

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV031557-910

TELIA KIVETT; WANDA NELSON  
FOWLER; the REPUBLICAN  
NATIONAL COMMITTEE; and the  
NORTH CAROLINA REPUBLICAN  
PARTY,

Plaintiffs,

*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,

Defendants.

**UNOPPOSED MOTION TO  
INTERVENE BY THE  
DEMOCRATIC NATIONAL  
COMMITTEE**

The Democratic National Committee (“DNC” or “Movant”) is a national organization whose purposes and functions are to communicate the Democratic Party’s position and messages on issues; protect voters’ rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including

by persuading and organizing citizens not only to register to vote as Democrats but also to cast their ballots for Democratic nominees and candidates.

Plaintiffs—the Republican National Committee (“RNC”) and North Carolina Republican Party (“NCRP”)—threaten those purposes with this lawsuit, as well as the flood of other meritless lawsuits they have filed in North Carolina courts (and elsewhere) in recent weeks. Here, less than a month before election day, they attack the constitutionality of a state statute that was enacted in June 2011, *more than 13 years ago*. In so doing, Plaintiffs seek to cast a cloud over the results of the 2024 election and create doubt in the minds of voters (many of whom are children of U.S. military personnel stationed overseas) about their eligibility to vote. But Plaintiffs (as in their other recent lawsuits) come to court without a shred of evidence of any unlawful registration or unlawful voting. None.

Put simply, this lawsuit—and Plaintiffs’ recent litigation strategy overall—is a baseless attempt to lay the legal groundwork for subverting the will of the voters by challenging the certification of the 2024 election in this and other closely divided states.

To prevent such subversion, the DNC respectfully moves to intervene in this lawsuit pursuant to North Carolina Rule of Civil Procedure 24. It moves to intervene as a matter of right, or in the alternative by permission, to protect its interest in having North Carolina’s 2024 general election conducted in accordance with North Carolina and federal law, including respecting the will of the people of this state.

1. Rule 24(a)(2) allows a movant that timely makes a sufficient showing to intervene in a civil action as of right. N.C. Gen. Stat. § 1A-1, Rule 24(a)(2).

2. Specifically, intervention as of right requires the movant to show that “(1) it has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of ... that interest, and (3) there is inadequate representation of that interest by existing parties.” *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 459 (1999). Each requirement is satisfied here, so the DNC is entitled to intervention as of right.

3. This motion, filed and served just seven days after Plaintiffs filed their complaint, is timely. *See Procter v. City of Raleigh Bd. of Adjustment*, 133 N.C. App. 181, 183 (1999) (“The question of whether an application to intervene is timely is left to the discretion of the trial court.”); *Capacchione v. Charlotte-Mecklenburg Bd. of Educ.*, 179 F.R.D. 502, 504 (W.D.N.C. 1998) (holding that motion to intervene filed two weeks after cases were consolidated was timely).

4. As to the second factor, the DNC—the oldest continuing party committee in the United States—is the Democratic Party’s national committee as defined by 52 U.S.C. § 30101(14). The DNC’s leadership is composed of the chair, vice chairs, and over 200 members elected by Democrats in every U.S. state and territory and the District of Columbia.

5. As a political organization representing and campaigning for candidates standing for office in the upcoming election, the DNC has a clear and direct interest in the upcoming election and its proper administration. *See James v. Bartlett*, 359

N.C. 260, 263 n.2 (2005); *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1505640, at \*5 (W.D. Wis. Mar. 28, 2020) (“[T]he court will nevertheless permit [the Republican National Committee and the Republican Party of Wisconsin] to intervene as they are uniquely qualified to represent the ‘mirror-image’ interests of the plaintiffs, as direct counterparts to the DNC/DPW.”).

6. Specifically, the DNC has a substantial interest in protecting the right of its members who choose to vote (and of others who will support Democratic candidates) to have those votes counted in accordance with federal and North Carolina law. These members include individuals qualified to vote in (and candidates for offices in) every county in this state. To further this interest, the DNC has dedicated significant resources in recent days, weeks, and months to encouraging its supporters and constituents in North Carolina to register and vote in the upcoming election, and to obtain the photo identification required to do so. Its efforts in this regard have included door knocking, text messaging, phone banking, mailed advertising, and digital advertising targeting counties across North Carolina.

7. The complaint challenges the DNC’s interest by seeking to invalidate the lawful registrations of voters covered by the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.* (“UOCAVA”), and the state Uniform Military and Overseas Voters Act, N.C. Gen. Stat. § 163-258.1 *et seq.* (“UMOVA”). Such a challenge is a practical impairment to the DNC’s interests in running successful campaigns to elect its candidates to public office. It is also contrary both to “[t]he object of elections,” which is “to ascertain the popular will, and not to

thwart it,” and to another “[t]he object of election laws,” which is “to secure the rights of duly-qualified electors, and not to defeat them.” *Owens v. Chaplin*, 228 N.C. 705, 711 (1948).

8. The relief the complaint seeks would require the DNC to expend and divert funds and resources that it would otherwise spend on voter outreach and mobilization efforts toward informing and educating voters about their rights under federal and North Carolina law, in order to ensure that those voters are not prevented from voting. The likely erroneous denial of Democratic voters’ right to cast ballots and have them counted would further injure the DNC, by reducing the number of registered Democrats able to cast a ballot in North Carolina that will be counted.

9. The RNC and NCRP allege that denying eligible North Carolinians their fundamental right to vote will give it a competitive advantage in this year’s general election. Compl. ¶¶ 15-16. The DNC has a mirror-image interest in ensuring that eligible voters can cast votes for Democratic candidates that will be counted.

10. The parties in this action do not adequately represent the DNC’s interest in seeing Democratic candidates elected. Defendants are public officeholders focused on efficient administration of elections. They do not share the DNC’s particularized interest in helping Democratic candidates win elections or its members’ particularized interest in ensuring that their votes are counted. Movant thus should be allowed to represent its interests as of right in this action.

11. In recognition of the DNC’s substantial interests in the outcome of cases affecting the electoral rights of Democratic voters, courts in North Carolina and

across the country routinely grant intervention to political party committees such as the DNC in cases like this—particularly cases that threaten to undermine the ability of one party’s voters to vote or threaten to harm the electoral prospects of the party’s candidates. For example, this Court recently granted the DNC’s motions to intervene in *RNC v. NCSBE*, 24CV026995-910 (N.C. Super. Ct. Sep. 12, 2024), and *RNC v. NCSBE*, 24CV028888-910 (N.C. Super. Ct. Sep. 20, 2024). Similarly, the U.S. Court of Appeals for the Third Circuit granted the motion of the DNC and other Democratic Party committees late last year to intervene in a lawsuit challenging a Pennsylvania state voting requirement as violating the federal Voting Rights Act. Order Granting Motion To Proceed As Intervenor, *Pennsylvania State Conference of NAACP Branches v. Northampton County Board of Elections*, No. 23-03166 (3d Cir. Dec. 7, 2023). Other such cases are legion.<sup>1</sup>

12. In the alternative, Movant should be granted permissive intervention. N.C. Gen. Stat. § 1A-1, Rule 24(b)(2). For the reasons stated above, Movant’s defenses

---

<sup>1</sup> *E.g.*, *Paher v. Cegavske*, 2020 WL 2042365, at \*4 (D. Nev. Apr. 28, 2020) (granting the DNC intervention in an election-law case brought by a conservative interest group); Order (ECF No. 35), *Donald J. Trump for President v. Bullock*, No. 6:20-cv-66 (D. Mont. Sept. 8, 2020) (granting the Democratic Congressional Campaign Committee (“DCCC”), the Democratic Senatorial Campaign Committee, and the Montana Democratic Party intervention in a lawsuit brought by four Republican party entities); *Donald J. Trump for President, Inc. v. Murphy*, 2020 WL 5229209, at \*1 (D.N.J. Sept. 1, 2020) (granting the DCCC intervention in a lawsuit by a Republican candidate and party entities); Minute Entry (ECF No. 37), *Cook County Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020) (granting the DCCC intervention in a lawsuit by a Republican party entity); *Issa v. Newsom*, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020) (granting the DCCC and the California Democratic Party intervention in a lawsuit by a Republican congressional candidate).

raise common questions of law and fact as those presently in this case, including the propriety of counting the ballots that Plaintiffs seek to have discarded. Intervention will not delay or prejudice the adjudication of the rights of the existing parties, including because Movant will abide by whatever schedules and deadlines this Court has set or will set.

13. Pursuant to Rule 24(c) of the North Carolina Rules of Civil Procedure, attached as Exhibit 1 is the answer and motion to dismiss that Movant will file if intervention is granted.

14. Counsel for the DNC has conferred with counsel for Plaintiffs and counsel for Defendants. Plaintiffs and Defendants do not oppose the DNC's Motion.

WHEREFORE, Movant prays

1. That the Court enter an order allowing Movant to intervene as of right pursuant to Rule 24(a)(2) of the North Carolina Rules of Civil Procedure;

2. In the alternative, that the Court enter an order permitting Movant to intervene pursuant to Rule 24(b)(2) of the North Carolina Rules of Civil Procedure;  
and

3. Granting such other relief as the Court deems just and proper.

Respectfully submitted, this 9<sup>th</sup> day of October, 2024.

SETH P. WAXMAN\*  
DANIEL S. VOLCHOK\*  
CHRISTOPHER E. BABBITT\*  
GARY M. FOX\*  
JOSEPH M. MEYER\*  
JANE KESSNER\*  
NITISHA BARONIA \*  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue N.W.  
Washington, D.C. 20037  
Phone: (202) 663-6000  
Fax: (202) 663-6363  
seth.waxman@wilmerhale.com  
daniel.volchok@wilmerhale.com  
christopher.babbitt@wilmerhale.com  
gary.fox@wilmerhale.com  
jane.kessner@wilmerhale.com  
nitisha.baronia@wilmerhale.com  
joseph.meyer@wilmerhale.com  
(\**Pro Hac Vice* application forthcoming)

/s/ Eric M. David  
JIM W. PHILLIPS, JR.  
N.C. BAR NO. 12516  
SHANA L. FULTON  
N.C. BAR NO. 27836  
ERIC M. DAVID  
N.C. BAR NO. 38118  
WILLIAM A. ROBERTSON  
N.C. BAR NO. 53589  
JAMES W. WHALEN  
N.C. Bar No. 58477  
BROOKS, PIERCE, MCLENDON  
HUMPHREY & LEONARD, LLP  
150 Fayetteville Street  
1700 Wells Fargo Capitol Center  
Raleigh, N.C. 27601  
Phone: (919) 839-0300  
Fax: (919) 839-0304  
jphillips@brookspierce.com  
sfulton@brookspierce.com  
edavid@brookspierce.com  
wrobertson@brookspierce.com  
jwhalen@brookspierce.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served by electronic mail upon the following:

Philip J. Strach  
[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)  
Jordan A. Koonts  
[jordan.koonts@nelsonmullins.com](mailto:jordan.koonts@nelsonmullins.com)

*Counsel for Plaintiffs*

Terence Steed  
[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)  
Mary Carla Babb  
[mcbabb@ncdoj.gov](mailto:mcbabb@ncdoj.gov)  
Sarah Boyce  
[sboyce@ncdoj.gov](mailto:sboyce@ncdoj.gov)

*Counsel for Defendants*

This the 9<sup>th</sup> day of Octobers 2024.

/s/ Eric M. David  
Eric M. David

**EXHIBIT 1**  
**PROPOSED ANSWER IN**  
**INTERVENTION**

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV031557-910

TELIA KIVETT; WANDA NELSON  
FOWLER; the REPUBLICAN  
NATIONAL COMMITTEE; and the  
NORTH CAROLINA REPUBLICAN  
PARTY,

Plaintiffs,

*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,

Defendants,

and

DEMOCRATIC NATIONAL  
COMMITTEE,

Intervenor-Defendant.

**[PROPOSED] MOTION TO DISMISS,  
ANSWER, AND AFFIRMATIVE  
DEFENSES OF INTERVENOR-  
DEFENDANT DEMOCRATIC  
NATIONAL COMMITTEE**

Intervenor-Defendant the Democratic National Committee (“DNC”), pursuant to Rules 8 and 12 of the North Carolina Rules of Civil Procedure, submits the following motion to dismiss, answer to, and affirmative defenses to the complaint in this case.

### **MOTION TO DISMISS**

The DNC moves to dismiss Plaintiffs’ complaint for failure to state a claim upon which relief can be granted pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the North Carolina Rules of Civil Procedure.

Dismissal is warranted under Rule 12(b)(1) as to Plaintiffs Telia Kivett and Wanda Nelson Fowler (the “Individual Plaintiffs”) because they each lack standing. The Individual Plaintiffs’ claim that their votes will be “diluted” by others casting ballots is not a cognizable injury under North Carolina law, which requires only that “each vote must have the same weight,” *Harper v. Hall*, 384 N.C. 292, 364–365, 886 S.E.2d 393, 439–440 (2023).

Dismissal is warranted under Rule 12(b)(6) because, among other reasons, (1) the General Assembly may reduce the time-of-residency requirement for presidential elections pursuant to North Carolina Constitution article VI, § 2(2); (2) N.C. Gen. Stat. § 163-258.11 expressly entitles Uniform Military and Overseas Voters Act (“UMOVA”) voters to use Uniformed and Overseas Citizens Absentee Voting Act absentee ballots; (3) the relief Plaintiffs seek is preempted by federal law and barred by the North Carolina Constitution; (4) the relief sought by Plaintiffs is barred by laches, the applicable statute of limitations, and/or the U.S. Supreme Court’s *Purcell*

doctrine barring last-minute changes to state election law; and (5) Plaintiffs' Complaint is an improper attempt to avoid the administrative procedures set by statute to challenge the eligibility of voters, which procedures include giving notice and adequate due process to the challenged voters.

Dismissal is warranted under Rule 12(b)(7) both because Plaintiffs have failed to join the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as required by Rule 19(d) of the North Carolina Rules of Civil Procedure, and because Plaintiffs have failed to join the UMOVA voters they seek to disenfranchise, as required by Rule 19 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 1-260.

### **ANSWER AND GENERAL DENIAL**

The DNC, by and through undersigned counsel, answers the complaint as follows: The complaint is replete with legal conclusions to which no response is required. As to the well-pleaded factual allegations, the DNC admits only paragraphs 11, 13, 18–24, the last sentence of paragraph 27, and the first sentence of paragraph 30. The documents referenced in paragraphs 43 n.2, 48 & n.3, 50 & n.4, and 64–72 speak for themselves as a matter of fact and law and are the best evidence of their contents. Except as expressly admitted, the DNC generally denies all factual allegations in the complaint in their entirety and demands strict proof of the same.

### **AFFIRMATIVE OR ADDITIONAL DEFENSES**

Having fully answered the complaint, the DNC pleads the following defenses and/or affirmative defenses, without waiving any arguments that it may be entitled

to assert regarding the burden of proof, legal presumptions, or other legal characterizations. The DNC expressly reserves the right to plead additional defenses and other matters of defense to the complaint by way of amendment after further discovery and investigation.

#### **FIRST DEFENSE**

The Individual Plaintiffs each lack standing to the extent their purported injury is “dilution” of their votes.

#### **SECOND DEFENSE**

Plaintiffs fail to state a claim upon which relief can be granted.

#### **THIRD DEFENSE**

Plaintiffs failed to join necessary parties in this action, including the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the UMOVA voters whose fundamental right to vote Plaintiffs seek to deny.

#### **FOURTH DEFENSE**

Plaintiffs’ claims are barred by the Fourteenth Amendment to the United States Constitution and Article I, §§ 1, 10, and 19 of the North Carolina Constitution.

#### **FIFTH DEFENSE**

Plaintiffs’ claims are preempted, in whole or in part, by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.*

#### **SIXTH DEFENSE**

Plaintiffs’ claims do not meet any of the requirements for the issuance of an injunction.

### **SEVENTH DEFENSE**

Plaintiffs' requested relief is barred, in whole or in part, by the doctrine of laches.

### **EIGHTH DEFENSE**

Plaintiffs' requested relief is barred, in whole or in part, by the statute of limitations.

### **NINTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the National Voter Registration Act, 52 U.S.C. § 20507, *et seq.*

### **TENTH DEFENSE**

Plaintiffs' requested relief is barred by the doctrines of ratification and unclean hands.

### **PRAYER FOR RELIEF**

The DNC, having moved to dismiss, answered, and otherwise responded to the complaint, prays unto the Court:

1. That Plaintiffs' claims be dismissed with prejudice;
2. For a trial by jury on all issues so triable;
3. To tax the costs of this action against Plaintiffs; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted, this 9<sup>th</sup> day of October, 2024.

SETH P. WAXMAN\*  
DANIEL S. VOLCHOK\*  
CHRISTOPHER E. BABBITT\*  
GARY M. FOX\*  
JOSEPH M. MEYER\*  
JANE KESSNER\*  
NITISHA BARONIA\*  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue N.W.  
Washington, D.C. 20037  
Phone: (202) 663-6000  
Fax: (202) 663-6363  
seth.waxman@wilmerhale.com  
daniel.volchok@wilmerhale.com  
christopher.babbitt@wilmerhale.com  
gary.fox@wilmerhale.com  
joseph.meyer@wilmerhale.com  
jane.kessner@wilmerhale.com  
nitisha.baronia@wilmerhale.com  
(\**Pro Hac Vice* application forthcoming)

/s/ Eric M. David  
JIM W. PHILLIPS, JR.  
N.C. BAR NO. 12516  
SHANA L. FULTON  
N.C. BAR NO. 27836  
ERIC M. DAVID  
N.C. BAR NO. 38118  
WILLIAM A. ROBERTSON  
N.C. BAR NO. 53589  
JAMES W. WHALEN  
N.C. Bar No. 58477  
BROOKS, PIERCE, MCLENDON  
HUMPHREY & LEONARD, LLP  
150 Fayetteville Street  
1700 Wells Fargo Capitol Center  
Raleigh, N.C. 27601  
Phone: (919) 839-0300  
Fax: (919) 839-0304  
jphillips@brookspierce.com  
sfulton@brookspierce.com  
edavid@brookspierce.com  
wrobertson@brookspierce.com  
jwhalen@brookspierce.com

**CERTIFICATE OF SERVICE**

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

Phillip J. Strach  
Jordan A. Koonts  
phil.strach@nelsonmullins.com  
jordan.koonts@nelsonmullins.com

*Counsel for Plaintiffs*

Terence Steed  
tsteed@ncdoj.gov  
Mary Carla Babb  
mcbabb@ncdoj.gov  
Sarah Boyce  
sboyce@ncdoj.gov

*Counsel for Defendants*

This 9<sup>th</sup> day of October, 2024.

/s/ Eric M. David  
Eric M. David

RETRIEVED FROM DEMOCRACYDOCKET.COM