

No. 235P24

No. _____

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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; and 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.

From NCCOA
No. P24-624

DEFENDANTS' PETITION FOR WRIT OF SUPERSEDEAS

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DEFENDANTS' PETITION FOR WRIT OF SUPERSEDEAS

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

Pursuant to N.C. R. App. P. 23, Defendants respectfully petition for a writ of supersedeas of the Court of Appeals' September 6, 2024 order enjoining Defendants from "disseminating ballots listing [Robert F. Kennedy, Jr.] as a candidate for President of the United States" and remanding this case to the trial court for an order requiring Defendants to remove Plaintiff's name from the North Carolina ballot. Order, No. P24-624 (Sept. 6, 2024) (attached as Ex. 4). Contemporaneously with this petition for a writ of supersedeas, Defendants have also filed a petition for discretionary review.

Defendants respectfully request expedited treatment of this petition. Consistent with the Court of Appeals' Order, Defendants have begun the work of recoding ballots to remove Plaintiff's name. That work is expected to take approximately two to three days. As discussed further below, if this Court acts before that work is completed, Defendants can still avoid most of the irreparable harm caused by the Order below.

INTRODUCTION

Under state law, voting in North Carolina was supposed to begin today, September 6, when county boards of elections mailed absentee ballots

to voters across the globe, including our State's military and overseas voters. Now, however, the North Carolina Court of Appeals has thrown our State's elections process into chaos. This morning, that court ordered the State Board to cast aside weeks—if not months—of preparation, trash millions of already printed ballots, and restart the ballot-preparation process again, all so that one presidential candidate's name can be removed.

The Court of Appeals' last-minute disruption of the State's election procedures would be alarming in any election cycle, given the impact it will have on North Carolinians' constitutional right to vote and given the time and money that has already been expended by elections officials across the State. But it is especially galling in this election cycle, considering the context in which this lawsuit arises.

This case was brought by Robert F. Kennedy, Jr., who two weeks ago announced that he was “suspending” his presidential campaign, “but not terminating it.”¹ Since that pronouncement, Plaintiff has not actually

¹ Plaintiff's full remarks on this issue were as follows:

I want everyone to know that I am only suspending my campaign, not terminating it. My name will still be on the ballot in most states. If you live in a blue state, you can vote for me without harming or helping

abandoned his efforts to be elected—he is continuing to fundraise and to seek access to the ballot in certain States.²

In this State, however, Plaintiff has decided he would prefer to be removed from the ballot. Hence, five days after “suspending” his campaign, and *nine days before voting in the State was set to begin*, Plaintiff’s party (the We The People Party or “WTP”) filed a formal request, asking the State Board to remove him from the ballot. (Bell Aff., ¶ 10 and Aff. Ex. K (attached as Ex. 1)).³

The State Board rejected this request the following day, on the ground that removing Plaintiff from the ballot would be impractical. That decision

President Trump or Vice President Harris. In red states—the same applies. I encourage you to do so. And if enough of you vote for me and neither of the major party candidates win 270 electoral votes, I could still end up in the White House in a contingent election. But in about ten battleground states where my presence would be a spoiler, I will remove my name and urge voters not to vote for me.

Robert F. Kennedy, Jr., *Why I am suspending my campaign for President*, RFK Jr.’s Policies + Politics, Aug. 23, 2024, <https://robertkennedyjr.substack.com/p/why-i-am-suspending-my-campaign-for>.

² See *infra* n.16; see also Geoff Pender, *As RFK Jr. fights to get off ballot in some states, his team files to get him on Mississippi’s*, Mississippi Today, Sept. 3, 2024, <https://mississippitoday.org/2024/09/03/kennedy-ballot-mississippi-trump-rfk-jr-swing-states>.

³ Affidavit of State Board Executive Director Karen Brinson Bell, attached as Ex. 1.

was correct, both as a legal matter and as a matter of common sense. The North Carolina General Assembly has empowered the State Board to make decisions about the “form and content of ballots.” N.C.G.S. § 163-22(e).

When those decisions involve whether or not to make “late changes,” state law directs the State Board to consider the “practical[ity]” of a revision. *Id.*, § 163-165.3. “In every instance[,] the board of elections shall exert every effort to provide absentee ballots . . . by the date on which absentee voting is authorized to commence.” N.C.G.S. § 163-227.10.

Pursuant to these statutory mandates, the State Board found that removing Plaintiff from the ballot would be impractical. At the time the State Board voted, 98 of the State’s 100 counties had finalized their ballots and were approved to print. (Bell Aff., ¶ 50) Approximately 90 counties’ ballots were in the process of being printed or had already been printed. *Id.* And state and federal deadlines for completing this work were fast approaching. The General Assembly has instructed the State Board to disseminate absentee ballots “60 days prior to the statewide general election in even-numbered years.” *Id.* § 163-227.10(a); *see also id.*, §163-258.9(a) (same, for military and overseas voters). This year, that date is today,

September 6. Federal law also imposes a separate deadline: absent a special federal waiver (which the State does not currently have), absentee ballots must be distributed to civilian, military, and overseas voters 45 days prior to the election (this year, September 21). *See* 52 U.S.C. § 20302(a)(8); N.C.G.S. § 163-258.9(a). When the State Board voted to deny WTP's removal request, they did so on the understanding that removing Plaintiff from the ballot would place their ability to comply with *both* the state *and* federal deadlines in serious jeopardy. (Bell Aff., ¶ 57).

Now, the Court of Appeals has placed the State Board in precisely the situation it had hoped to avoid. The State—and our taxpayers—may have to spend upwards of \$1 million undertaking the numerous tasks it takes to reprint ballots. (Bell Aff., ¶ 50e.) Our State's elections officials will have to work around the clock and on weekends to reformat, reprint, and reassemble ballots. (*See* Bell Aff. ¶¶ 4-16, 39-58; Cohen Aff. ¶¶ 4-16 (attached as Ex. 2)). Absentee voters—including members of our military—will have significantly less time to receive their ballots, fill them out, and return them. And our State is now certain to miss the deadline that the legislature has

imposed for distributing absentee ballots, and reasonably certain to miss the federal deadline as well.

This Court can avoid these harms and protect North Carolinians' right to participate fully in this election. But it must act quickly. In compliance with the Court of Appeals' order, county boards across the State have been instructed to immediately begin recoding ballots to remove Plaintiff from the ballot. Those efforts will take approximately the next two to three days, including this weekend. If this Court intervenes and enters a writ of supersedeas allowing elections officials to distribute absentee ballots before recoding is complete, the State can still avoid the significant financial costs of reprinting ballots and also comply with the federal absentee-ballot deadline.

Defendants respectfully urge this Court to enter a writ of supersedeas and to do so immediately. Plaintiff has little likelihood of prevailing on his two legal claims, and he has failed to make any showing that he will be irreparably harmed if he remains on the ballot.

To start, Plaintiff has alleged that denying his removal request violated his statutory rights under N.C. Gen. Stat. § 163-113, because that statute

permits certain candidates to “resign,” so long as they do so “prior to the first day on which military and overseas absentee ballots are transmitted to voters.” Plaintiff is incorrect. Section 163-113 has nothing to do with this case, for at least two reasons.

First, § 163-113 governs the withdrawal of candidates who have been nominated through processes distinct from the one that WTP used to nominate Plaintiff. Plaintiff is a presidential candidate, nominated through a convention process. By its express terms, § 163-113 applies only to non-presidential nominees who are selected through the primary process and certified by the State Board or county boards following the canvass of the primary.

Second, even if § 163-113 did apply to candidates like Plaintiff, that statute speaks only to *withdrawal* of a candidate *from an electoral contest*. It has nothing whatsoever to do with *removal* of a candidate *from a ballot*. That is why § 163-113 understandably allows candidates to withdraw all the way up until the date absentee ballots are mailed. Such a deadline would make no sense for removal from a ballot, which necessarily requires some cushion between the time at which a decision to remove a candidate is made

and the time that ballots need to be mailed. Because Plaintiff's statutory argument is based on an entirely irrelevant statute, his claim necessarily fails.

Second, Plaintiff has argued that requiring him to remain on the ballot amounts to compelled speech, in violation of his free-speech rights. This, too, is wrong. *Plaintiff's* speech is not at issue here. The State Board's decision regulates the content of the *State's* ballot, and it is well-established that a ballot is not a forum for private political expression. Moreover, even if the Court were to find Plaintiff's speech to be at issue, the law that the State Board applied should be evaluated under the U.S. Supreme Court's framework for reviewing free-speech challenges to ordinary election laws, the *Anderson-Burdick* test. Under that flexible standard, the State Board's decision here imposed an at-most modest burden on Plaintiff's speech, justified by compelling state interests, including ensuring order, rather than chaos, in the 2024 general election and protecting voters' interests in the timely distribution of absentee ballots. Therefore, the decision easily passes constitutional review.

Time is of the essence. Every hour that the Court of Appeals' order remains in place is an hour wasted by elections officials redoing work that has already been done, and an hour less that North Carolinians who have requested absentee ballots are waiting to begin voting. Because Plaintiff's statutory and constitutional claims lack any merit, and because the Court of Appeals' order is inflicting irreparable harm on the State as long as it remains in place, Defendants respectfully ask this Court to grant their petition for a writ of supersedeas and allow voting in North Carolina to commence as required by state law.

BACKGROUND

A. Voting for the 2024 General Election

In North Carolina, voting for the 2024 general election begins with the distribution of absentee-by-mail ballots. The state legislature has mandated that these ballots must be distributed sixty days prior to a statewide general election, meaning distribution this year must begin today: Friday, September 6. *See* N.C.G.S. §§ 163-227.10(a) (for a statewide general election), -258.9(a) (for military and overseas voters).

The legislature has identified a limited exception to the legislature's sixty-day deadline: § 163-22(k) provides that if absentee ballots are “not ready” sixty days before the general election, “the State Board shall allow the counties to mail absentee ballots out as soon as the absentee ballots are available.” This provision has never been invoked, and it is unclear whether it applies in situations where ballots *are* ready, but the State Board makes a discretionary decision to discard them in order to remove a candidate and reprint.

Separately, federal law mandates that distribution of absentee ballots to overseas and military voters must occur forty-five days before a general election. *See* 52 U.S.C. § 20302(a)(8). This year that deadline is September 21. The State Board has no discretion to move this deadline without first securing a waiver from the federal government. *See id.* Requesting such a waiver is no small matter, and receipt of such a waiver is not guaranteed.⁴

⁴ *See* https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf (last visited Aug. 31, 2024).

B. Ballot Preparations.

Under state law, the State Board is primarily responsible for supervising elections in this State. *See* N.C.G.S. § 163-22(a). As relevant here, the Board is charged with determining “the form and content of ballots . . . to be used in primaries and elections.” *Id.*, § 163-22(e). It also certifies the official ballot, a process that includes proofreading every county’s ballot, if practical, prior to production. *Id.*, § 163-165.3(a). And it is responsible for promulgating rules and making decisions about “late changes in ballots.” *Id.*, § 163-165.3(c).

County Boards bear the cost of ballot production. (Bell Aff. ¶ 54). It is their responsibility to print and distribute ballots. N.C.G.S. §§ 163-33(6), -165.3.

Before county boards can begin printing ballots, however, they must first work together with the State Board to complete ballot coding. *See* N.C.G.S. § 163-165.3(a). Coding involves writing software code to be used in ballot tabulators, to ensure that selections on the ballot are accurately read by the tabulators. Each oval/square position on a ballot must be properly

coded to correspond to the correct contest and candidate on the ballot (or referendum selection). (Bell Aff., ¶ 11).⁵

After the ballots have been formatted and the machines have been coded, the State Board and county boards embark upon a series of quality-control checks to ensure the accuracy of every ballot in the State. (Bell Aff., ¶ 4). These checks include proofreading the ballots for all 100 counties in the State, and ensuring that the tabulators' coding is uniform and accurate. (Bell Aff., ¶ 6).

Next, the ballots are printed and delivered, and the county boards begin the time-consuming process of creating outgoing absentee ballot packages for each eligible absentee ballot requester. *Id.*

In affidavits attached to this Response, State Board Executive Director Brinson Bell and Wake County Board of Elections member Gerry Cohen provide the Court with further details about the ballot-preparation and

⁵ Any changes to a ballot must also be coded into this software. (Bell Aff., ¶ 11). When a change is made at the beginning of the printed ballot, that change can often trigger numerous changes to the alignment of various candidates further down the ballot. Thus, the removal of a single candidate from a ballot can require significant revisions to the ballot coding, to ensure that tabulators accurately reflect voter choices in each of the different contests on the ballot. *Id.*

mailing processes performed by the State Board and county boards and the time already spent on those processes this year. (Bell Aff. ¶¶ 4-16, 39-58; Cohen Aff. ¶¶ 4-16).

C. The Nomination Process for Presidential Candidates in North Carolina

Presidential elections are unique, in large part due to the involvement of the Electoral College and the political parties' role in selecting nominees. 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: Chapter 163, Article 18.

In presidential primary elections, voters do not actually select their parties' nominees. They merely select their preferred candidate among the options provided, including an option for "uncommitted" or "no preference." N.C.G.S. § 163-213.7. This is why the presidential primary in North Carolina is called the "Presidential Preference Primary." *Id.* ch. 163, art. 18A. The actual selection of the presidential candidates that will appear on a general election ballot is made by the political parties, typically at a convention.

The political parties are similarly responsible for nominating presidential electors. N.C.G.S. § 163-1(c). As N.C.G.S. § 163-209(a) makes

clear, when voting for President, voters are in fact voting for these presidential electors, not a presidential candidate. 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 . . .”).

As detailed above, the State Board is responsible for the content of the official ballot. *See* N.C.G.S. § 163-22(e). To execute that responsibility, although the General Statutes do not specify how political parties should submit their presidential candidates, the State Board has historically requested that political parties submit a document certifying the names of the parties’ nominees. (Bell Aff., ¶ 24). The General Statutes similarly do not specify a deadline for the political parties to submit their presidential nominees. But parties usually do so by July or August, in recognition of the need for the State Board to comply with the relevant ballot-distribution deadlines. (Bell Aff., ¶ 27).

Because state law contemplates that political parties will nominate presidential electors and candidates, *see* N.C.G.S. § 163-209(a), the State Board traditionally communicates exclusively with the political parties

regarding those issues, and not with individual candidates or their campaigns. (Bell Aff., ¶ 26). This practice is reflected in the records of the Board's communications with Plaintiff's campaign and his party, and in its communications this year with other candidates and parties. *Id.*, ¶¶ 26, 39-47, and Aff. Exs. B-K.

D. Procedural Background

On July 16, 2024, the State Board certified WTP as a North Carolina political party pursuant to N.C.G.S. § 163-96.⁶ Two weeks prior, on July 1, 2024, WTP had notified the State Board of its candidates for President and Vice-President, Plaintiff and Nicole Ann Shanahan, respectively. (Bell Aff., ¶ 10 and Aff. Ex. A).

Shortly after the State Board certified WTP as a political party, the North Carolina Democratic Party sued, challenging that certification. *N.C. Democratic Party v. N.C. State Bd. of Elections*, No. 24CV023631-910 (filed July 25, 2024). The Democratic Party argued that WTP had been formed

⁶ July 16, 2024 State Board Mtg. Folder, Mtg. recording, 29:24-30:15, available at https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/State%20Board%20of%20Elections%20Meeting-20240716.mp4 (last visited Aug. 31, 2024).

solely to nominate Plaintiff and, thus, that Plaintiff should have had to follow the state law procedures for unaffiliated candidates, as opposed to the procedures for new political parties. WTP fought back, arguing that the party was properly certified and that Plaintiff should remain on the ballot. On August 21, the state trial court sided with WTP and upheld the State Board's certification decision.

On August 23, 2024, Plaintiff announced in a press conference that he was suspending his campaign for President and endorsing another candidate. In doing so, however, Plaintiff emphasized that he was “not terminating” his campaign and would “still be on the ballot in most states.”⁷ He encouraged his supporters to vote for him in States where he remained on the ballot, since he “could still end up in the White House in a contingent election.”⁸

Three days later, on August 26, 2024, a representative of WTP contacted the State Board about the process for removing a candidate from North Carolina's ballot. (Bell Aff., ¶ 39). State Board General Counsel Paul

⁷ See *supra* n.1.

⁸ *Id.*

Cox responded to the inquiry. *Id.*, ¶ 40. Mr. Cox informed the WTF representative, consistent with state law and the State Board's historic practices, that the political party for a presidential nominee, not the nominee himself, should notify the State Board of any changes to its nominee. *Id.* It is the party, after all, that has the authority to replace its candidate, *see id.* § 163-114(a), and it is the party that will promptly lose recognition in this State if it has no presidential or gubernatorial candidate on the ballot, *see id.* §§ 163-96(a)(1), -97.

That same day, the Board also received an inquiry from an individual claiming to represent Plaintiff's campaign, and Mr. Cox sent that individual the same information regarding removal that he had sent to the WTP representative. *Id.*, ¶¶ 41-42.

After close of business on August 26, a separate individual representing Plaintiff's campaign, Elizabeth Brehm, sent the Board an email with an attached notice signed by Plaintiff, in which Plaintiff stated that he wanted to remove his name from North Carolina's ballot. *Id.*, ¶ 43. State Board legal staff would receive this email the next day, August 27. After receiving the correspondence, Mr. Cox sent Ms. Brehm the same information he had

previously sent to another representative of the campaign. *Id.*, ¶ 43-46. Ms. Brehm asked whether the State would reprint ballots if WTP made a removal request, and Mr. Cox referred her to N.C.G.S. § 163-165.3(c) and 08 NCAC 06B .0104, noting that “[u]nder these provisions, if the party wished to change its nominee at this late stage, the State Board would need to determine the practicality of reprinting ballots.” (Bell Aff., ¶ 47 and Aff. Ex. I).

WTP’s executive committee met the following day, on August 28, 2024, and voted four-to-one to request removal of its presidential and vice-presidential candidates from North Carolina’s 2024 general election ballot. (Bell Aff., Aff. Ex. K). On that same day, at 3:11 p.m., the party sent a request to the State Board to remove its candidates from the ballot. *Id.*

Soon thereafter, the State Board scheduled an emergency meeting to be held the following morning, on August 29, 2024, for the Board to consider the party’s request to remove Plaintiff’s name. *Id.*, ¶ 49.

At that meeting, in accordance with state law, *see* N.C.G.S. § 163-165.3(c) and 8 NCAC 06B .0104, the specific issue before the Board was whether removing Plaintiff’s name from the ballot would be “practical,”

given the proximity of the election and the progress that had already been made on ballot preparation. Aug. 29 Bd. Mtg. Recording, 2:39-:46.

Executive Director Brinson Bell briefed the Board on the multilayered and complex ballot preparation and printing process being performed by the county boards in order to meet the September 6 absentee ballot deadline.

Id., 5:01-6:46. The briefing indicated that the process was well underway. *Id.*

Director Brinson Bell told the Board that, according to estimates by the Printelect (the vendor chosen by 93 of the counties for both printing and coding), production and coding had already begun for 80 of its 93 counties.

Id., 6:02-7:18. Sixty-seven had already received their supply of absentee-by-mail ballots. *Id.*, 7:19-:20. Printelect estimated that over 1.73 million ballots

had already been produced and that the cost to reprint ballots for its clients

would be “in the high six figure range.” *Id.*, 7:30-:35; 9:07-:30. The company

further estimated that to reprint and redistribute those ballots would take

twelve to thirteen days, not including the time it would take the State Board

and county boards to prepare the ballots. *Id.*, 8:12-:37.

Director Brinson Bell also explained that removing Plaintiff from the ballot would trigger a complete reproofing of all ballots, a process that

involves both the State Board and county board staff. *Id.*, 8:38-9:04. She also estimated that it would then take an additional one-to-three days to prepare the absentee-by-mail packets, a necessary step that ensures absentee voters have the information and materials required by law to be included with their absentee ballots. *Id.* All told, these delays were certain to delay voting across the State by at least two weeks. *See id.*; *see also* Bell. Aff., ¶ 57.

Director Brinson Bell acknowledged that she was aware of Plaintiff's press conference on August 23 announcing the suspension of his presidential campaign. But she explained that the announcement was not sufficient to justify instructing the county boards to halt the printing of ballots, which had already begun in earnest. Aug. 29 Bd. Mtg. Recording, 16:11-50; 20:54-21:45; 24:16-27:16. As Director Brinson Bell conveyed, without a formal request for removal by WTF or an order from the State Board, she was duty bound to maintain the status quo and continue her work ensuring that county boards could meet the fast-approaching September 6 deadline. *Id.*

Following Director Brinson Bell's briefing, and after receiving input from the State Board's General Counsel, the Board voted three-to-two to deny WTP's request to remove Plaintiff from the 2024 general election

ballot. *Id.* 4:24-:38; 35:43-:58; 39:46-40:15. Specifically, by a vote of three-to-two, the Board found that removing Plaintiff's name and reprinting ballots would not be "practical," the key consideration contemplated in N.C.G.S. § 163-165.3(c) and 08 NCAC. 06B .0104. Aug. 29 Bd. Mtg. Recording, 41:34-43:04; 43:50-44:41; 45:34-47.

Plaintiff filed this suit the following day, on August 30, 2024. He moved for a TRO four days later, on September 3, 2024.

Yesterday, on September 5, 2024, Wake County Superior Court held a hearing on Plaintiff's motion and denied it. The trial court found that Plaintiff would suffer no practical, personal, or pecuniary harm if his name remained on the North Carolina ballot. The court balanced Plaintiff's negligible harm against the irreparable harm that Defendants, county boards of elections, and voters would suffer upon entry of injunctive relief. The court concluded that Plaintiff's injury paled in comparison to these far more significant harms and, on that basis, denied relief.

The trial court ordered Defendants not to distribute absentee ballots before noon today, to give Plaintiff sufficient time to petition this Court for relief. Yesterday, Plaintiff filed a notice of appeal and a motion for a

temporary stay, a motion for a temporary injunction, and a petition for a writ of supersedeas. Defendants filed a response this morning.

Shortly thereafter, the Court of Appeals issued an order allowing Plaintiff's petition and motion and staying the trial court's order denying Plaintiff's temporary restraining order. Order, No. P24-724 (Ex. 4). The Court of Appeals' order directed that the trial court's stay remain in effect until disposition of Plaintiff's appeal or until further order of the Court of Appeals. The court also remanded the case to the trial court, ordering it to "direct[] 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." *Id.*

REASONS WHY THE WRIT SHOULD ISSUE

Under Appellate Rule 23, a writ of supersedeas may issue "to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal." N.C. R. App. P. 23(a)(1). The writ's purpose "is to preserve the [s]tatus quo pending the exercise of appellate jurisdiction." *Craver v. Craver*, 298 N.C. 231, 238, 258 S.E.2d 357, 362 (1979).

In this case, before the Court of Appeals entered its order today, the status quo had been that the trial court's previously entered temporary stay would dissolve at 12:00 p.m. and county boards would have immediately started distributing North Carolina's already prepared and packaged absentee-by-mail ballots. *See* TRO Order, p. 5 (Ex. 3).

In deciding whether to preserve the status quo pending appeal, courts consider whether (1) the appellant can show a likelihood of success on the merits of its appeal and whether (2) irreparable harm will occur absent a stay pending appeal. *See* Elizabeth B. Scherer & Matthew N. Leerberg, *North Carolina Appellate Practice and Procedure* § 23.04; *see also* *N. Iredell Neighbors for Rural Life v. Iredell County*, 196 N.C. App. 68, 78-79, 674 S.E.2d 436, 442-43 (2009) (listing similar criteria for direct appeals from denials of motions to stay pending appeal).

Here, the writ should issue. Defendants are likely to succeed in their appeal of the Court of Appeals' order directing the State Board to distribute North Carolina's ballots without Plaintiff's name appearing as a candidate for President. Plaintiff's claims are meritless. More importantly, Defendants have demonstrated that the Court of Appeals' Order will inflict irreparable

harm upon themselves, the county boards and voters. Plaintiff, by contrast, has not shown that he will suffer *any* “practical, personal, or pecuniary harm should his name remain on the ballot.” TRO Order at 4. Defendants’ petition should be allowed.

I. Defendants Are Likely to Succeed on Appeal.

As an initial matter, a writ of supersedeas should issue because Defendants are likely to succeed in establishing that Plaintiff’s statutory and constitutional claims are meritless.

Plaintiff’s lawsuit alleges that the State Board’s rejection of his request to remove from the ballot violated both North Carolina state and constitutional law. First, Plaintiff argues that state law requires the State Board to allow a candidate to remove himself from the ballot any time before absentee ballots are mailed. Second, Plaintiff argues that retaining his name on the ballot violates his right against compelled speech.

Both of these claims fail. The state law that Plaintiff invokes does not apply in these circumstances. And the state laws that *do* apply are wholly consistent with the State Board’s actions. As for Plaintiff’s constitutional claim, Plaintiff is wrong to characterize the appearance of his name on the

ballot as compelled speech. The appearance of Plaintiff's name on the State's ballot does not force him to say anything at all. Rather, it reflects the kind of ordinary election regulation that courts review deferentially—review that the State Board's decision easily passes here.

A. The State Board Did Not Violate the State's Election Statutes.

Plaintiff's statutory argument is entirely dependent on N.C.G.S. § 163-113. That statute reads:

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 ballots are transmitted to voters . . . , [the] person submits to the board of elections which certified the nomination a written request that person be permitted to withdraw.

N.C.G.S. § 163-113 (brackets in original). According to Plaintiff, this statute means that the State Board is required to remove him from the ballot, because WTP requested that he be removed prior to September 6, when absentee ballots will be mailed.

Plaintiff is wrong. Section 163-113 has zero relevance to WTP's removal request, for at least two reasons. First, as § 163-113 plainly states, that statute applies to people who are "declared the nominee of a political party . . . *under*

the provisions of G.S. 163-182.15 or G.S. 163-110.” (Emphasis added.) At yesterday’s hearing, Plaintiff conceded that he was not declared a nominee under § 163-110. Plaintiff thus must rely on § 163-182.15 to trigger application of § 163-113. But Plaintiff was not “declared the nominee of a political party . . . under the provisions of G.S. 163-182.15” either. Section 163-182.15 addresses certification of a candidate as a party’s nominee by the State or county boards following the canvass of the votes in a primary election. It has nothing to do with the nomination of a presidential candidate through the convention process, the manner in which Plaintiff was selected.

Second, even assuming § 163-113 did apply to candidates like Plaintiff, it still holds no relevance here. Section 163-113 addresses the *withdrawal* of a candidate from an electoral contest. It says nothing about the *removal* of a candidate from the ballot. Candidates who fall within the scope of § 163-113 can decide to abandon their pursuit of elected office, so long as they comply with the statute’s deadline. But whether they will appear on the ballot or not is a different question.

This distinction between withdrawal and removal explains why § 163-113 can set the deadline for *withdrawal* of a candidate as the day before

“military and overseas absentee ballots are transmitted to voters.”

Withdrawal of a candidate can feasibly occur any time before voters begin casting their votes. *Removal* of a candidate from the ballot, by contrast, requires some additional runway before ballots are mailed. Otherwise, the State Board and county boards have no practicable way to revise, reformat, and print ballots to account for late-breaking changes and still meet the ballot-distribution deadlines imposed by state and federal law.

For both these reasons, § 163-113, the lynchpin of Plaintiff’s statutory claim, is entirely irrelevant.

The state laws that *do* address removal of a candidate from the ballot make clear that such decisions fall squarely within the jurisdiction of the State Board. Under state law, the general responsibility for determining the “form and content of ballots” rests squarely on the shoulders of the State Board. More specifically, § 163-165.3(c) authorizes the State Board to “promulgate rules for late changes in ballots.” Those 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.” *Id.* (emphasis added). The most relevant state regulations, in

turn, provide that when a “vacancy occurs before the absentee voting period begins,” the State Board “may determine *whether it is practical* to have the ballots reprinted.” 08 NCAC 06B .0104 (emphasis added).

Under these state laws, the key touchstone for the State Board in deciding whether to make a late-breaking ballot revision is practicality.⁹ Consistent with that standard, the State Board’s focus in resolving WTP’s removal request was whether it would be practical to stop the ballot printing process and start it all over again. Aug. 29 Bd. Mtg. Recording, 2:39-3:46, 41:04-43:04, 43:50-44:41.

The State Board rightly concluded that revising the ballot would be impractical. Plaintiff, for his part, does not seem to seriously dispute that conclusion. And no wonder. By the time WTP requested the removal of Plaintiff from the ballot, the start of absentee voting was nine days away.

⁹ Plaintiff criticizes “practicality” for being an “indeterminate” and “subjective” standard. (Compl., ¶ 1). But it is hardly an unfamiliar one under North Carolina state law. See, e.g., N.C.G.S. §§ 163-82.15(c), -82.16(c), -82.17(c), -165.3(a)(2), (a)(5), (d), -165.10, -166.4(a), and -278.69(a); see also N.C.G.S. §§ 1A-1, Rule 24(a)(2), 7A-2053(f), 7A-49.4(b), 15A-294(i)(1)(b) and (c), 20-16.1(b), 150B-21.1(a)(11), and 150B-21.1A(a). Moreover, “practicality” is a reasonable standard in this context, because it acknowledges the complexities of elections administration and allows consideration of the risks of potential disruptions to the election.

Ninety-eight counties had finalized their ballots and were approved to print them, and around 90 counties' ballots were being printed or had already been printed. (Bell Aff., ¶ 50). Restarting the ballot-preparation process would have delayed voting by at least two weeks, and caused the State Board to violate the legislature's requirement to mail absentee ballots sixty days prior to the general election.¹⁰ In that context, the practicality of making ballot revisions is hardly debatable.¹¹ Though Plaintiff does not seriously dispute the State Board's practicality conclusion, he does make a handful of other counterarguments. Each one fails.

¹⁰ To the extent Plaintiff is arguing that perhaps the State Board could ignore the sixty-day deadline without consequence, Defendants are not aware of the State Board ever having deviated from that deadline absent a separate and express statutory authorization to do so. (See, e.g., Cohen Aff., ¶ 3). And even if the State Board were willing to flout state law (and to be clear, it is not), doing so would still not resolve the many other logistical harms posed by delay.

¹¹ The State Board also rightly concluded that it should prioritize compliance with the statutory deadline that calls for absentee ballots to be distributed sixty days prior to the general election. Compliance with state law is obviously imperative for any governmental entity as a general matter. But North Carolina law also specifically reiterates that the State Board must "exert every effort to provide absentee ballots" by the mandatory state deadline, "[i]n every instance," even when extenuating circumstances arise. See N.C.G.S. § 163-227.10(a).

First, Plaintiff suggests that the State Board should have known before August 28 that he wished to be removed from the ballot and that it could have stopped printing ballots sooner. This argument falls flat. At Plaintiff's August 23 press conference, he made clear that he intended to remain on the ballots in some States and remove himself in others.¹² The State Board would have been acting entirely outside the scope of its authority to unilaterally take action to remove Plaintiff from the ballot based on the assumption that North Carolina might be one of the States where Plaintiff sought to remove himself. After all, for weeks leading up to Plaintiff's August 23 press conference, Plaintiff had been fighting to be *included* on the ballot in this State. The only responsible—or lawful—decision the State Board could make in reaction to Plaintiff's press conference was to wait and see whether WTP would pursue Plaintiff's removal from the ballot in North Carolina. That request ultimately came on August 28, and the State Board held a meeting immediately (on August 29, the next day) in response.

Second, Plaintiff points out that even if WTP did not request his removal until August 28, other individuals inquired into the processes for

¹² See *supra* n.1.

removal. True enough. But state law makes clear that when a political party recognized in this State decides to place a presidential candidate on the State's ballot, it is *the party* that controls who that candidate is and what happens in the event of a vacancy. See N.C.G.S. § 163-209(a). In other words, once a party selects its nominee, the party is in the driver's seat, not the nominee.

In any event, even if the State Board had called an emergency meeting to consider Plaintiff's removal as soon as it received the first outreach (on August 26), it still would have been impractical to remove Plaintiff from the ballot at that point. By 1 p.m. on August 26, "66 counties had their ballots fully proofed and approved, 63 counties had ordered their ballots to be printed, and actual printing had begun for the ballots for over half of all counties. By 5 p.m., around 80 counties had their ballots fully proofed and approved for printing." (Bell Aff., ¶ 38).

Finally, it bears emphasizing that as the State Board was fielding all of the various inquiries regarding Plaintiff's removal from the ballot, it was simultaneously working diligently to prepare the State's ballots and comply with the relevant legal deadlines. Any pause—even a short or temporary

one—threatened to torpedo the State Board’s ability to print and mail ballots in compliance with state and federal law.

Plaintiff insists that the State Board has more “wobble room” than it admits because, in his view, § 163-22(k) affords the State Board flexibility to ignore the General Assembly’s September 6 deadline. Plaintiff misconstrues state law. Section 163-22(k) allows the State Board to delay the distribution of absentee ballots beyond the statutory deadline only if the ballots are “not ready,” presumably because of some extenuating circumstance like a candidate challenge, vendor error or delay, or a natural disaster. It is not at all clear that § 163-22(k) permits the State Board to prioritize revising ballots that *are* “ready” over meeting the deadline the General Assembly has identified. That course of action would run contrary to the specific statutory provision and administrative rule that contemplate that not all late changes to the ballot will be accommodated. *See* N.C.G.S. § 163-165.3(c); 08 NCAC 06b .0104. And it would contravene the legislature’s clear direction to the Board to “exert every effort” to meet the 60-day deadline, “[i]n every instance.” N.C.G.S. § 163-227.10(a).

Faced with the prospect of violating the legislature's clear deadline for mailing absentee ballots, and cognizant of the dozens of counties that had already printed their ballots, the State Board decided it was not practical to throw those ballots out and start over. That decision was lawful, and Defendants will prove as much on appeal.

B. The State Board Did Not Violate the State Constitution.

Plaintiff separately alleges that the State Board's decision not to remove his name from the State's ballot is compelled speech in violation of his right to free speech under the North Carolina Constitution, Article I, Section 14.

Article I, Section 14 provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse." Plaintiff concedes that this provision of the state Constitution should be interpreted in line with U.S. Supreme Court cases interpreting the U.S. Constitution's First Amendment. (Compl., ¶ 66 (citing *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 841 (1993))). Under those cases, Plaintiff cannot prevail on his free-speech claim.

1. The State Board did not compel Plaintiff to speak.

As an initial matter, at yesterday's trial court hearing, Plaintiff seemed essentially to concede that his constitutional claim cannot support entry of injunctive relief. Plaintiff admitted that there are "reasonable" arguments on both sides of the constitutional issue and urged the trial court to focus on his statutory claim. This concession nullifies any possibility that equitable relief can be founded on Plaintiff's constitutional claim. Entry of a writ of supersedeas requires the petitioner to show a likelihood of success on appeal. Plaintiff cannot make such a showing if even he agrees that both sides' arguments are reasonable.

Even apart from this concession, though, Plaintiff plainly will not prevail on his constitutional claim. The State Board's decision denying Plaintiff's removal request is not compelling Plaintiff to say anything. After all, the ballot is not *Plaintiff's* speech: "A ballot is a ballot, not a bumper sticker."¹³ *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1016 (9th Cir. 2002).

¹³ If the names on a ballot constitute speech, that speech either belongs to the government or to the political party who nominated the candidate. A ballot entry could be interpreted as government speech that communicates which candidates have qualified to participate in a given electoral contest

The U.S. Supreme Court has long concluded that “[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 (1997) (rejecting the notion that there is “a right to use the ballot itself to send a particularized message”); *accord Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 452 (2008); *id.* at 461 (Roberts, C.J., concurring) (“[T]he State controls the content of the ballot, which [the Court] ha[s] never considered a public forum” for expression). Rather than compelling speech, the State Board in this case has merely applied a ballot-content regulation that grants it the authority to control the content of the State’s ballot when late changes are impractical.

To the extent that keeping Plaintiff’s name on the ballot affects his speech rights at all, this Court should follow the “ordinary litigation” framework that the U.S. Supreme Court applies when litigants bring free-speech challenges to regulations that “control the mechanics of the electoral

under state law. Alternatively, a ballot entry could be understood as communicating a political party’s view as to the best candidate for a particular office. Either way, the speech does not belong to the candidate him or herself.

process.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995). This framework is based on the U.S. Supreme Court’s decisions in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick*, 504 U.S. at 434, and is commonly referred to as the *Anderson-Burdick* test.

Under the *Anderson-Burdick* framework, to determine whether a state election law unconstitutionally burdens free-speech rights, courts must weigh: (1) the character and magnitude of the asserted injury to those rights, against (2) “the extent to which the regulations advance the state’s interests in ensuring that order, rather than chaos, is to accompany the democratic processes.” *Fusaro v. Howard*, 19 F.4th 357, 368 (4th Cir. 2021); *Buscemi v. Bell*, 964 F.3d 252, 261-62 (4th Cir. 2020). “[W]hen a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’” on First Amendment rights, “the State’s important regulatory interests are generally sufficient to justify the restrictions.” *See Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788). Our State’s laws governing late changes to the State’s ballot are no exception.

2. Any burden on Plaintiff's free-speech rights passes the *Anderson-Burdick* balancing test.

Applying *Anderson-Burdick* here shows that Plaintiff cannot succeed on the merits of his free-speech claim. The State Board's action challenged in this case—finding that it is no longer practical to remove Plaintiff from the 2024 general election ballot—was a reasonable, nondiscriminatory restriction, imposing minimal, if any, burdens on Plaintiff's free-speech rights under Article I, Section 14 of the state Constitution.

As a threshold matter, Plaintiff's own conduct undermines any claim that the State has burdened his speech by continuing to include his name on the ballot. Plaintiff has not abandoned his campaign for President; rather, he has sought to remove himself from the ballot in certain key States. He is still directing voters in other States to vote for him. He is still soliciting campaign contributions. And, in at least two States, he is continuing to fight to have his name *included* on the ballot. *See infra* Part II. In light of these highly unusual facts, Plaintiff is unlikely to establish *any* burden on his speech rights, much less the type of severe burden that *Anderson-Burdick* prohibits.

In any event, for all the reasons detailed above and in the attached affidavits, applying state election law here imposed reasonable and non-discriminatory restrictions on Plaintiff's speech. The restrictions were nondiscriminatory, based not on the content of WTP's or Plaintiff's speech, but rather on Plaintiff's late efforts to remove his name from the ballot. The restrictions were also reasonable, because they reflected the many practical considerations associated with administering a general election where voting was to begin in a little over a week.

Against these modest burdens, there can be no doubt that by denying the request to remove Plaintiff from North Carolina's general election ballot, the State Board advanced North Carolina's legitimate—indeed compelling—interest in ensuring order, rather than chaos, in the 2024 general election and, more specifically, in protecting voters' interests in the timely distribution of absentee ballots.

In short, the State Board's decision, which was fully consistent with state law, readily passes the *Anderson-Burdick* test. The minimal (to nonexistent) burden imposed on Plaintiff by the State Board's decision is strongly outweighed by the compelling state interests that decision

protected. Plaintiff is therefore unlikely to succeed on his free-speech claim under the state constitution.¹⁴

II. Defendants Will Suffer Irreparable Harm Unless a Writ Issues.

Relief from the Court is needed to avoid irreparable harm.

First, as explained at length above, judicial intervention here would inflict significant harm upon the State Board and the county boards. For weeks, the State Board and county boards have been engaged in the work of ballot preparation and production. (Bell Aff., ¶¶ 4-16, 50-56). Thousands of different ballot styles have been carefully formatted to include each of the relevant candidates, and each of those ballots includes Plaintiff's name. *Id.*, ¶ 7. As of Tuesday morning, September 3, all 100 county boards of elections

¹⁴ To the extent the Court may conclude that Plaintiff's burden was severe, triggering strict scrutiny, the State Board's decision here satisfies that level of review. The state interests were compelling, and the Board's action was narrowly tailored to protect those interests. *See generally Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014). This is also true if the Court concludes the proper analysis lies in compelled speech case law and strict scrutiny review is triggered under that analysis.

had finalized their general election ballots, and they planned to begin mailing those ballots this morning.¹⁵ (Bell Aff., ¶ 56).

Because ballot-preparation is now complete, restarting that process would come at a tremendous cost. Some of that cost would be financial—it may cost upwards of one million dollars to remove Plaintiff's name from the ballot. (Bell Aff., ¶ 50e.). But it would also be logistical. As the affidavits submitted with this briefing explain, removing Plaintiff from the ballot does not entail simply deleting a line or two and pressing the print button.

Rather, removing a party and its candidate from the presidential contest means starting anew and reconfiguring the 2,348 different ballot styles that are used across the State, proofing them all again top-to-bottom, printing and delivering them, and assembling new absentee-ballot packages. (Cohen Aff., ¶ 4; Bell Aff., ¶¶ 7, 14-16). And this work must be done by state and county elections officials, whose plates are already overflowing with other elections-related tasks.

¹⁵ As of two days ago, September 4, 2024, the county boards had received 125,500 requests for absentee ballots, of which more than 12,000 were from military and overseas citizen voters. (Bell Aff., ¶ 20).

In addition, denying relief here would result in an almost certain violation of federal law. As Director Brinson Bell explains in her affidavit, if the State Board had ordered Plaintiff's name to be removed from the ballot at its meeting last Thursday, August 29, the State would inevitably have missed the sixty-day ballot distribution deadline that the legislature has imposed and could well have missed the federal deadline. (Bell Aff., ¶ 52). If the Board had ordered reprinting the morning of August 29, the earliest those ballots would have been ready to be mailed out would have been sometime between Wednesday, September 18 and Saturday, September 21. *Id.*

Now, Director Brinson Bell's predictions will inevitably need to be moved back. Even if this Court acts immediately, ballots are highly unlikely to be ready before late September. Under that timeline, the State Board will have failed to meet the deadlines under *both* state *and* federal law, absent a special federal waiver.

Second, not issuing the writ will harm voters. If reprinting is required to take place, the window for voting in this State will constrict by at least two weeks. That outcome runs counter to democracy and counter to the

principle that courts should strive to “minimize disruption to the ongoing election cycle.” *Pender Cty. v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam). By granting Defendants’ supersedeas petition and staying the order below, this Court can ensure that voters have as much of the full window for voting as possible and can receive and return their ballots with full confidence that their votes will be counted.

Plaintiff, too, invoked irreparable harm in support of his arguments below. But Plaintiff’s theories of harm strain credulity. Plaintiff has claimed that “forcing him to stay on the ballot against his will” constitutes serious and irreparable harm. (TRO Motion at 5; Compl. ¶ 88). Yet Plaintiff continues to fight for a place on the ballot in at least two other States,¹⁶ and in his August 23 press conference, continued to encourage citizens across the

¹⁶ On the very same day that Plaintiff filed the present action, he simultaneously 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, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.nysd.621842/gov.uscourts.nysd.621842.54.o.pdf> (last visited Sept. 2, 2024).

nation to vote for him for President.¹⁷ Plaintiff fails to explain why remaining on the ballot in North Carolina is inherently harmful, but appearing on the ballot in New York and Mississippi poses no such harm. At bottom, remaining on a ballot after spending months campaigning to secure such a spot is not a cognizable harm—and it is certainly not the kind of irreparable harm that would warrant an extraordinary intervention into the State’s elections process like the one that Plaintiff was granted in this action.

Voting in North Carolina was supposed to begin today. Our State’s elections officials have gone to admirable lengths to ensure that voters across North Carolina will receive their ballots on time and enjoy the full two months for voting mandated by state law. The petition for a writ of supersedeas should be allowed so voting can begin.

¹⁷ His campaign website still declares that “Yes! Robert F. Kennedy Jr. Is STILL Running for President in 40 States.” Kennedy Shanahan campaign website, available at <https://www.kennedy24.com/donate-aug31> (last visited Sept. 2, 2024).

CONCLUSION

Defendants respectfully request that this Court issue a writ of supersedeas and that it do so with haste.

Respectfully submitted, this 6th day of September, 2024.

/s/ Electronically submitted

Terence Steed

Special Deputy Attorney General

N.C. State Bar No. 52809

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N.C. R. App. P. 33(b) Certification:

I certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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Counsel for State Board Defendants

CERTIFICATE OF SERVICE

I certify that today, I caused the above document to be served on
counsel by e-mail, addressed to:

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This 6th day of September, 2024.

/s/ Electronically submitted
Terence Steed

VERIFICATION

I, Terence Steed, being first duly sworn, verify that the statements in the attached petition are true to the best of my knowledge. I also certify that the documents in the appendix to the petition are true and correct copies of the pleadings and other filings in this case.

This 6th day of September, 2024.

Terence Steed
Terence Steed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

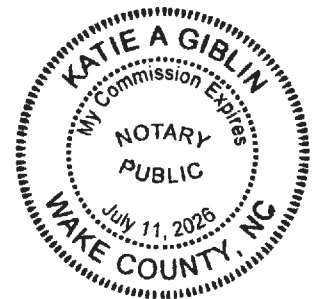
I, Katie Giblin, a Notary Public for said County and State, do hereby certify that Terence Steed personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 6th day of September 2024.

Katie Giblin
Notary Public

My Commission expires: 07/11/2026

[NOTARIAL SEAL]



INDEX TO ATTACHMENTS

1. Affidavit of Karen Brinson Bell;
 - A. Exhibit A – July 1, 2024, We The People (“WTP) Certification of Nominees;
 - B. Exhibit B – Aug. 15, 2024, Notice for Candidates to Democratic Party Officials;
 - C. Exhibit C – Aug. 15, 2024, Notice for Candidates to Republican Party Officials;
 - D. Exhibit D – Aug. 15, 2024, Notice for Candidates to Libertarian Party Officials;
 - E. Exhibit E – June 6, 2024, Inquiry from Biden Campaign and Board Response;
 - F. Exhibit F – Aug. 16, 2024, Democratic Party Certificates of Nomination to Board;
 - G. Exhibit G – Aug. 26, 2024, WTP Presidential Candidate Inquiry and Board Response;
 - H. Exhibit H – Aug. 26, 2024, Kennedy Campaign Inquiry to Secretary of State, Forwarded to Board and Board Response;
 - I. Exhibit I – Aug. 27, 2024, Kennedy Campaign Withdrawal to Board and Board Response with Withdrawal attached;
 - J. Exhibit J – Aug. 27, 2024, Kennedy Campaign follow up regarding Withdrawal to Board and Board Response; and
 - K. Exhibit K – Aug. 28, 2024, WTP Presidential Nominee Withdrawal Request with Withdrawal attached.
2. Affidavit of Gerry Cohen
3. Superior Court’s TRO Order, No. 24CV027757-910 (Sept. 5, 2024)
4. N.C Court of Appeals Order, No. P24-624 (Sept. 6, 2024)

Exhibit 1

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV027757-910

ROBERT F. KENNEDY, JR.,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

**AFFIDAVIT OF
KAREN BRINSON BELL**

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this affidavit and have personal knowledge of the facts set forth herein. I have consulted with senior staff at the State Board in the preparation of this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. I began my career in elections in February 2006, when I worked as a staff member to the State Board of Elections, providing hands-on support to 12 counties in the western part of the state. In 2011, I accepted a position as director of elections for Transylvania County, a

position I held for 4 years. In that position, I directly prepared, proofed, and ordered printed ballots before each of the 7 elections I oversaw. I also oversaw the coding and testing of the ballot tabulators to ensure that the printed ballots would be accurately read and counted by our county's certified voting equipment. And I personally worked with staff to prepare outgoing absentee ballot envelopes for military and overseas citizens and civilian absentee voters who had requested their ballots, which were required to be distributed in the mail starting on a date prescribed in statute for every election. I am deeply familiar with the complicated, layered processes of preparing ballots and mailing absentee voting packages to eligible voters.

Requirements of Ballot Preparation

4. Among the work that I supervise at the State Board is the management of the preparation of ballots for nearly all 100 counties. The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. This includes the preparation and proofing of official ballots, certified vendors printing and delivering those ballots to the county board offices, and county board staff creating outgoing absentee ballot packages for each eligible absentee ballot requester. *See* N.C.G.S. §§ 163-165.3, -229, -230.1(a1) & (c); *see also* 08 NCAC 06B .0103.

5. All of this must be completed prior to the absentee ballot distribution deadline, which is 60 days before a general election, which is this Friday, September 6, 2024, for the upcoming election. *See* N.C.G.S. §§ 163-227.10(a), 163-258.9(a). Federal law requires that absentee ballots for military and overseas citizens be made available no later than 45 days before a general election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I request a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.*

§ 20302(g). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.¹ To my knowledge, North Carolina has never requested such a waiver.

6. The State Board has two staff members who are directly engaged with the county boards of elections in the preparation of their ballots and the software coding of their tabulators. They are also directly engaged with the state’s ballot and voting machine vendors, managing their workflow to guarantee that ballots are accurate and delivered on time, and the tabulator coding is uniform and accurate. The State Board also employs five field support staff, each of whom directly support county boards of elections on a regional basis. And the State Board employs three election administration program specialists, along with an election administration manager. The field support and election administration staff also help proofread (or “proof”) the ballots for all counties. This includes the proofing of all physical ballots and all ballots that are delivered electronically to military and overseas citizens and visually impaired voters—these voters are eligible to receive and transmit their ballots through the State Board’s online portal. All of these staff members, along with staff from all 100 county boards, work long hours for multiple weeks, including many working overtime and weekends, leading up to the state’s ballot distribution deadline, supporting the preparation of ballots and voting equipment for the start of voting.

7. There are 2,348 different ballot styles across the state for the upcoming general election. As defined in our General Statutes, a “ballot style” is: “[T]he version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses

¹ https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf.

essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county’s official ballot containing only those district ballot items one individual voter may vote are the county’s different ballot styles.” N.C.G.S. § 163-165(3).

8. Each one of those ballot styles must be carefully prepared and proofed before it is approved for a print order. This is to ensure that every ballot meets the statutory criteria governing official ballots in our state. In general, these requirements are that all ballots “(1) Are readily understandable by voters[,] (2) Present all candidates and questions in a fair and nondiscriminatory manner[,] (3) Allow every voter to cast a vote in every ballot item without difficulty[,] (4) Facilitate an accurate vote count[, and] (5) Are uniform in content and format, subject to varied presentations required or made desirable by different voting systems.” N.C.G.S. § 163-165.4. More specifically, state law prescribes the content of the ballot, including the composition of the heading, contest titles, names of candidates, party designations, write-in voting lines, voter instructions, and the scanned signature of the county board chair. *Id.* § 163-165.5. State law also dictates the order for contests and candidates to appear on the ballot. *Id.* § 163-165.6.

9. As soon as all content is finalized for a county’s ballots, the work of preparing and proofing the ballots begins. This is a weeks-long process. Beginning in early August, State Board staff began sharing preliminary election coding data with vendors and counties, so they could begin composing their ballot layouts and determine the sizes of their respective ballots. By this time, the vast majority of the ballots’ contents (i.e., the candidates) had already been established. By mid-August, the major outstanding ballot content was the presidential and vice-presidential nominees for the recognized political parties. However, because the agency knew

which parties would have a ballot line for the presidential election, the layout for the ballot styles could be composed, leaving only the candidates' names to be inserted.

10. The Constitution Party's certification of its nominees arrived on July 1, and was given legal effect when the State Board recognized this new political party on July 9. The We The People Party's certification of its nominees, including Plaintiff Robert F. Kennedy, Jr., was received on July 1, 2024, and was given legal effect when the State Board recognized this new political party on July 16. See attached Exhibit A. The Justice for All Party's certification of its nominees also arrived on July 1, and was given legal effect when the State Board recognized this new political party on August 20. The Republican Party's certification of its nominees arrived on July 30. The Democratic Party's certification of its nominees arrived on August 15. Then, on August 21, 2024, the State Board received the final nominees for president and vice president from a recognized political party, the Green Party. Thus, with the ballot content finalized for nearly all of the 2,348 ballot styles across the state, the proofing of those ballot styles began immediately.²

11. Simultaneous with the preparation of ballot proofs, the State and county boards and their voting machine vendors must prepare the coding for the ballots. This involves writing software code to be used in ballot tabulators, to ensure that the selections on the ballot are accurately read by the tabulators. Each oval/square position on a ballot must be properly coded to correspond to the correct contest and candidate on the ballot (or referendum selection). Any changes to the printed ballot must be correspondingly coded into this software. When a change is

² For a handful of ballot styles affecting only a few counties, there were party nomination vacancies that were remaining to be filled until August 22, which is when the State Board instructed the relevant parties that it must get those replacement nominees in order to get those new candidates on the ballot and meet the September 6 absentee ballot distribution deadline. See attached Exhibits B, C, and D. And one municipal candidate challenge, for the small town of Star, in Montgomery County, was pending resolution until August 26, which is when that proceeding concluded.

made to oval/square positions at the beginning of the printed ballot that presents the likelihood that numerous oval/square positions will change further down the ballot. Thus, the removal of a presidential candidate line requires significant changes to the ballot coding, to guarantee that tabulators accurately reflect voter choices in that contest and potentially many others on the ballot.

12. It takes roughly a full calendar week, including overtime and some weekend work, for State and county staff to proof all ballot styles across the state. As soon as ballot styles are proofed, and the proof is finally approved by the county, the ballot printing vendor must conduct a final voting machine test to ensure that the ballot could be accurately read by the certified ballot tabulators, relying on the software coding referred to above. Then, the vendor must package and deliver the printed ballots to each county board of elections.

13. Once the printed ballots arrive at the county board office, staff must assemble the outgoing absentee ballot packages to be sent to eligible voters who have requested absentee ballots. Preparing absentee ballots is a multi-layered process that has little automation. Labels that are affixed to the envelope to those voters who have requested absentee ballots must be printed out of the Statewide Election Information System (SEIMS). The ballot, a return envelope, instructions, a common ID flyer, and a photo ID exception form must all be mailed in the packet that each voter receives. Once the county workers have completed this process they must mail the ballots to the workers. This requires that appropriate postage be applied. Some counties use meter postage while others will apply the stamps to the envelopes before they are entered into the mail. Given the volume of these mailings, county board staff typically must coordinate with the local post office to place the ballots in the mail stream.

14. Preparation of the absentee portal for military and overseas voters as well as visually impaired voters is also a multi-layered process. Once county board of elections staff

have signed off on their final ballot proofs, the ballots are then ready to be imported into the absentee portal. The data for each ballot are extracted from SEIMS and verified against each ballot image (.PDF), and then written as JavaScript Object Notation (JSON) files, which is a file format used by the State's absentee ballot portal vendor, OmniBallot. The JSON files and ballot PDFs are then loaded into the portal system and each county's election configuration must be completed and tested to ensure proper transmission of the correct ballot style to each voter and accurate tabulation of each ballot's votes. Again, for this election that is 2,348 ballot styles. Once they are configured, they are ready to be proofed to ensure all ballot images are aligned with the correct ballot styles. The proofing process is very time consuming. The process began last Thursday and despite valiant efforts from the State Board staff, including working nights, weekends, as well as the Labor Day holiday, as of today (Wednesday, September 4), 26 counties still remain to have their portal ballots configured and proofed.

15. To put it plainly, preparing ballots for a statewide general election is a layered, complex, and lengthy process. As I noted in our Board meeting last week, this is not like pressing copy on a Xerox machine—*very* far from it.

16. As the county boards finalize their ballot proofs, State Board staff post sample ballots corresponding to each ballot style. The sample ballot file corresponding to each voter is linked to that voter's profile through our elections IT system, such that when a voter looks up their registration record at the State Board's online [Voter Search](#), the voter can see their sample ballot. For the general election, all 2,348 sample ballots have already been posted publicly here: <https://dl.ncsbe.gov/?prefix=data/SampleBallots/2024-11-05/>.

Mass Communications to Voters Regarding the Start of Voting

17. The State Board has consistently and repeatedly communicated to the voting public that the start of absentee voting this year is September 6, consistent with state law. The following pages have been posted on our website for months:

a. Our [Upcoming Election](#) webpage provides the following within the “Dates and Deadlines” heading: “Sept. 6, 2024: County boards of elections begin mailing absentee ballots to eligible voters who submitted an absentee ballot request form.” That date has been published on our website since November 7, 2023.

b. Our public Election Calendar includes the following entry for [September 6](#): “**Absentee Ballots Begin Mailing Out | 2024 General Election** . . . Starting Friday, Sept. 6, 2024, the county boards of elections will begin to mail absentee ballots to eligible voters who requested one for the 2024 general election.” This has been on our website since March 11, 2024.

c. Our website homepage, www.ncsbe.gov, has featured the above deadline in recent weeks under the headings “What’s Going On? | Upcoming Voter Dates.”

d. On our webpage titled [FAQ: Military and Overseas Voting](#), it states, “North Carolina sends ballots even earlier for federal elections: 60 days prior to the statewide general election in even-numbered years,” in response to the question, “**When will I get my ballot?**”

e. The State Board also publishes a detailed Election Calendar that is used by county election administrators, political parties, and other groups engaged in the elections process. Since December 2023, that calendar has included the following entry for 09/06/24: “Absentee Voting -Date By Which Absentee Ballots Must be Available and UOCAVA ballots distributed.”

18. The State Board has distributed to the media and posted online the following press releases:

a. An August 2, 2024, press release entitled, “Fact: In NC, if an Election Worker Writes on Your Ballot, It Does Not Invalidate It,” which includes the statement, “The 2024 general election is 95 days away on Nov. 5. The first absentee ballots are expected to be sent out on Sept. 6. In-person early voting runs from Oct. 17 through Nov. 2.”

b. An August 29, 2024, press release entitled, “State Board Determines It Is Too Late to Remove We The People Nominee for President from the Ballot,” which includes the statement, “under state law, absentee ballots must go out by September 6 to voters who have already requested them, including military and overseas voters who may need more time to return their ballots.” It further states, “Staff at the county board then must package those ballots into outgoing absentee ballot envelopes, to be ready to be mailed to voters when the start of voting begins, which is September 6, 2024, for the upcoming election.”

19. The State Board’s press releases and web content are routinely picked up by local, state, and national media, when they report voting information to the public. For example, on Friday, WRAL [published](#) a story titled, “What you need to know to vote in North Carolina,” which included the following lines: “Believe it or not, it’s already that time: The 2024 general election begins this week. The state has begun accepting requests for absentee-by-mail ballots for the Nov. 5 election. And officials will start mailing the ballots on Friday. . . . The state has already begun accepting requests for mail-in ballots. Ballots will be mailed to voters starting Friday.” Yesterday, the Associated Press [published](#) a national story titled, “Ready or not, election season in the US is about to start. The first ballots will go out within days,” which included the

following line: “North Carolina will begin sending mail ballots to all voters who request them, including military personnel and overseas voters, on Sept. 6.” This morning, Fox News [published](#) a story titled, “With 3 days until voting starts, 'election season' kicks off sooner than you think,” which included the following subheading in bold: “Voting begins on Sept. 6 in North Carolina, with seven more battleground states starting that month,” followed by the line, “The first voters to be sent absentee ballots will be in North Carolina, which begins mailing out ballots for eligible voters on Sept. 6.” We did not exhaustively search the media for such statements; there are undoubtedly more.

Absentee Ballot Requests Pending

20. As of the today (Wednesday, September 4), the county boards had received more than 125,500 requests for absentee ballots, of which more than 12,000 are from military and overseas citizen voters. Roughly 10,000 additional absentee requests remain to be processed in our system. Under state law, each of these voters who is eligible to receive their ballot must be sent their ballot this Friday, September 6.

21. In our experience, once the news media reports that absentee voting has started, requests from voters tends to ramp up significantly. When requests come in and are approved, the county boards must promptly transmit ballots to voters who have requested them. Accordingly, between this Friday and Election Day, on a daily basis, the county boards will be reviewing incoming ballot requests and packaging and mailing out blank absentee ballots. This is why the county boards must order significant stocks of absentee ballots for the start of absentee voting. The amount of ballots that are mailed out on the first day of voting is only the tip of the iceberg; the volume of requests and ballot packages to mail out will increase significantly in the coming weeks.

Presidential Elector Election

22. The presidential contest is unique among all contests on the North Carolina ballot, because it is technically an election for presidential electors nominated by political parties. In fact, the mechanism for conducting the election for presidential electors is set forth in an article of our election laws, Article 18 of Chapter 163, which is set apart entirely from the general laws governing elections for local, state, and other federal offices.

23. Legally speaking, the candidates who appear on the ballot are not the officials who are receiving the votes cast for them. Instead, due to the Electoral College provisions of federal and state law, the actual candidates whom North Carolina voters are electing are the presidential electors who are submitted by the recognized political parties pursuant to their nominating conventions (or an unaffiliated candidate who petitioned to get on the ballot, which is not relevant here). General statute section 163-209(a) says:

The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under G.S. 163-96, or nominated [by an unaffiliated candidate], shall be filed with the Secretary of State but shall not be printed on the ballot. . . . In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State, and the name of any [unaffiliated candidate.] . . . *A vote for the 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 whose names have been filed with the Secretary of State.*” (Emphasis added.)

24. Per the statute above, the political parties submit elector candidates to the Secretary of State’s office. The presidential nominees of a political party are not authorized to submit electors. Similarly, the parties are authorized to submit their nominees for president and vice president to appear on the ballot, not the candidates. Although the General Statutes do not address how the parties should submit their candidates for president and vice-president, the State

Board has historically requested that the parties submit a certification of their nominees to the State Board, because it is our agency that is responsible for placing those nominees on the ballot and preparing those ballots. And due to the deadlines in our law for sending absentee and military/overseas citizen ballots beginning the 60th day before the general election, we request that the parties submit these nominees weeks in advance of that ballot distribution deadline.

25. Consistent with the Electoral College provisions discussed above, unlike every other type of candidate who appears on a North Carolina ballot, presidential candidates do not file for office in North Carolina. Instead, the parties certify to the State Board who their nominees are. Even in the presidential preference primary, the political parties submit candidates to be voted on by primary voters; the candidates do not file for ballot access with the State Board. *See* N.C.G.S. § 163-213.4(a) (“No later than 90 days preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board a list of its presidential candidates to be placed on the presidential preference primary ballot.”). This is different from every other primary contest, in which a candidate must file for office with the board of elections having jurisdiction over their contest. *See id.* § 163-106. The results of the presidential preference primary then inform the state political parties how they should allocate delegates to vote in the party’s national convention where presidential nominations are made, but the rules of the political party can instruct delegates to vote otherwise. *Id.* § 163-213.8.

26. Because the statutes authorize only the political parties to nominate presidential electors and presidential candidates (unless the presidential candidates qualify as an unaffiliated candidate, which is not relevant here), the State Board traditionally communicates only with the political parties regarding presidential elector and presidential candidate nominees, not with individual candidates or their campaigns. For example, the State Board legal staff has corresponded with staff at the Republican National Committee only regarding the presence of

that party's presidential and vice-presidential candidates on the North Carolina ballot. Similarly, up until last week when Mr. Kennedy's representatives contacted our agency, our staff corresponded only with the officers of the Constitution Party of North Carolina, the Justice For All Party, and the We The People Party regarding the submission of those parties' presidential and vice-presidential candidates for the ballot. Staff corresponded with officers of the national Green Party regarding that party's presidential and vice-presidential nominee submissions. Our staff did forward communications with the Green Party about candidate submissions to the Jill Stein campaign, upon request, but did not accept (and would not have accepted) official nomination submissions from the candidate or the candidate's campaign. Finally, although a representative of the Biden campaign, and later the Harris campaign, sought to correspond with our staff about the submission of the Democratic Party's nominees for president and vice president, our general counsel made clear that the Democratic National Committee needed to submit official presidential and vice-presidential nominees, not the candidates' campaigns. *See* attached Exhibits E and F

27. As explained earlier in this Affidavit, all recognized political parties submitted their nominees for president and vice president to the State Board through the months of July and August, with the We The People Party submitting its nominees on July 1.

28. Based on information we received from the Secretary of State's office or from the political parties themselves, all recognized political parties submitted their presidential elector candidates directly to that office over the past three months. The last party to do so was the Justice For All Party, which submitted its electors on August 21. The We The People Party submitted its presidential elector candidates to the Secretary of State on July 1. The We The People Party submitted an official request to the Secretary of State on August 28 to withdraw its

candidates for presidential elector, in the same communication in which the party requested that the State Board remove their party's nominees for president and vice-president from the ballot.

Ballot Preparation Status Over the Last Few Weeks and Communications Regarding Kennedy

29. Starting on August 8, 2024, I began to receive pressing messages from the ballot vendor for the majority of North Carolina's counties, Printelect, asking whether ballots would be approved soon so that the company's large print orders from counties across the state could be fulfilled in time for the September 6 ballot mail-out date. The vendor was concerned that the finalization of presidential nominees later in August would make the turnaround difficult for the volume of ballots that needed to be delivered to the counties at the end of the month. I explained to the vendor that the staff at the State Board and the county boards would do their part to meet the statutory deadline to mail ballots, and that we were counting on the vendor to likewise do its part. Of course, we were all planning for the final nominees to be inserted into existing ballot lines during the week of August 19, at the latest. No one was considering the possibility that there would be a request to remove content from every ballot in the state during the final week of August.

30. On the afternoon of Friday, August 23, senior staff and I became aware of news reports that Mr. Kennedy had announced he was suspending his campaign. Those reports noted that he was not ending his candidacy. Instead, he was planning to remain on some states' ballots, and that he would seek to remove his name from unidentified "battleground states." The State Board received no request from the We The People Party to remove or change its presidential nominee that day; nor did it receive any request from Mr. Kennedy. And before that day, neither the We The People Party, the Kennedy campaign, nor Mr. Kennedy contacted our office to determine the timeline for the preparation of ballots in this state.

31. It should go without saying that the State Board of Elections does not have the authority to take action to remove a political party's presidential ballot line without an official request from that party based only on news reports of a press conference given by that party's presidential candidate. It should also go without saying that it would be inappropriate for the State Board to determine for any party or candidate what that party or candidate believes is a "battleground state," such that the Board could assume that it should take action to remove a party's candidate when the candidate says they are seeking to remove themselves from battleground state ballots. Accordingly, as of Friday, August 23, the State Board had no lawful reason to change course with respect to ballot preparations that were already well under way.

32. At the time of Mr. Kennedy's news conference, State Board staff reported to me that 27 counties had already started printing their ballots, and almost all the remaining counties had final proofs of all their ballot styles that were in the process of being approved.

33. Not only did the State Board have no lawful reason to change its ballots when Mr. Kennedy held his press conference, but if the State Board had instructed the counties to pause printing, there was a high risk that many counties would not receive their ballots in time to prepare outgoing absentee ballot packages to meet the September 6 deadline in law.

34. That same Friday afternoon, I sent an email to all county directors of elections, and blind copied the State Board members, to apprise them of the news about Kennedy's press conference and to explain the requirements for preparing ballots by our September 6 deadline. This email was also sent to representatives of the two largest ballot print houses serving our counties and the two certified voting system vendors for our state. I stated:

While media reports indicate that Robert F. Kennedy, Jr., may be suspending his Presidential campaign, we have not received a request from We the People party to remove him as their nominee, and the media is reporting that Kennedy is choosing to remain on the ballot in some

states. It is likely that even if we receive such a request, the State Board would need to consider the removal of a candidate once ballot printing has begun per our administrative code. Therefore, we have no reason to change our course of action. Prevailing at this time is the statutory requirement to send out absentee by mail ballots by September 6, 2024. All counties and State Board staff should continue to proof ballots, place ballot print orders, and proceed with our ballot preparation processes. The voting system and print vendors are being notified of this as well.

35. Numerous media organizations reached out to the State Board regarding Mr. Kennedy's press conference that afternoon. Our public information officer provided the following statement to these media organizations that same afternoon, over the weekend, and early the next week:

Robert F. Kennedy Jr. has been nominated by the We The People Party as that party's presidential candidate to be listed on the ballot. That party has not informed the State Board of any plans to change its nomination.

If We The People officially withdraws his nomination, the State Board would have to consider whether it is practical to remove his name from ballots and reprint ballots at that time. As of Friday afternoon, nearly 30 of 100 counties had started printing ballots in North Carolina.

36. Numerous media outlets published the State Board's statement, including [WRAL](#), [WXII](#), [NC Newsline](#), [Axios](#), and [NPR](#) (whose story has since been updated). We have not done an exhaustive media search for such mentions.

37. By the next day, Saturday, August 24, our largest ballot printing vendor reported that 41 counties' ballots were already being printed.

38. By Monday, August 26, around 1 p.m., 66 counties had their ballots fully proofed and approved, 63 counties had ordered their ballots to be printed, and actual printing had begun for the ballots for over half of all counties. By 5 p.m., around 80 counties had their ballots fully proofed and approved for printing.

39. On Monday, August 26, at 12:09 pm, the vice-chair of the We The People Party, Ryan Rabah, emailed our legal staff, in a message entitled, “We The People – Presidential Candidate Inquiry.” The email noted the recent news about the party’s nominees and sought to inquire about “the possibility of their names being removed from the North Carolina ballots.” Mr. Rabah included a number of questions about the North Carolina law that applied to candidate withdrawal, the party’s role, and any repercussions for the party should the nominee be withdrawn, particularly for the party’s two down-ballot candidates and the party’s ability to remain recognized following the 2024 general election. See attached Exhibit G.

40. The State Board’s general counsel responded to Mr. Rabah later that afternoon at 4:00 pm, answering all of Mr. Rabah’s questions in detail and explaining the following regarding the procedure for the withdrawal of a party’s presidential nominee:

We interpret the presidential elector statutes to require that, for a nominee of a recognized political party, the political party is who notifies the State Board of any changes to its nominee. See GS 163-209(a) (“[T]here shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State.”). There is no statute authorizing a presidential nominee of a party to be the one to authorize a change to a party’s nominee. In any event, your party’s nominee has not submitted a request to withdraw.

See attached Exhibit G.

41. Roughly an hour after sending this message, at 5:08 pm, our general counsel received an email, on which he was copied, from the North Carolina Secretary of State’s general counsel, in which she was replying to an inquiry that was sent by a “senior editor,” Jill Schoff, for a law firm representing Mr. Kennedy’s campaign. Ms. Schoff had written to the Secretary of State’s office “concerning the withdrawal of Robert F. Kennedy Jr. from the ballot in North Carolina,” and “the appropriate steps we need to take.” The Secretary of State’s general counsel copied our agency’s general counsel because, as she noted, Ms. Schoff’s questions about the

procedure for removing Mr. Kennedy from the ballot “fall under the purview of the NC State Board of Elections.” See attached Exhibit H. This was the first message the State Board received from Mr. Kennedy’s representatives regarding any potential withdrawal request.

42. The State Board’s general counsel responded to that message at 5:38 pm. He included the detailed instructions and legal citations that he had provided earlier that afternoon to the We The People Party. See attached Exhibit H, attaching Exhibit G.

43. The next morning, Tuesday, August 27, our general counsel received an email from a State Board staff member who specializes in candidacy questions. Another representative of the same law firm representing Mr. Kennedy, attorney Elizabeth Brehm, had written to the State Board’s general public email inbox, Elections.SBOE@ncsbe.gov, at 5:25 pm the evening before, attaching a signed letter from Mr. Kennedy, stating, “I, Robert F. Kennedy, Jr., the We the People party candidate for the office of President of the United States, hereby request permission to withdraw my candidacy from the 2024 United States Presidential Election in North Carolina and formally request that my name be removed from the general election ballot.” See attached Exhibit I.

44. The letter from Mr. Kennedy was not notarized, but our staff did not question its authenticity. Because the letter was sent to our general public inbox outside the “operating hours” of the agency, *see* 08 NCAC 01 .0101, our intake staff did not see it until the next day, Tuesday, August 27, around 9:30 am. The letter was routed to the legal department at 9:36 am. See attached Exhibit I.

45. The State Board’s general counsel responded to Ms. Brehm’s message at 11:21 am, copying the message he sent the evening before to Ms. Brehm’s colleague stating, “We have received the notice that you sent to our general inbox yesterday at 5:25 pm. I’m resending the message that I sent to one of your colleagues separately around that same time yesterday. For

your awareness, more than half of North Carolina's 100 county boards of elections have begun printing ballots for the general election, given that our absentee voting period begins next Friday." See attached Exhibit I, which attached Exhibit G.

46. Ms. Brehm responded at 11:42 am, stating, "Thank you so much for the email and the update. If the We the Party party [sic] takes action and requests Mr. Kennedy's removal, would that have any effect on his name appearing on any ballots? In other words, is re-printing and/or discretion permitted should the party make the request?" See attached Exhibit J.

47. The State Board's general counsel responded to this latest message at 12:11 pm, stating, "At this point, if the We The People Party requested a change to their nominee, the following provisions of NC election law would become relevant, because ballots have begun to be printed in over half of our 100 counties." He pasted the text of N.C.G.S. § 163-165.3(c) and 08 NCAC 06B .0104. He further wrote, "Under these provisions, if the party wished to change its nominee at this late stage, the State Board would need to determine the practicality of reprinting ballots. This is a decision that would have to be made if the late change occurs any time before September 6, which is the start of the absentee voting period in North Carolina." See attached Exhibit J.

48. The next day, Wednesday, August 28, at 3:11 pm, the We The People Party vice-chair, Ryan Rabah, submitted a request to the State Board to remove its presidential and vice-presidential nominees from the North Carolina ballot. That message was sent to the State Board's legal staff. Mr. Rabah copied the chair of the We The People Party, Ceara Foley, as well as Ms. Brehm, the attorney for the Kennedy campaign. He also copied the legal staff for the Secretary of State and indicated that the party was requesting to remove the "associated presidential electors." See attached Exhibit K.

49. The State Board's general counsel immediately informed the State Board chair of the request, and the chair requested an emergency meeting of the board, to be held the next day. At 3:49 pm on Wednesday, the State Board's general counsel informed all board members of this request and of the chair's call for an emergency meeting. The earliest time all board members were available was 11:30 am on Thursday, which is when the meeting was scheduled.

50. By the time the State Board received an official request from the We The People Party to remove Mr. Kennedy as its nominee on the ballot on the afternoon of Wednesday, August 28, 98 counties had finalized their ballots and were approved to print. Around 90 counties' ballot were being printed or had already been printed. In preparation for the Board meeting, staff gathered additional details on ballot preparations and contingencies if ballots were to be ordered reprinted. By the next morning, staff had determined the following after consultation with the counties' ballot printing vendors, which was communicated to the State Board prior to the meeting:

- a. Printelect, the main ballot vendor, estimated that 80 of the 93 counties they print ballots for had begun production of ballots. Sixty-seven counties would be receiving their absentee ballots by the end of the day.
- b. Approximately 1,730,000 ballots had been printed to date statewide.
- c. At least 1 of the 7 counties using Hart, the main alternative vendor to Printelect, had their ballots ready for printing and may have started that process already.
- d. If ballots were to be ordered reprinted, in Printelect's estimate, the earliest they could have them ready for distribution to the counties would be within 12–13 days of the reprinting order. This does not factor in the time for county and State staff proofing and approval, which staff estimated would take a full calendar week. Once ballots arrived at the counties, the counties would then need 1–3 days to assemble the absentee packets.

e. It is difficult for the vendors to estimate the full costs associated with re-coding ballots, overtime and weekend labor, and shipping and delivery charges (which would be escalated from current rates), but Printelect estimated it would be in the high six-figure range just for the counties they serve.

51. It is also important to note that removing a party and its candidates from the presidential contest presents complications for reconfiguring the ballots. It is more complex than simply revising the text on an existing ballot line—for example, replacing one candidate’s name with another or inserting a candidate’s name where a placeholder had appeared, which is what we typically do when we’re waiting for the last parties to officially certify their presidential nominees. The presidential contest is the first item on the ballot, as shown on any of the 2,348 sample ballots we have posted [online](#). The We The People candidate, Mr. Kennedy, appears second among seven candidates in the presidential contest and a write-in line that follows those candidates.³ To remove the We The People nominee line requires modifying the layout for the entire contest, potentially modifying the layout for the first ballot column, and potentially modifying the layout for other ballot columns and page breaks. We cannot have contests span multiple columns or pages on the ballot. That would not present all candidates “in a fair and nondiscriminatory manner.” N.C.G.S. § 163-165.4(2). Since the presidential contest is first on the ballot, any other item on the ballot would potentially need to move as a result of removing a presidential nominee. As mentioned earlier in this Affidavit, oval/square positions on the ballots will change for multiple candidates and multiple contests, and the voting machine software coding would need to be modified for each of these oval/square positions affected, to ensure that the voter selections on the modified ballots are accurately tabulated. So each ballot style would

³ The candidate order on the ballot was determined by random drawing in December 2023, pursuant to N.C.G.S. § 163-165.6(c). See the State Board’s December 15, 2023, [Press Release](#).

need to be recoded and reproofed, top to bottom, as a result of such a change. This was factored into the estimate from State Board staff and our printing vendor that reprinting ballots would cause a roughly two-week delay in voting, if the reprinting had started last Thursday.

52. Accordingly, if the State Board were to order ballots reprinted at its meeting last Thursday, it would have been impossible to meet the 60-day ballot distribution deadline in state law for civilian, military, and overseas citizen absentee voters. If the Board had ordered reprinting that morning, the earliest those ballots would have been ready to be mailed out would be sometime between Wednesday, September 18 and Saturday, September 21. The federal law ballot distribution deadline for military and overseas citizens requesting absentee ballots is 45 days before the election, which is September 21, 2024. If ballots were reprinted, not only would we be reducing the period of voting in the presidential election from that which is provided in state law, but there was a real risk of us failing to meet the federal law deadline to distribute ballots for military and overseas citizen voters.

53. During our board meeting, one of our board members noted that he had spoken with the boards of elections in Mecklenburg and Wake counties regarding the feasibility of reprinting ballots. *See* State Board of Elections Meeting-20240829.mp4, available [online](#). Mecklenburg is unique in that it was given the budget to purchase nine high-speed ballot printers. It prints all of its absentee-by-mail ballots in house and does not rely on a vendor for the printing and delivery of those ballots. As for Wake, our staff learned after the State Board meeting that the director of elections for that county was not consulted for this inquiry from a State Board member. She reported that, if asked, she would not have said that the Wake County Board of Elections would have been able to get all ballots proofed and reprinted and still meet the statutory deadline of September 6.

54. The State Board does not pay for the printing of ballots; county boards do, using appropriations from their boards of commissioners. The high-six-figure aggregate reprinting costs would be new, unbudgeted costs placed on the counties. I have little doubt that large, wealthy counties would have been able to allocate the additional funds required for the reprinted ballots. In less-wealthy counties, it is far more difficult to locate the funds that would be required to reprint these ballots. As a former director in one such county, I have no doubt that in most counties, existing budgetary priorities of the county commissioners would have to suddenly give way to this new expense for the elections office, if it were ordered.

55. Additionally, staff in small to mid-size counties wear many hats, unlike our largest counties, which have dedicated staff for the absentee-by-mail process. The small to mid-size counties have planned training, tabulator testing, processing of voter registration forms, and other required tasks with the knowledge that ballot proofing and the initial bulk of absentee-by-mail assembling and distribution would occur by September 6. Shifting these steps later into September will conflict with many other processes, which are handled by the same staff who do the absentee-by-mail work as well.

Current Status of Ballot Preparation

56. As of the morning of Tuesday, September 3, all 100 county boards of elections had finalized their general election ballots. At least 92 counties have completely printed their absentee ballots in preparation for mailing to voters in two days. All of these absentee ballots have been delivered to these counties or are currently in transit to be delivered. In all 100 counties, election workers are right now preparing ballot envelopes to send out in two days. As of today (September 4), more than 2,910,000 general election ballots had been printed statewide. This includes ballots for both absentee and in-person voting.

57. If the State Board had ordered ballots reprinted last Thursday, the voting period in our state would have been reduced by at least two weeks from the statutory 60 days, and there was a risk that we would violate federal law by failing to get military and overseas citizen ballots on time. If the Court were to order ballots to be reprinted at this point, the period for voting would be reduced even further, commensurate with every day of delay, and the state would almost assuredly breach the federal law deadline for distributing military and overseas citizen absentee ballots.

58. If the We The People Party had requested to remove its candidate from the ballot a week or two earlier, I suspect we could have revised all ballots and met our state and federal deadlines. It would have been close, since the removal of a presidential ballot line presents more complication than replacing a name, for example. But State Board staff believes we could have pulled it off. In any event, that did not occur. And neither the We The People Party, Mr. Kennedy, nor the Kennedy campaign ever consulted our office regarding the timelines for ballot preparation in this state prior to requesting his removal from the ballot last week. By that time, most counties had already printed ballots with Mr. Kennedy listed as the We The People nominee for president.

This concludes my affidavit.

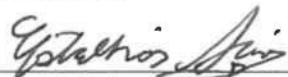
Space left blank intentionally.

This concludes my affidavit.

This the 4th day of September, 2024.


Karen Brinson Bell

Sworn to and subscribed before me this 4 day of September, 2024.


(Notary Public)

My commission expires: 04/26/2028



Exhibit A



July 1, 2024

North Carolina State Board of Elections
Dobbs Building
Third Floor
430 N. Salisbury Street
Raleigh, NC 27603

All:

We The People party hereby certifies the results of the party's convention held on Saturday, June 29, 2024. As President of the State Convention of We The People, the party hereby certifies to the North Carolina State Board of Elections. The Party hereby makes this certification to comply with all statutory requirements for the party to name our candidates for the 2024 general election to be held on Tuesday, November 5, 2024. Despite the Board's failure to qualify We The People prior to the July 1st deadline, the party files this certification to so that when either the Board or the Courts certify the party, all documents will have been filed in a timely manner.

Accordingly, as the President of the North Carolina State Convention of We The People, North Carolina, conducted on Saturday, June 29, 2024, I, Ceara Foley do hereby certify that the following have been nominated and are certified to the North Carolina State Board of Elections for the North Carolina general election ballot to be held on Tuesday, November 5, 2024:

President of the United States

Name: Robert Francis Kennedy Jr.
Name to Appear on the Ballot: Robert F. Kennedy Jr.
Residential Address: 84 Croton Lake Road, Katonah, New York, 10536
Mailing Address: 124 Washington Street, Foxboro, Massachusetts, 02035
Email Address: Legal@teamkennedy.com
Contact Phone Number: 717.961.8978

Vice President of the United States

Name: Nicole Ann Shanahan
Name to Appear on the Ballot: Nicole Shanahan
Residential Address: 271 Dedalera Drive, Portola Valley, California, 94028

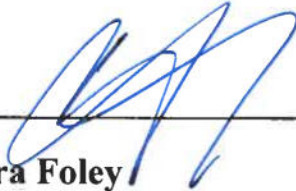
Mailing Address: 124 Washington Street, Foxboro, Massachusetts, 02035
Email Address: Legal@teamkennedy.com
Contact Phone Number: 717.961.8978

North Carolina State Senator (District 40)

Name: Jeffery Scott
Name to Appear on the Ballot: Jeff Scott
Residential Address: 1300 Blueberry Lane, Charlotte, NC 28226
Mailing Address: 1300 Blueberry Lane, Charlotte, NC 28226
Email Address: jeff.scott.nc2024@gmail.com
Contact Phone Number: 510.928.2879

County Commissioner (Rowan County)

Name: MARK FREDERIC ORTIZ
Name to Appear on the Ballot: Mark Ortiz
Residential Address: 155 WANKEL DR, KANNAPOLIS, NC 28083
Mailing Address: 155 WANKEL DR, KANNAPOLIS, NC 28083
Email Address: markortizauto@windstream.net
Contact Phone Number: 704.798.9612



Ceara Foley
State Chair, We The People

Exhibit B

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Thursday, August 15, 2024 10:45 AM
To: Anderson Clayton; Cat Lawson; John Wallace
Cc: Bell, Karen B; SBOE_Grp - Legal
Subject: Outstanding candidacies - Deadline 8/22

Importance: High

Chair Clayton, Cat and John,

I hope you are all well.

With our ballot preparation deadline fast approaching, I'm reaching out to flag the vacancies we currently have for party nominees from the Democratic Party, which are listed below. Two of these are vacancies created when a party nominee resigned, thereby allowing the relevant executive committee to name a replacement nominee under GS 163-114. One is a new contest, however, in Carteret County caused by an officeholder resignation. I'm told the local party is aware of that one.

Carteret
CARTERET COUNTY BOARD OF EDUCATION DISTRICT 01 (UNEXPIRED)
New vacancy – partisan contest

Columbus (also Robeson)
NC HOUSE OF REPRESENTATIVES DISTRICT 046
Edward Squires (DEM) WITHDRAWN, no replacement nominee yet

Hoke (also Moore)
NC SUPERIOR COURT JUDGE DISTRICT 29 SEAT 02
Gregory Thompson (DEM) WITHDRAWN, no replacement nominee yet

If the party plans to submit a nominee for any of these contests, the relevant party organization/committee must certify those nominees to the State or county board of elections having jurisdiction over the contest by next Thursday, August 22. After that time, the county boards will have to print their absentee ballots to prepare for the September 6 start date for absentee voting in North Carolina.

Please let us know if you have any questions.

Best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

Exhibit C

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Thursday, August 15, 2024 10:49 AM
To: Kyle Offerman; Jason Simmons
Cc: Bell, Karen B; SBOE_Grp - Legal
Subject: Outstanding candidacies - Deadline 8/22

Importance: High

Chair Simmons and Kyle,

I hope you are both well.

With our ballot preparation deadline fast approaching, I'm reaching out to flag the vacancies we currently have for party nominees from the Republican Party, which are listed below. Four of these are vacancies created when a party nominee resigned, thereby allowing the relevant executive committee to name a replacement nominee under GS 163-114. One is a new contest, however, in Carteret County caused by an officeholder resignation. I'm told the local party is aware of that one.

Carteret
CARTERET COUNTY BOARD OF EDUCATION DISTRICT 01 (UNEXPIRED)
New vacancy – partisan contest

Franklin (also Granville, Person, Vance)
NC DISTRICT COURT JUDGE DISTRICT 11A SEAT 02
Adam B. Watkins (REP) WITHDRAWN, no replacement nominee yet

Mecklenburg
NC HOUSE OF REPRESENTATIVES DISTRICT 099
Isaiah Payne (REP) WITHDRAWN, no replacement nominee yet

Robeson
ROBESON COUNTY BOARD OF COMMISSIONERS DISTRICT 05
Lynn E. Locklear (REP) WITHDRAWN, no replacement nominee yet

Wake
NC HOUSE OF REPRESENTATIVES DISTRICT 066
Phillip Lin (REP) WITHDRAWN, no replacement nominee yet

If the party plans to submit a nominee for any of these contests, the relevant party organization/committee must certify those nominees to the State or county board of elections having jurisdiction over the contest by next Thursday, August 22. After that time, the county boards will have to print their absentee ballots to prepare for the September 6 start date for absentee voting in North Carolina.

Please let us know if you have any questions.

Best regards,

Paul Cox
General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

Exhibit D

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Thursday, August 15, 2024 12:08 PM
To: Ryan Brown; excom@lpnc.org
Cc: SBOE_Grp - Legal; Bell, Karen B
Subject: Outstanding candidacy - Deadline 8/22

Importance: High

Chair Brown and colleagues,

I hope you are well.

With our ballot preparation deadline fast approaching, I'm reaching out to flag a vacancy we currently have for a party nominee from the Libertarian Party, which is listed below. This is a vacancy created when a party nominee resigned, thereby allowing the relevant executive committee to name a replacement nominee under GS 163-114.

Cumberland
NC HOUSE OF REPRESENTATIVES DISTRICT 044
Christina Aragues (LIB) WITHDRAWN, no replacement nominee yet

If the party plans to submit a nominee for this contest, the relevant party organization/committee must certify the nominee to the county board of elections having jurisdiction over the contest by next Thursday, August 22. After that time, the county boards will have to print their absentee ballots to prepare for the September 6 start date for absentee voting in North Carolina.

Please let us know if you have any questions.

Best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

Exhibit E

From: Andrea Levien <leviena@dnc.org>
Sent: Thursday, June 06, 2024 10:56 AM
To: Cox, Paul
Cc: Varoon Modak; John Wallace; SBOE_Grp - Legal; Bell, Karen B
Subject: Re: [External] Presidential Candidate Certification

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.

Great - thank you, Mr. Cox.

On Thu, Jun 6, 2024 at 8:36 AM Cox, Paul <paul.cox@ncsbe.gov> wrote:

Thank you, Mr. Modak. We'll be anticipating the submissions from the national party.

Ms. Levien, you may address the party's certifications to our Executive Director, Karen Brinson Bell, and copy our legal staff email account. Those email addresses are copied on this email.

For any physical copies, if sending by US mail, please send to NC State Board of Elections, PO Box 27255, Raleigh NC 27611-7255.

If sending by commercial delivery, address it to NC State Board of Elections, Dobbs Building Third Floor, 430 N Salisbury St, Raleigh NC 27603-1362.

Best regards,

Paul Cox

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

www.ncsbe.gov

From: Varoon Modak <vmodak@joebiden.com>
Sent: Wednesday, June 5, 2024 9:07 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Andrea Levien <leviena@dnc.org>; John Wallace <jrwallace@wallacenordan.com>
Subject: [External] Presidential Candidate Certification

You don't often get email from vmodak@joebiden.com. [Learn why this is important](#)

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Mr. Cox,

I'm counsel for the Biden campaign, and I'm also copying here the DNC's legal counsel, Andrea Levien.

John Wallace forwarded on your email regarding the process in North Carolina for a political party to certify its presidential and vice-presidential nominees for the general election - thank you for providing that information.

We're still finalizing the timeline on our end for generating and submitting the necessary certification documents, but anticipate that it will meet the functional deadlines described in your email.

Please let us know if there's any information we can provide in the interim.

Thanks,

Varoon

--

Varoon Modak

Senior Counsel, Biden for President

408-621-9020

Exhibit F

From: Andrea Levien <leviena@dnc.org>
Sent: Friday, August 16, 2024 3:49 PM
To: Cox, Paul
Cc: Bell, Karen B; SBOE_Grp - Legal
Subject: Re: [External] Democratic Party Certification of Nominations of Kamala Harris and Tim Walz

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.

Yes, this is the Democratic Party's official certification of our nominees.

On Fri, Aug 16, 2024 at 10:11 AM Cox, Paul <paul.cox@ncsbe.gov> wrote:

Ms. Levien,

Can you please confirm for our records that these are the official certifications of nomination from the Democratic Party? Normally the party submits its nominees, rather than the candidate's representatives. I have no reason to doubt their authenticity, of course. I just want to be sure we have a clear record that the party submitted these nominees to us.

Thank you,

Paul Cox

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

www.ncsbe.gov

From: Varoon Modak <vmodak@kamalaharris.com>

Sent: Friday, August 16, 2024 9:08 AM

To: Bell, Karen B <Karen.Bell@ncsbe.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>

Cc: Andrea Levien <leviena@dnc.org>

Subject: [External] Democratic Party Certification of Nominations of Kamala Harris and Tim Walz

Some people who received this message don't often get email from vmodak@kamalaharris.com. [Learn why this is important](#)

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Ms. Bell,

Please find attached the official certificates of nomination from the Democratic Party, certifying that Kamala Harris and Tim Walz are the party's nominees for President and Vice President, respectively. A hard copy of this document will follow by mail.

Could you please confirm receipt at your convenience? Thank you for your assistance with this matter.

Varoon

--

Varoon Modak

Senior Counsel, Harris for President

408-621-9020

Exhibit G

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, August 26, 2024 4:00 PM
To: Ryan Rabah; Steele, Adam
Cc: cearafoley@gmail.com
Subject: RE: [External] We The People - Presidential Candidate Inquiry

Mr. Rabah,

I hope you're doing well.

Below are responses to your questions.

1. According to GS 163-113, it appears the candidate must "submit a written request" to "be permitted to withdraw" prior to September 6, 2024. Can you confirm that is the case? Has such a request been submitted?

Under GS 163-113, "[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." This statute does not appear to encompass a party's presidential nominee who was nominated through a convention, which is not a nomination "under the provisions of G.S. 163-182.15 or G.S. 163-110." The statutes addressing recognized party nominees for president/vice-president are:

- GS 163-1(c), which states, "Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors." And
- GS 163-209(a), which states, "The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under G.S. 163-96, or nominated under G.S. 163-1(c) by a candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State, and the name of any candidate for President who has qualified to have his or her name printed on the general election ballot under G.S. 163-122. A candidate for President who has qualified for the general election ballot as an unaffiliated candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of Elections the name of a candidate for Vice-President, whose name shall also be printed on the ballot. A vote for the 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 whose names have been filed with the Secretary of State."

We interpret the presidential elector statutes to require that, for a nominee of a recognized political party, the political party is who notifies the State Board of any changes to its nominee. See GS 163-209(a) ("[T]here shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State."). There is no statute authorizing a presidential nominee of a party to be the one to authorize a change to a party's nominee. In any event, your party's nominee has not submitted a request to withdraw.

2. Assuming the aforementioned request has been or will be made, what is the process and what role, if any, does WTP play?

Per the above, we believe only the party is able to change its nominee. The party would have to determine the process to authorize such a change—presumably in accordance with its bylaws (attached)—and officially communicate any such change to the State Board. At this point, however, the following provisions of NC election law would become relevant, because ballots have begun to be printed in over half of our 100 counties.

GS § 163-165.3. Responsibilities for preparing official ballots.

...

(c) Late Changes in Ballots. - 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. If an official ballot is not reprinted, a vote for a candidate who has been replaced in accordance with G.S. 163-114 will count for the replacement candidate.

...

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible county board of elections, or State Board of Elections if the contests 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. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

Under these provisions, if the party wished to change its nominee at this late stage, the State Board would need to determine the practicality of reprinting ballots. This is a decision that would have to be made if the late change occurs any time before September 6, which is the start of the absentee voting period in North Carolina.

3. If they are removed, when will WTP lose our ballot line? For example, will this impact our current down-ballot candidates?

No, a new political party is not required to have a presidential candidate at all, although the consequences for not having a presidential and gubernatorial candidate are discussed in the next question. Also, once a political party is recognized by the State Board, it is “entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots . . .” GS 163-98. The presence of a presidential candidate, or lack thereof, does not affect the party’s other candidates being on the ballot in this year’s election.

4. If they are removed, what mechanisms or options does WTP have for retaining our ballot line through the 2028 election cycle?

Whether WTP remains an official political party in this state after the general election depends on whether it meets the requirements of GS 163-96(a)(1): “Any 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.” If the party were to have no presidential or gubernatorial nominee in this general election, there would be no way for the party to meet those requirements. Therefore, pursuant to GS 163-97, following the canvass of the general election, the party would “cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Subchapter.” For the 2028 election cycle, the party would then need to petition again to be recognized under GS 163-96(a)(2) or (3).

5. Are there any other issues for WTP related to their potential removal?

I’m not sure what this question is asking, since under no circumstances would your party be “removed” for this year’s general election. For what happens to the party after the general election, see the last item.

Please let us know if you have further questions.

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Ryan Rabah <ryan@ryanrabahlaw.com>
Sent: Monday, August 26, 2024 12:09 PM
To: Steele, Adam <adam.steele@ncsbe.gov>; Cox, Paul <paul.cox@ncsbe.gov>
Cc: cearafoley@gmail.com
Subject: [External] We The People - Presidential Candidate Inquiry

You don't often get email from ryan@ryanrabahlaw.com. [Learn why this is important](#)

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Dear Mr. Cox and Mr. Steele,

I hope this email finds you well. My name is Ryan Rabah, and we have previously corresponded in my role as Vice Chair and Counsel for We The People of North Carolina (WTP). (Our Chair, Ceara Foley, is cc'd on this email.)

I am reaching out regarding recent developments concerning our Presidential Nominees, Robert F. Kennedy Jr. and Nicole Shanahan, and the possibility of their names being removed from the North Carolina ballots. We would greatly appreciate your assistance in clarifying the following:

1. According to GS 163-113, it appears the candidate must “submit a written request” to “be permitted to withdraw” prior to September 6, 2024. Can you confirm that is the case? Has such a request been submitted?
2. Assuming the aforementioned request has been or will be made, what is the process and what role, if any, does WTP play?
3. If they are removed, when will WTP lose our ballot line? For example, will this impact our current down-ballot candidates?
4. If they are removed, what mechanisms or options does WTP have for retaining our ballot line through the 2028 election cycle?
5. Are there any other issues for WTP related to their potential removal?

Your prompt guidance on these matters would be greatly appreciated.

Thank you in advance for your assistance.

Best,
Ryan Rabah, Esq.

RYAN RABAH LAW, PLLC
3020 Prosperity Church Road
Suite I-271
Charlotte, NC 28269
Tel: (980) 263-9293

Exhibit H

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, August 26, 2024 5:38 PM
To: generalcounsel; Schoff Jill
Cc: Brehm Elizabeth; Crowley, Timothy L; SBOE_Grp - Legal
Subject: RE: [External] Re: FW: Kennedy withdrawal from Presidential election - assistance needed
Attachments: RE: [External] We The People - Presidential Candidate Inquiry

Ms. Schoff,

Please find attached an email I sent earlier today to the vice chair of the We The People Party of North Carolina.

Best,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: generalcounsel <generalcounsel@sosnc.gov>
Sent: Monday, August 26, 2024 5:08 PM
To: Schoff Jill <jschoff@sirillp.com>
Cc: Cox, Paul <paul.cox@ncsbe.gov>; Brehm Elizabeth <ebrehm@sirillp.com>; Crowley, Timothy L <TCrowley@sosnc.gov>
Subject: [External] Re: FW: Kennedy withdrawal from Presidential election - assistance needed

You don't often get email from generalcounsel@sosnc.gov. [Learn why this is important](#)

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I was not in the office on Friday and have just reviewed your email. The Department of the Secretary of State is responsible for receiving the list of Presidential electors. Your other questions fall under the purview of the NC State Board of Elections.

As to the presidential electors, Chapter 163 of the North Carolina General Statutes does not specify a process by which electors submitted by a political party or unaffiliated candidate may be withdrawn from the files of the Department of State, where they are a public record. Our office will add your email and any other information the campaign sends showing desire to withdraw their list of presidential electors to our files, however.

Regards,

Ann B. Wall
General Counsel
NC Department of the Secretary of State
Post Office Box 29622
Raleigh, North Carolina 27626-0622
919 814 5400

Good morning Ms. Wall,
I sent the email below on Friday, concerning the withdrawal of Robert F. Kennedy Jr. from the ballot in North Carolina. I'm hoping you may be able to assist us with the appropriate steps we need to take.

Thank you in advance for any guidance you can provide. If you have any questions, please feel free to call my cell at (207) 992-7381.

Sincerely,
Jill Schoff

Jill Schoff, Senior Editor
Siri | Glimstad
745 Fifth Avenue, Suite 500
New York, NY 10151
Main: 212-532-1091
www.sirillp.com

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From: Jill Schoff <jschoff@sirillp.com>
Date: Friday, August 23, 2024 at 4:02 PM
To: elections.sboe@ncsbe.gov <elections.sboe@ncsbe.gov>
Subject: Kennedy withdrawal from Presidential election - assistance needed

Good afternoon,
I'm writing on behalf of Robert F. Kennedy's campaign. As you may have heard, Mr. Kennedy has withdrawn today from the Presidential race.

Could you please let us know the appropriate steps he should take to formally withdraw as the nominee of the We the People party in North Carolina and remove his name from the ballot (if still possible)?

Please let us know:

- The appropriate documentation to send
- whether you need original copies and does it need to be notarized
- what address to send it to
- and whether or not you also need documentation from the vice-presidential candidate and his presidential electors.

Thank you for your time. Should you have any questions, my cell phone is (207) 992-7381.

Jill Schoff, Senior Editor

Siri | Glimstad

745 Fifth Avenue, Suite 500

New York, NY 10151

Main: 212-532-1091

www.sirillp.com

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Exhibit I

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 27, 2024 11:21 AM
To: Brehm Elizabeth
Cc: Holden, Tiffany; SBOE_Grp - Legal
Subject: RE: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Attachments: RE: [External] Re: FW: Kennedy withdrawal from Presidential election - assistance needed; Withdrawal North Carolina_2024_08_26.pdf

Ms. Brehm,

We have received the notice that you sent to our general inbox yesterday at 5:25 pm. I'm resending the message that I sent to one of your colleagues separately around that same time yesterday. For your awareness, more than half of North Carolina's 100 county boards of elections have begun printing ballots for the general election, given that our absentee voting period begins next Friday.

Please let us know if you have any questions.

Best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Holden, Tiffany <tiffany.holden@ncsbe.gov>
Sent: Tuesday, August 27, 2024 9:36 AM
To: Cox, Paul <paul.cox@ncsbe.gov>; Steele, Adam <adam.steele@ncsbe.gov>
Subject: FW: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

Good morning Paul and Adam,

Just received this email regarding Robert F. Kennedy withdrawing from the Presidential contest.

From: SVC_SBOE.Elections <Elections.SBOE@ncsbe.gov>
Sent: Tuesday, August 27, 2024 9:31 AM
To: Holden, Tiffany <tiffany.holden@ncsbe.gov>
Subject: FW: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

Hello Tiffany,

Please see attached document.

Thank you,
Maria

Maria Williams
Training & Operations Coordinator
919-819-6953



From: Elizabeth Brehm <ebrehm@sirillp.com>
Sent: Monday, August 26, 2024 5:25 PM
To: SVC_SBOE.Elections <Elections.SBOE@ncsbe.gov>
Cc: Catherine Cline <ccline@sirillp.com>; Amaryllis Fox <amaryllis@teamkennedy.com>
Subject: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

You don't often get email from ebrehm@sirillp.com. [Learn why this is important](#)

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.

Dear North Carolina Board of Elections:

On behalf of Robert F. Kennedy, Jr., attached please find Mr. Kennedy's withdrawal from the presidential election. Kindly confirm receipt.

Regards,
Elizabeth

Elizabeth A. Brehm, Esq.
Siri | Glimstad
745 Fifth Avenue
Suite 500
New York, NY 10151
Direct: 929-220-2758
Main: 888-747-4529
Fax: 646-417-5967
www.sirillp.com

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745 Fifth Ave, Suite 500, New York, NY 10151
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

VIA EMAIL AND FEDERAL EXPRESS

August 26, 2024

North Carolina State Board of Elections
Third Floor
430 N. Salisbury St.
6400 Mail Service Center
Raleigh, NC 27603-1362
elections.sboe@ncsbe.gov

Re: *Robert F. Kennedy, Jr. Withdrawal from Presidential Campaign*

Dear North Carolina Board of Elections:

I write on behalf of Robert F. Kennedy, Jr. to notify you that Mr. Kennedy is requesting permission to withdraw from the 2024 general election in North Carolina and, therefore, his name should not appear on the ballot as a presidential candidate. Please find attached Mr. Kennedy's withdrawal request (pursuant to Section 163-113 of the North Carolina General Statutes).

If you have any questions or need any additional information, kindly contact me as soon as practicable. Otherwise, please confirm receipt of Mr. Kennedy's withdrawal via email at ebrehm@sirillp.com.

Very truly yours,

Elizabeth A. Brehm
Elizabeth A. Brehm, Esq.
Main: 888-747-4529
ebrehm@sirilp.com

Enc.

Cc: North Carolina State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255

CERTIFICATE OF WITHDRAWAL

I, Robert F. Kennedy, Jr., the We the People party candidate for the office of President of the United States, hereby request permission to withdraw my candidacy from the 2024 United States Presidential Election in North Carolina and formally request that my name be removed from the general election ballot. This election is being conducted by the State of North Carolina and is to be held on November 5, 2024.

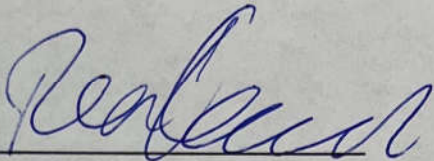

/s/ _____
Robert F. Kennedy, Jr.

Exhibit J

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 27, 2024 12:11 PM
To: Elizabeth Brehm
Cc: Holden, Tiffany; SBOE_Grp - Legal
Subject: RE: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election

Ms. Brehm,

At this point, if the We The People Party requested a change to their nominee, the following provisions of NC election law would become relevant, because ballots have begun to be printed in over half of our 100 counties.

GS § 163-165.3. Responsibilities for preparing official ballots.

...

(c) Late Changes in Ballots. - 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. If an official ballot is not reprinted, a vote for a candidate who has been replaced in accordance with G.S. 163-114 will count for the replacement candidate.

...

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible county board of elections, or State Board of Elections if the contests 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. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

Under these provisions, if the party wished to change its nominee at this late stage, the State Board would need to determine the practicality of reprinting ballots. This is a decision that would have to be made if the late change occurs any time before September 6, which is the start of the absentee voting period in North Carolina.

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Elizabeth Brehm <ebrehm@sirillp.com>
Sent: Tuesday, August 27, 2024 11:42 AM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Holden, Tiffany <tiffany.holden@ncsbe.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election

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Mr. Cox,

Thank you so much for the email and the update. If the We the Party party takes action and requests Mr. Kennedy's removal, would that have any effect on his name appearing on any ballots? In other words, is re-printing and/or discretion permitted should the party make the request?

Regards,
Elizabeth

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 27, 2024 11:21 AM
To: Elizabeth Brehm <ebrehm@sirillp.com>
Cc: Holden, Tiffany <tiffany.holden@ncsbe.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election

You don't often get email from paul.cox@ncsbe.gov. [Learn why this is important](#)

Ms. Brehm,

We have received the notice that you sent to our general inbox yesterday at 5:25 pm. I'm resending the message that I sent to one of your colleagues separately around that same time yesterday. For your awareness, more than half of North Carolina's 100 county boards of elections have begun printing ballots for the general election, given that our absentee voting period begins next Friday.

Please let us know if you have any questions.

Best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Holden, Tiffany <tiffany.holden@ncsbe.gov>
Sent: Tuesday, August 27, 2024 9:36 AM
To: Cox, Paul <paul.cox@ncsbe.gov>; Steele, Adam <adam.steele@ncsbe.gov>
Subject: FW: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

Good morning Paul and Adam,

Just received this email regarding Robert F. Kennedy withdrawing from the Presidential contest.

From: SVC_SBOE.Elections <Elections.SBOE@ncsbe.gov>
Sent: Tuesday, August 27, 2024 9:31 AM
To: Holden, Tiffany <tiffany.holden@ncsbe.gov>
Subject: FW: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

Hello Tiffany,

Please see attached document.

Thank you,
Maria

Maria Williams
Training & Operations Coordinator
919-819-6953



From: Elizabeth Brehm <ebrehm@sirillp.com>
Sent: Monday, August 26, 2024 5:25 PM
To: SVC_SBOE.Elections <Elections.SBOE@ncsbe.gov>
Cc: Catherine Cline <ccline@sirillp.com>; Amaryllis Fox <amaryllis@teamkennedy.com>
Subject: [External] Robert F. Kennedy, Jr. Withdrawal from Presidential election
Importance: High

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Dear North Carolina Board of Elections:

On behalf of Robert F. Kennedy, Jr., attached please find Mr. Kennedy's withdrawal from the presidential election. Kindly confirm receipt.

Regards,
Elizabeth

Elizabeth A. Brehm, Esq.
Siri | Glimstad
745 Fifth Avenue
Suite 500
New York, NY 10151
Direct: 929-220-2758
Main: 888-747-4529
Fax: 646-417-5967
www.sirillp.com

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745 Fifth Ave, Suite 500, New York, NY 10151
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

VIA EMAIL AND FEDERAL EXPRESS

August 26, 2024

North Carolina State Board of Elections
Third Floor
430 N. Salisbury St.
6400 Mail Service Center
Raleigh, NC 27603-1362
elections.sboe@ncsbe.gov

Re: *Robert F. Kennedy, Jr. Withdrawal from Presidential Campaign*

Dear North Carolina Board of Elections:

I write on behalf of Robert F. Kennedy, Jr. to notify you that Mr. Kennedy is requesting permission to withdraw from the 2024 general election in North Carolina and, therefore, his name should not appear on the ballot as a presidential candidate. Please find attached Mr. Kennedy's withdrawal request (pursuant to Section 163-113 of the North Carolina General Statutes).

If you have any questions or need any additional information, kindly contact me as soon as practicable. Otherwise, please confirm receipt of Mr. Kennedy's withdrawal via email at ebrehm@sirillp.com.

Very truly yours,

Elizabeth A. Brehm
Elizabeth A. Brehm, Esq.
Main: 888-747-4529
ebrehm@sirilp.com

Enc.

Cc: North Carolina State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255

CERTIFICATE OF WITHDRAWAL

I, Robert F. Kennedy, Jr., the We the People party candidate for the office of President of the United States, hereby request permission to withdraw my candidacy from the 2024 United States Presidential Election in North Carolina and formally request that my name be removed from the general election ballot. This election is being conducted by the State of North Carolina and is to be held on November 5, 2024.

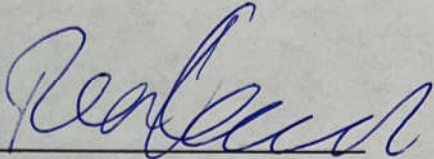

/s/ _____
Robert F. Kennedy, Jr.

Exhibit K

From: Ryan Rabah <ryan@ryanrabahlaw.com>
Sent: Wednesday, August 28, 2024 3:11 PM
To: Cox, Paul
Cc: generalcounsel; Crowley, Timothy L; Elizabeth Brehm; cearafoley@gmail.com; Steele, Adam
Subject: [External] We The People - Presidential Nominee Withdrawal Request *URGENT*
Attachments: WTP Presidential Withdrawal 20240828.pdf
Importance: High

You don't often get email from ryan@ryanrabahlaw.com. [Learn why this is important](#)

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Mr. Cox, et al.,

I am writing on behalf of We The People Party of North Carolina.

Attached please find the Party's formal request for the removal of Robert F. Kennedy Jr. and Nicole Shanahan as candidates for President of the United States and Vice President of the United States, respectively, from We The People's ballot line in the upcoming November election (as well as the associated presidential electors) in North Carolina.

Please confirm receipt and advise as to the process going forward, and if there is anything else needed from the Party to effectuate the requested removal.

Best,
Ryan Rabah, Esq.

RYAN RABAH LAW, PLLC
3020 Prosperity Church Road
Suite I-271
Charlotte, NC 28269
Tel: (980) 263-9293

RYANRABAHLAW
— PLLC —



Presidential Nomination Withdrawal

THIS IS TO CERTIFY that on August 28, 2024, at a duly convened meeting of the Executive Committee of We The People Party of North Carolina, and in accordance with Party Bylaws and applicable provisions of N.C. Gen. Stat. § 163, the Committee has voted in favor (by a vote of 4 - 1) and hereby issues a formal request for the removal of the following candidates (and associated electors) from our ballot line for the upcoming November election:

- **Robert F. Kennedy Jr.** for President of the United States
- **Nicole Shanahan** for Vice President of the United States

Certified by:

Ryan Rabah
Attorney at Law
Vice Chair, We The People of North Carolina
August 28, 2024

Exhibit 2

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV027757-910

ROBERT F. KENNEDY, JR.,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

**AFFIDAVIT OF
GERRY COHEN**

I, Gerry Cohen, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this affidavit and have personal knowledge of the facts set forth herein.
2. I am a member of the Wake County Board of Elections. I was first appointed February 12, 2019, and was appointed to a second term in 2021 and a third term in 2023. I was on the staff of the North Carolina General Assembly from 1977 to 2014. I was a staff attorney 1977-1981, Director of Bill Drafting 1981-2012, and Special Counsel 2012-2014. I was principally responsible for drafting election laws from 1977-1995. I shared responsibility for that 1995-2014, but as Bill Drafting Director was responsible for reviewing all draft legislation. While in graduate school in Political Science at the University of North Carolina in 1971, I successfully lobbied for absentee balloting reform legislation, and as a law student in 1973-1974 worked to draft and review major absentee ballot reform legislation with Professor Rud Turnbull of the UNC School of Government who was counsel to the election laws committee. I worked on absentee ballot legislation through my retirement in 2014. I also served on the Chapel Hill

Town Council 1973-79 where I became familiar with local government budgeting including the Local Government Budget and Fiscal Control Act.

3. In 2012, the 60-day statutory deadline fell on September 7. When the Democratic National Convention in 2012 did not end until September 5, it was physically impossible to mail ballots two days later on day 60, as party nominees were not certified until the end of the convention, although coding had continued assuming renomination of the Democratic ticket. Most counties were able to mail the ballots out about day 53 before the election. To address this situation, the General Assembly passed Section 17(b) of Session Law 2013-381, granting statutory relief to the 60-day presidential year absentee ballot mail-out deadline, which applied when a party's political convention nominated the party's presidential candidate after the 63rd day before the election. *See* N.C.G.S. § 163-258.9(a) ("Provided, in a presidential election year, the board of elections shall provide general election ballots no later than three days after nomination of the presidential and vice presidential candidates if that nomination occurs later than 63 days prior to the statewide general election and makes compliance with the 60-day deadline impossible."). My final drafting on legislative staff on the subject of absentee ballots was my work on this legislation. No thought was given in the legislative drafting process I managed on this new statute that the State Board of Elections had any authority in 2012 to waive the 60-day deadline.

4. There will be 2,348 different ballots used in North Carolina in the 2024 general election. These are commonly known as "ballot styles". Wake County will have 181 different ballot styles, the most of any county in the state. This exceedingly high number is because voters in Wake County are in different districts for U.S. House of Representatives, State Senate, State House, Superior Court, District Court, Wake County Board of Commissioners, and Wake County Board of Education. Simultaneously the City of Raleigh will be having its municipal

election conducted by the Wake County Board of Elections, including city council members in five different districts. The towns of Cary and Zebulon have bond issues on the ballot, which are only given to voters living in those municipalities. Further complicating matters, the City of Durham has had a series of annexations in Wake County, and there are 330 City of Durham voters in Wake County for which the Wake County Board of Elections must provide a ballot style in part of Precinct 08-03 for two City of Durham bond issues on the November 5 ballot. The total of 181 ballot styles reflects all combinations of voters and their districts and municipalities. All 181 ballot styles for Wake County have to be coded, proofed, approved, tested and printed before absentee envelopes can be prepared for mailing out to voters who have requested them.

5. The Wake County Board of Elections began the process of 2024 general election ballot preparation in mid-August of 2024. Tasks included four days of ballot coding, followed by three days of proofing the 181 ballot styles by up to 15 staff members. Each ballot has different coding to reflect all the offices and ballot issues and referenda. Each Wake County voter has approximately 21 to 25 different partisan offices on their ballot, one county-wide non-partisan race, and City of Raleigh voters have four non-partisan offices on their ballot. There is a county-wide bond issue, a constitutional amendment, and voters in three municipalities have bond issues. This programming and coding are so the optical scanners will assign the choices on each ballot to the programmed software that counts the ballots. Any errors in coding would result in errors in tabulation. The ballots were then uploaded to the State Board of Elections to review, following that process they were sent back to the Wake County Elections Director for final approval before programming of our over 275 tabulators and ordering of ballots from our print contractor AlphaGraphics. Ballot coding by Wake County was finished around Friday, August 23 (with state review that weekend).

6. The next process was L&A (Logic and Accuracy) testing required by the state. Wake County received 68,056 ballots marked "TEST" from AlphaGraphics on Tuesday, August 27 and began the L&A process Wednesday, August 28. The test decks of ballots were marked for various pre-determined candidates and run through the over 275 tabulators which had been programmed for the 181 ballot styles to determine if the ballots were correctly coded and the tabulators accurately programmed for the ballots.

7. On Friday, August 30, Wake County received 30,800 blank absentee ballots from AlphaGraphics to be used for the initial round of absentee ballots to be mailed out Friday, September 6.

8. Wake County also ordered from AlphaGraphics an additional 149,600 absentee ballots, these were delivered Tuesday, September 3.

9. The cost to Wake County for the 68,056 test ballots was \$19,454. The cost to Wake County for the two shipments of absentee ballots was \$36,071.

10. The cost of ballot coding and printing is entirely borne by the counties. If Wake County had to scrap the 250,000 ballots already prepared, these would either need to be shredded or retained 22 months under state and federal law. To order new ballots to replace these means that many counties would not have enough money in their FY 2024-25 budget adopted by the respective county board of commissioners to support this expenditure. Under the Local Government Budget and Fiscal Control Act, all expenditures must be pre-audited to ensure there is a sufficient appropriation. Counties might be forced to reduce other expenditures budgeted for the election (likely an impossibility) or seek an additional appropriation from their County Board of Commissioners, a potentially lengthy process.

11. If any ballots were changed, Wake County Elections Staff would have to start the process entirely from scratch, repeating the processes discussed above, including: preparation,

coding and proofing of the ballots (all done sequentially), followed by submission to and review of the 181 ballots styles by the State Board of Elections, followed by tabulator programming and ordering entirely new ballots from AlphaGraphics. The L&A process would have to be conducted again. Only after this process has been completed over several weeks and new ballots are in hand, the ballots must be assembled for mailing, a three-day process based on our volume. Meanwhile we assume thousands of more requests would be received by a new mailout date as the general election approaches. For the initial more than 20,000 absentee ballots to go out September 6, staff are starting the ballot assembly process Tuesday September 3 and should be finished Thursday September 5 for mail-out Friday, September 6.

12. A further time complication with ES&S and printing vendors is that since NC is the first state in the country to start voting on September 6, we were likely not competing with other states for vendors printing capacity, staff and computer time. Many other states start voting September 16-20, and the nationwide UOCAVA mail out deadline is September 21. This could delay the new ballot preparation process even further.

13. On Wednesday, August 28, I personally observed the L&A process as the Express Vote units were tested for the 212 precincts and 22 early voting sites. This is used primarily by voters unable to mark the paper ballot.

14. The absentee ballot mailing preparation process is time-consuming and complicated. A bar code and/or address label is generated for each absentee applicant to be peeled off and applied to the outer mailing envelope. Then the proper one of the 181 ballot styles must be fetched to place in the outer mailing envelope, along with two other envelopes placed inside (inner and outer return envelopes, one of which is bar coded and labeled to allow it to be logged in when the voter returns the ballot). Also to be inserted is a 4-page instruction packet and (new for 2024) a voter ID exception form to be used by voters who do not have ID or cannot

make a copy. As of Wednesday morning, September 4, Wake County has received over 20,000 absentee ballot requests of which over 2,200 are for military and overseas voters and sent as attachments to an email. All of these must be sent out Friday, September 6. Our ballots are scheduled to be picked up at 10 am on Friday, September 6 to be metered and sorted. Then they will be put in the USPS mail stream. The UOCAVA ballots are also scheduled to go out mid-morning on September 6.

15. The absentee ballot mailing preparation process is significantly more complicated than in past general elections with the new requirement for the voter to include a copy of their voter ID in a sleeve on the outside of the inner of the two return envelopes.

16. Beginning at 7:30 a.m. Tuesday, September 3, Wake County had 20 individuals (including 15 packagers, 3 runners, and 2 managers) preparing the absentee-ballot packets to be mailed out as scheduled on September 6. The team can be expanded if needed. They will work from 7:30 a.m. to 7:30 p.m. from September 3 through 5. On September 3, a total of 5,500 absentee ballot packets were completed and are ready to mail on Friday, September 6.

17. It has been widely publicized that ballots begin mail-out on September 6. This has been on the State Board of Elections website for months, and on many county websites (specifically including Wake and Mecklenburg which I checked on September 1), and I have also seen it on political party sites, TV news stories and widely in social media. The 60-day before election absentee start has also been the law over a decade. Voters who have already applied are likely to know this and in my opinion provided addresses where they will be the week of September 10 when the ballots would likely arrive in the voter's mailbox. If the ballot was sent weeks later there are likely many voters who would no longer be at that address. As a further illustration of this point, I am active on a number of social media platforms where I post accurate election information and answer questions. On Saturday August 31 I had this public

exchange on X (formerly Twitter) with user @janepeppler.bsky.social that would have been seen by the recipient and my 8,883 followers on that platform:

Her Q. "My 92 year old ex father in law is in treatment for cancer and it's not going so well. When is the earliest one can receive and fill out an absentee ballot?"

My A. "Assuming he is an NC resident, absentee ballots can be applied for now. Ballots are scheduled to be mailed Friday, Sept 6 so voters whose applications are received by the middle of next week should start receiving them the week of Sept 10. You can DM me for more details."

This concludes my affidavit.

This the 4th day of September, 2024.



Gerry Cohen

Sworn to and subscribed before me this 4th day of September, 2024.


(Notary Public)

My commission expires: 07/05/2026



Exhibit 3

FILED

DATE: September 5, 2024
TIME: 09/05/2024 5:01:39 PM
WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

NORTH CAROLINA BY: S. Smallwood IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION
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

Exhibit 4



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2779
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