by an intermediate court on the day ballots are ready and required to be mailed to voters. See *Reynolds v. Sims*, 377 U.S. 533, 585, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) (“In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws and should act and rely upon general equitable principles.”).

Even if this issue was properly before the Court, we know of no case where a court, federal or state, has treated the declination to remove a name from a government ballot, this close to an election, as compelled speech or a constitutional free speech injury. Rather the Supreme Court has said “[b]allots serve primarily to elect candidates, not as forums for political expression.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997) (citation omitted).

And even if the Board's decision, in its discretion under state law, to leave Mr. Kennedy's name on the ballot when the burden of repreparing and reprinting ballots would be so costly and difficult did qualify as the government compelling Mr. Kennedy's speech, such a burden on his free speech rights would not outweigh the harms wrought on election

administrators and voters. Keeping one man's name on the ballot when he still wants the office and fought to have his name put on that ballot cannot be of more constitutional significance than the ability of thousands of eligible voters to access the franchise via absentee voting. Nor do Mr. Kennedy's free speech rights outweigh the risks of creating disarray in a statewide election. “States may, and inevitably must, enact reasonable regulations of parties, elections, \*70 and ballots to reduce election- and campaign-related disorder.” *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199 (2011) (quoting *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364). In this case, any burden to Mr. Kennedy of keeping his name on the ballots in North Carolina pales in comparison to the State's interest in affording military, overseas, and other absentee voters the statutorily-mandated voting period.

#### **This Court Should Act to Avoid Irreparable Harm to the Voters of North Carolina.**

On the day the Board was required by duly-enacted state law to mail absentee ballots to voters, the Court of Appeals ordered the Board to modify prepared, printed, and ready-to-mail ballots. The Court of Appeals' order essentially modified state election law—without any legal analysis—in a manner that irreparably harms the Board and the voters of North Carolina. This directive has the irrefutable effect of shortening the statutory voting window for absentee voters. See N.C.G.S. § 163-227 (requiring absentee ballots to be mailed sixty days before the election). Further, barring intervention by this Court, the Board estimates that North Carolina taxpayers will pay upwards of a million dollars to remove Mr. Kennedy's name from our ballots. We should have acted promptly to avoid both of these unjustified outcomes.

Voting is a fundamental right ranking “among our most precious freedoms,” *Anderson*, 460 U.S. at 787, 103 S.Ct. 1564 (quoting *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968)), and our Court should precious respect and defend that freedom. We should be clear with the public about the impact of this ruling on the franchise: we have effectively rubberstamped the Court of Appeals' decision to eliminate one-quarter of the absentee voting period established by the North Carolina General Assembly. Any examination of irreparable harms should certainly look at the burdens on the Board and election administrators; even more significantly, though, we must also address the burden on the right to vote.



**\*\*15** Removing a candidate's name from a ballot is not simple after the ballot preparation process is complete. For the upcoming general election, North Carolina has already created, proofed, coded, and printed almost three million ballots; these ballots include 2,348 different ballot styles reflecting “the version of a ballot within a jurisdiction that an individual voter is eligible to vote.” N.C.G.S. § 163-165(3). Each ballot style has been proofed to ensure it meets the statutory criteria for official ballots. N.C.G.S. §§ 163-165.4 to -165.6. Each ballot style has also been coded to ensure that the vote tabulators correctly read the contest and candidate on the ballot. Changes made at the top of the ballot create a likelihood that candidates and contests further down the ballot may not be coded properly. *Id.* Thus, once Mr. Kennedy's name, currently in the second position on the ballot, is removed from the 2,348 different ballot styles, all contests and candidates below his name will require re-proofing, re-coding, and quality control testing before reprinting. The Board estimates that this entire revisited process will take at least two weeks to complete. Under the Court of Appeals' order, the statutorily required sixty-day absentee voting period will be reduced by at least two weeks. *See* N.C.G.S. § 163-227.10(a); N.C.G.S. § 163-258.9(a) (2023) (deadline for military and overseas voters). Additionally, because the Board explains that complying with the Court of Appeals' order will take approximately two weeks, there is a risk of reducing the federally mandated absentee voting to less than the minimum time required under federal law. 52 U.S.C. § 20303(a)(8) (requiring states to mail absentee ballots to absent uniformed service voters and overseas voters “not later than 45 days before the election”). Not insignificantly, this work must be done by state and county election officials when they should be focused on preparations for early voting and other election-related tasks.

The concept of judicial restraint flew out the window when the Court of Appeals required, outside the normal course of appeal litigation, the Board of Elections to modify 2,348 ballot styles on the day that the first 125,500 of those ballots were printed, packaged, and ready to be mailed to military, overseas, and absentee voters. *See* **\*71** *Democratic Nat'l Comm. v. Wis. State Legislature*, — U.S. —, 141 S. Ct. 28, 31, 208 L.Ed.2d 247 (2020) (Kavanaugh, J., concurring) (highlighting an important principle of judicial restraint protects the state's interest in running an orderly, efficient election, preventing voter confusion, and giving citizens confidence in the fairness of the election). And that intermediate appellate court order also required non-

compliance with state law requiring absentee ballots to be mailed out sixty days before an election. The Court of Appeals sits inappropriately as a policy-making body when it unilaterally decides to deprive voters of fully one-quarter of the absentee voting period. This should evoke constitutional and institutional outrage in any reasonable high court. Not only does the lower appellate court's order offend every traditional sense of judicial restraint, it also stands in stark contrast to repeated guidance from the Supreme Court of the United States counseling against last-minute judicial alteration to state election law. *See Purcell v. Gonzalez*, 549 U.S. 1, 5–6, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam) (holding that because of the impending election and the necessity for clear guidance for voters and election administrators, courts should not alter election law right before elections).

When confronted with requests to modify election law in the run-up to an election, the Supreme Court of the United States has repeatedly emphasized that appellate courts should not modify election law in the period close to an election. *See Merrill v. Milligan*, — U.S. —, 142 S. Ct. 879, 879, --- L.Ed.2d --- (2022) (Kavanaugh, J., concurring) (explaining that the Supreme Court's election-law precedent establishes that “federal district courts ordinarily should not enjoin state election laws in the period close to an election, and [ ] that federal appellate courts should stay injunction when ... lower federal courts contravene that principle”). Even amid a national pandemic, the Supreme Court has rebuffed efforts to modify election law on the eve of an election. *See, e.g., Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424, 140 S.Ct. 1205, 206 L.Ed.2d 452 (2020) (staying a district court order that allowed ballots mailed and postmarked after election day to be counted). The Supreme Court has even denied an emergency application for a stay of a state election law when the Court believed “that both sides have advanced serious arguments on the merits.” *Moore v. Harper*, — U.S. —, 142 S. Ct. 1089, 1089, 212 L.Ed.2d 247 (2022) (emphasizing that “this Court has repeatedly ruled that federal courts ordinarily should not alter state election laws in the period close to an election”). This Court also has followed suit and avoided changing election law just before an election. *See Pender County v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364 (2007) (declining to enforce a required change in districting until after the 2008 election because the decision, issued on 24 August 2007, was too close to the upcoming election).

**\*\*16** Finally, in balancing the equities of potential harm wrought in this matter, it should be noted that Mr. Kennedy waited until 3 September 2024 to file for a temporary restraining order after filing suit seeking the removal of his name from the ballot—only three days before absentee ballots must be mailed out under state law. Given the date of Mr. Kennedy's decision to “suspend” his campaign on 23 August 2024 and seek alteration of ballots on 28 August 2024, the delay in filing for an injunction cuts against the alleged irreparable harm to which Mr. Kennedy describes himself as subject. In many other election law cases, even where litigants seek relief that would affect a much broader class of individuals, this kind of delay has been deemed fatal. *See, e.g., Lucas v. Townsend*, 486 U.S. 1301, 1305, 108 S.Ct. 1763, 100 L.Ed.2d 589 (1988) (Kennedy, J., in chambers) (enjoining a bond referendum election for school maintenance funding because the Board of Education waited too long to set the date of the special election); *Spencer v. Pugh*, 543 U.S. 1301, 125 S.Ct. 305, 160 L.Ed.2d 213 (2004) (Stevens, J., in chambers) (declining to enter injunctive relief to keep parties planning to “mount indiscriminate challenges at polling places” out of polling places because the short time until voting began limited the Court's ability to fully evaluate the filings of the parties); *Kishore v. Whitmer*, No. 20-11605, 2020 WL

3819125 (E.D. Mich. July 8, 2020), *aff'd*, 972 F.3d 745 (6th Cir. 2020) **\*72** (denying plaintiffs’ request for injunctive relief from state law requiring them to collect signatures to add a presidential candidate to the ballot where plaintiffs did not act diligently to obtain the required signatures); *see also Perry v. Judd*, 471 F. App'x 219, 220 (4th Cir. 2012) (denying candidate's emergency motion to be added to the ballot because of candidate's lack of diligence in challenging election rules and the affect on timely mailing of absentee ballots) (unpublished).

Today, any public aspersions cast on the impartiality, independence, and dignity of our state courts are well-earned. I despair of this Court's current failure to engage in plain reading of the law and its failure to forcefully defend the rights of the people, particularly when it comes to participation in the political process. I dissent.

Justice EARLS joins in this dissent.

#### All Citations

905 S.E.2d 55 (Mem), 2024 WL 4119196

#### Footnotes

- 1 There is evidence in the record from an affidavit of Wake County Board of Elections member Gerry Cohen, attached to Defendants’ Petition for Writ of Supersedeas, that the State Board of Elections has never deviated from that deadline absent a separate and express statutory authorization to do so. *See Cohen Aff.*, ¶ 3.
- 2 Highlighting the importance of the timely mailing of absentee ballots, North Carolina law also provides that “[i]n every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence.” N.C.G.S. § 163-227.10(a).
- 3 The majority reasons that the Board should have acted sooner based on Mr. Kennedy's public announcement that he intended to remove his name from ballots in battleground states. The majority neglects to mention that North Carolina was not mentioned by name in that announcement. The announcement also stated that Kennedy was “suspending” his presidential campaign “but not terminating it.” CNN Politics, Hear the Moment RFK Jr. Suspends his Presidential Campaign, at 1:15 (August 23, 2024), <https://www.cnn.com/2024/08/23/politics/video/rfk-jr-robert-kennedy-suspends-campaign-announcement-arizona-digvid>.
- 4 *Candidate Filing Period: Soil & Water Districts, 2024 General Election*, North Carolina State Board of Elections, <https://www.ncsbe.gov/news/events/candidate-filing-period-soil-water-districts-2024-general-election> (accessed 9 September 2024).

5 For example, Mr. Kennedy has filed a brief in New York arguing that he would be irreparably harmed if he were omitted from that state's ballot. See Team Kennedy, et al., vs. Berger, et al., No. 1:24-cv-3897-ALC, Docket No. 54, Pln's Reply Memo. Supporting PI, p. 9 and 9 n.5.

6 Presidential elections are unique and the processes for nominating and electing presidential candidates are governed by an entirely different article of the election code than the laws governing other elections. See N.C.G.S. § 163, Article 18. Notably, under state law, when a duly recognized political party decides to place a presidential candidate on the state's ballot, the party, not the candidate, controls who that candidate is and what happens in the event of a vacancy. See N.C.G.S. § 163-209(a). In fact, when voting for president during a general election, voters are voting for electors. N.C.G.S. § 163-209(a) ("A vote for the [presidential] candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate by which those candidates were nominated ...."). And the electors themselves are chosen by political parties. N.C.G.S. § 163-1(c).

This point raises further procedural concerns about whether an individual candidate, Mr. Kennedy, is even the proper party to bring a suit for the relief he wants—to withdraw entirely from the ballot without a replacement. Presumably he seeks to eliminate the presidential ballot line item of the party he represents, We The People, altogether. Bell Aff. Ex. K. But the political party, not the candidate, is the proper party to seek that relief. That party is not before us today.

The Court of Appeals Order muddles this distinction: It orders ballots disseminated "without the name of petitioner Robert F. Kennedy, Jr." but says nothing of the status of Kennedy's vice-presidential running-mate or We The People's presidential ballot line. Such confusion further supports that this Court should allow the Defendant's Petition for Writ of Supersedeas. Pointedly Mr. Kennedy identifies no statute authorizing a presidential nominee of a party to authorize a change to a party's nominee.

1 See also Ruby Edlin & Lawrence Norden, *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, Brennan Ctr. for Just., (Apr. 25, 2023) (highlighting that threats, abuse, and harassment have led to resignations of experienced election administration professionals).

2 Caitlin Yilek & Allison Novelo, *Map Shows Where RFK Jr. Is on the Ballot in the 2024 Election*, CBS News (Sept. 6, 2024), <https://www.cbsnews.com/news/rfk-jr-map-on-the-ballot-states/>.

## VERIFICATION

The undersigned attorney for Intervenor Democratic National Committee, being first duly sworn, deposes and says:

The contents of the foregoing response are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

Pursuant to N.C. R. App. P. 23, I also hereby certify that the contents of the foregoing Response to Plaintiffs' Petition for Writ of Supersedeas and App. 1-80 attached thereto are true and correct copies of the pleadings and other documents from the file in Wake County Superior Court.

I further certify that App. 81-102 attached to this Response to Plaintiffs' Petition for Writ of Supersedeas and Motions for Temporary Stay and Temporary Injunction are unpublished authorities attached for the Court's consideration as contemplated by N.C. R. App. P. 30(e)(3).

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This the 25<sup>th</sup> day of September, 2024.

William A Robertson  
William A. Robertson

STATE OF NORTH CAROLINA

WAKE COUNTY

Subscribed and sworn to me this day by William A. Robertson, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me, and executed the foregoing instrument for the purposes set forth therein and in the capacity indicated.

Date: 9/25/24

Patricia G Douglas  
Notary Public (Signature)

[official seal]

Patricia G Douglas  
Notary Public (Print Name)

PATRICIA G DOUGLAS  
Notary Public  
Wake County, NC  
My Commission Expires May 2, 2029

My Commission Expires: 5/2/29

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