

FILED

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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

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