

STATE OF NORTH CAROLINA

WAKE COUNTY

TELIA KIVETT; KARYN MULLIGAN;  
WAKE COUNTY REPUBLICAN  
PARTY; REPUBLICAN NATIONAL  
COMMITTEE; and 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.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

No. 24CV041789-910

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

**AND RULE 6(d) EX PARTE APPLICATION  
FOR ORDER SETTING MOTION FOR  
HEARING ON SHORTENED NOTICE**

The Democratic National Committee (“DNC”) is the nationwide coalition of voters, volunteers, party officers, and elected officials dedicated to strengthening our democracy and preserving every voter’s right to vote. Plaintiffs—Republican National Committee (“RNC”), state and local Republican party organizations, and voters—threaten that purpose with their lawsuit. This lawsuit is materially identical to one they filed (and lost) just months ago. They seek to disenfranchise more than 60,000 North Carolinians not because those voters did anything wrong,

but because—according to them—small portions of North Carolina’s approved voter registration form were improperly color coded. Their claims are unsupported by state or federal law, and their repeated request to disenfranchise voters after the election is over and many are certified is prohibited.

Many of the North Carolinians targeted by the RNC belong to the broad coalition of Democrats, Republicans, independents, and third-party voters who voted for Democratic candidates this fall. The DNC therefore respectfully moves to intervene in this lawsuit pursuant to North Carolina Rule of Civil Procedure 24. The DNC moves to intervene in this case as a matter of right, or in the alternative by permission, to protect its unique interests in North Carolina’s 2024 general election (and subsequent elections) conducted in accordance with North Carolina and federal law.

1. Rule 24(a)(2) of the North Carolina Rules of Civil Procedure allows a timely movant that makes three showings to intervene in a civil action as of right. N.C. Gen. Stat. § 1A-1, Rule 24(a)(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 the protection 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, 515 S.E.2d 675, 683 (1999). These three requirements are satisfied in this case, so intervention of right should (indeed must) be allowed.

2. This motion, filed just nine days after Plaintiffs filed their Complaint, is timely.

3. 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 organizational 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. 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, including North Carolina.

4. As a political organization that represented and campaigned for candidates who stood for office in the 2024 general election, and that will do the same in upcoming elections, the DNC has a clear and direct interest in proper administration of North Carolina's elections. *See James v. Bartlett*, 359 N.C. 260, 263 n.2, 607 S.E.2d 638, 640 n.2 (2005); *cf. Libertarian Party of N.C. v. State*, 200 N.C. App. 323, 324, 688 S.E.2d 700, 703 (2009), *aff'd as modified*, 365 N.C. 41, 707 S.E.2d 199 (2011). The DNC has dedicated significant resources to encouraging its supporters and constituents in North Carolina to register and to vote in the 2024 election and future elections, including through door knocking, text messaging, phone banking, mailed advertising, and digital advertising targeting counties across North Carolina. The DNC has a substantial interest in ensuring that the votes cast by its members (and of others who supported Democratic candidates) count 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.

5. The complaint challenges the administration of the election by seeking to invalidate the registrations and votes of more than 60,000 North Carolinians. 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 to "the object of elections," which is "to ascertain the popular will, and not to thwart it." *Owens v. Chaplin*, 228 N.C. 705, 711, 47 S.E.2d 12, 17 (1948). And it is contrary

to another “object of election laws,” which is “to secure the rights of duly-qualified electors, and not to defeat them.” *Id.*

6. The relief the complaint seeks would negate the DNC’s significant commitment of resources spent on voter outreach and mobilization efforts in the 2024 general election, informing and educating voters about their rights under federal and North Carolina law in that election, and ensuring that voters are not erroneously prevented from voting or removed from the voting rolls in that election. The complaint also 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 erroneously prevented from voting or removed from the voting rolls in future elections. The likely erroneous denial of Democratic voters’ right to cast a ballot and have it counted, and the likely erroneous removal of Democratic voters from the voting rolls, further injure the DNC by systematically disenfranchising Democratic voters.

7. The parties in this action do not adequately represent the DNC’s interests in seeing Democratic candidates elected. Respondents 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 each counted. The DNC thus should be allowed to represent its interests as of right in this action.

8. In recognition of the DNC’s substantial interests in the outcome of cases affecting the electoral rights of Democratic voters, courts 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 harm the electoral prospects of the party’s

candidates. For example, the U.S. Court of Appeals for the Third Circuit recently granted the motion of the DNC and other Democratic Party committees 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>

9. In the alternative, the DNC should be granted permissive intervention. N.C. Gen. Stat. § 1A-1, Rule 24(b)(2). For the reasons stated above, the DNC's defenses raise common questions of law and fact as those presently pending in this case. And the DNC will abide by whatever schedules and deadlines this Court sets for the original parties. Intervention therefore will not delay or prejudice the adjudication of the rights of those parties.

10. Pursuant to Rule 24(c) of the North Carolina Rules of Civil Procedure, attached as Exhibit A is an answer that the DNC would file if intervention is granted.

11. Pursuant to Rule 6(d) of the North Carolina Rules of Civil Procedure, good cause supports hearing the motion concurrently with Plaintiffs' motion for temporary restraining order, which has been noticed for January 10, 2025 at 10:30 a.m. in Wake County Superior Court, 316

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<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).

Fayetteville St, Raleigh, NC 27601. Hearing the motion on January 10, 2025 will allow the DNC the opportunity to be heard on Plaintiffs' extraordinary request to disenfranchise 60,000 voters by temporary restraining order, which would impair its rights and the rights of the voters it represents.

12. The DNC has conferred with the parties regarding their respective positions on the motion. Defense counsel stated that Defendants do not oppose to the DNC's request to intervene. Plaintiffs' counsel do not oppose DNC's request to intervene.

WHEREFORE, the DNC respectfully requests that the Court order its motion to intervene be heard concurrently with Plaintiffs' motion for temporary restraining order notice for hearing on January 10, 2025 at 10:30 a.m. in Wake County Superior Court, grant the DNC's motion to intervene in this matter, and grant such other and further relief as the Court deem just and proper.

Respectfully submitted, this 9th day of January, 2025.

/s/ Shana L. Fulton  
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**CERTIFICATE OF SERVICE**

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

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This the 9th day of January, 2025.

/s/ Shana L. Fulton  
Shana L. Fulton

# EXHIBIT A

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WAKE COUNTY

TELIA KIVETT; KARYN MULLIGAN;  
WAKE COUNTY REPUBLICAN  
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MILLEN, in their official capacities as  
members of the North Carolina State  
Board of Elections,

Defendants,

DEMOCRATIC NATIONAL  
COMMITTEE,

Intervenor-Defendant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

No. 24CV041789-910

**PROPOSED MOTION TO DISMISS,  
ANSWER AND AFFIRMATIVE DEFENSES  
BY INTERVENOR-DEFENDANT  
THE DEMOCRATIC NATIONAL  
COMMITTEE**

**(JURY TRIAL DEMANDED)**

Intervenor-Defendant the Democratic National Committee (“DNC”), pursuant to Rules 8, 12, and 24 of the North Carolina Rules of Civil Procedure, respectfully submits the following motion to dismiss, answer, and affirmative defenses to the complaint in the above captioned matter.

## **MOTION TO DISMISS**

The DNC moves to dismiss Plaintiffs' complaint for failure to state a claim pursuant to Rule 12(b)(6) and for failure to join necessary parties pursuant to Rule 12(b)(7) of the North Carolina Rules of Civil Procedure.

### **ANSWER TO COMPLAINT (GENERAL DENIAL)**

Pursuant to N.C. Gen. Stat. § 1A-1, Rule 8(b), the DNC generally denies the allegations contained in the Complaint except as follows: The DNC admits on information and belief the allegations in paragraphs 8–12, 14, and 21–25. The DNC admits the factual allegations contained in paragraphs 19 and 20. The DNC admits that the time for the county canvasses has passed as alleged in paragraph 56. The remainder of Plaintiffs' allegations are legal conclusions that do not require a response. To the extent that a response is required, the DNC denies all factual allegations not expressly admitted herein.

### **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 is complete.

#### **FIRST DEFENSE**

Plaintiffs are not entitled to relief under the Help America Vote Act, 52 U.S.C. § 20501 et seq. and state law implementing the same, *see, e.g.*, N.C. Gen. Stat. § 163-82.11(c).

## **SECOND DEFENSE**

Plaintiffs' claims are barred by the National Voter Registration Act, 52 U.S.C. § 20507 and state law implementing the same, *see, e.g.*, N.C. Gen. Stat. § 163-82.14(a1).

## **THIRD DEFENSE**

Plaintiffs' claims are barred by the Civil Rights Act of 1964, 52 U.S.C. § 10101.

## **FOURTH DEFENSE**

Plaintiffs' claims are barred by the Voting Rights Act of 1965, 52 U.S.C. § 10307.

## **FIFTH DEFENSE**

Plaintiffs' claims are barred by the First and Fourteenth Amendments to the United States Constitution and Article I, §§ 1 and 19 of the North Carolina Constitution.

## **SIXTH DEFENSE**

Plaintiffs are not entitled to relief because N.C. Gen. Stat. § 163-82.4 does not create a private cause of action.

## **SEVENTH DEFENSE**

Plaintiffs' claims are barred because N.C. Gen. Stat. § 163-82.4 does not impose a mandatory non-discretionary duty, rendering mandamus unavailable as a remedy. The county boards must exercise their discretion in determining the sufficiency of voter registration forms.

## **EIGHTH DEFENSE**

Plaintiffs' claims are barred because they do not meet any of the factors necessary for issuance of an injunction.

## **NINTH DEFENSE**

Plaintiffs' claims fail to comply with the requirements of state law regarding challenges to voter registrations. Among other things, Plaintiffs have failed to use the prescribed statutory

process for challenging voter registrations in an effort to circumvent the State Board's authority under N.C. Gen. Stat. § 163-22 and failed to join the voters they seek to disenfranchise in this lawsuit.

#### **TENTH DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrines of claim preclusion, issue preclusion, and claim splitting.

#### **ELEVENTH DEFENSE**

Plaintiffs' requested relief is barred by the doctrines of estoppel, laches, waiver, ratification, and the doctrine of unclean hands.

#### **PRAYER FOR RELIEF**

Wherefore, the DNC, having moved to dismiss, answered, and otherwise responded to the Complaint, respectfully 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 9th day of January, 2025.

/s/ Shana L. Fulton

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**CERTIFICATE OF SERVICE**

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

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This the 9th day of January, 2025.

/s/ Shana L. Fulton  
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