23A139
No. 23-5011

In The
Supreme Court Of The United States

Siddhanth Sharma

Plaintiff-Appellant

v.

Damon Circosta, et. al

Defendant-Appellee

On Petition for a Writ of Certiorari
To the United States District Court
Eastern District of North Carolina

MOTION FOR INJUNCTIVE RELIEF, PENDING THE DECISION OF WRIT OF CERTIORARI,

TO THE HONORABLE CHIEF JUSTICE JOHN ROBERTS

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pro se

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QUESTIONS PRESENTED

1.) Does Appellee's (NC Board of Elections) extra requirements of 3 additional requisites of 1.) Being a Registered Voter 2.) Being part of a Political Party for 90 days and 3.) Not being a Felon violate Appellant Sharma's (Applicant) 1st, 14th Amendment Rights, Article I Section 2 Clause 2, Article I Section 4 Clause 1, Article I Section 5 Clause 1, Article VI Clause 2 of the U.S. Constitution to seek Ballot-Access for the 2022 Midterms for U.S. House of Representatives in District 13 of North Carolina to serve in (now currently the remainder of) the 118th Congress, provided he got elected?

2.) Whether the District Court erred in refusing to hold a Special Election for Appellant for U.S. House of Representatives in District 13 of North Carolina for the 2022 Midterms for Appellant to serve in the remainder of the 118th Congress, provided he got elected, by Denying Appellant's Motion for Reconsideration and Preliminary Injunction?

3.) Can a Special Election Still be granted?

PARTIES TO THE PROCEEDING

Appellant Siddhanth Sharma was the Plaintiff in the District Court and Appellant in the Court of Appeals. The NC Board of Elections (NCBOE) were the Defendants in the District Court and Appellees in the 4th Circuit.

STATEMENT OF RELATED PROCEEDINGS

United States District Court for the Eastern District of North Carolina:

Sharma v. Circosta, No. 5:22-CV-00059-BO. Motion for Reconsideration and Injunction filed on 9 February 2023 – Status: Denied on 11 May 2023.

United States Court of Appeals for the 4th Circuit:

Sharma v. Circosta, 23-1535 – Case Pending

RULE 29.6 STATEMENT

Appellant is an individual and does not own any corporate stock.

TABLE OF CONTENTS

CASELAW/TABLE OF AUTHORITIES

STATUTES/RULES

U.S. CONSTITUTION

NC CONSTITUTION

FRCP

Local Rule

Federal Statute:

NC General Statute:

EXHIBITS

Siddhanth Sharma v. Damon Circosta, et al.	Motion for **EMERGENCY INJUNCTIVE RELIEF** Rule 11, 21, 22, 23 28USC1651

INTRODUCTION

Appellant reverently requests this Court for an Injunction to Order Appellees to hold a **Special Election for Appellant to run for U.S. House of Representatives in District 13 of North Carolina against Incumbent Wiley Nickel for the remainder of the 118th Congress**, provided he gets elected.

OPINIONS BELOW

The District Court's Opinion denying Motion for Injunction, and Reconsideration based on new evidence, on 11 May 2023 [13A-17A].

JURISDICTION

This Court retains jurisdiction pursuant to 28USC1651, 28USC2101(e), 28USC1254 and Rule 11, 21, 22, 23.3 of this Court. 28USC2403(b) may apply. Appellant filed a Request for an Injunction to hold a Special Election on 9 February 2023 [94B-125B] in the District Court to which it was **denied** on 11 May 2023. [*see* Appendix A, 13A-17A]. *See* 5:22-CV-00059-BO. *Toth v. Chapman*, 21A457 is identical to Appellant's scenario as applicants sought an injunction from the District Court to the Supreme Court. There was no 3-judge panel. The district court was still proceeding in *Chapman* and the injunction still got filed. The procedure in *Merrill v. Caster*, 21A376 *Caster* was entertained by a *single* District Judge : Anna Monasco. *See* 2:21-CV-1536 (N.D. Ala. January 24, 2022). *Caster* did not appeal to

the Supreme Court as this Court applied *Caster's* Injunction as a Certiorari before Judgment. *See* 21A376. A Certiorari before Judgment is not an appeal. *Milligan*,21A375 was treated as an appeal and Probable Jurisdiction was noted. Appellant has a motion for injunction pending in the 4th Circuit and it has been pending for **over 2 months** – far *too* long. See *Sharma v. Circosta*, 23-1535. The 4th Circuit entertained *Wise v. Circosta*, 20-2104 (4th Circuit) and *Lux v. Judd*, 10-1997 (4th Circuit) in less than 12 days. *Lux* and *Wise* were filed under 4th Circuit Local Rule 27(e) as well as Appellant's. Any motion filed under the 4th Circuit's Local Rule 27(e) is already handled on an expedited basis, thus, there is no point in filing a Motion to Expedite. Appellant should not have to suffer the inaction of a lower court just to be able to file a motion in this Court. By the time the 4th Circuit acts this application will more than likely be moot. This injunction is arguably the only relief Appellant can obtain in case 23-5011. "When, as in this case, 'the normal course of appellate review might otherwise cause the case to become moot,' issuance of a stay is warranted.." *Garrison v.* Hudson, 468 U.S. 1301 (1984).

Under Rule 23.3, this Court would retain jurisdiction as this case falls under the "Extraordinary Circumstances" exception. *See Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983). Other cases that filed injunctions/stays in the District Court and sought stays/injunctions directly to the Supreme Court, while circumventing a Court of Appeals, are: *Brotherhood of R.R. Signalmen v. Southeastern Pennsylvania*, 489 U.S. 1301 (1989) (Brennan J., in chambers); *Atiyeh v. Capps*, 449 U.S. 1312 (1981) (Rhenquist J., in chambers) and *Murdaugh v. Livingston*, A-396 (Rhenquist

J., in chambers November 18th 1998). These cases are still applicable as they were filed under 28USC1651 or Rule 44 from 1980, which is now Rule 23 of this Court.

CONSTITUTIONAL PROVISIONS, STATUTES, ETC. INVOLVED

Appellant would like this Court to rule unconstitutional NCGS 13-1, NCGS 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(a) 106.5(b), 127.3 et seq, 275, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C] as they violate The 1st, 14th, Amendment of the U.S. Constitution, Article I Section 2 Clause 2, Article I Section 4 Clause 1, Article I Section 5 Clause 1, Article VI Clause 2 of the U.S. Constitution [2C-8C] - only pertaining to running for U.S. House of Representatives.

STATEMENT OF THE CASE

- Since this case comes from the North Carolina, pursuant to Rule 22.3, this motion should be given to Chief Justice Roberts as he is Appellant's Circuit Justice.
- The basis for filing the lawsuit in District Court was that in order to run for U.S. House of Representatives, at least in North Carolina, in an addition to being 25 years old, Resident of America for 7 years and an inhabitant of the State, you have to 1.) Be a Registered Voter, 2.) Be affiliated with a political party for 90 days and 3.) Not be a felon. *See* NCGS 163-106, 106.1, 106.5. [21C-25C]. At the time Appellant was an active felon and did not have his voting rights restored. *See* NCGS 13-1, 163-106(e) [13C, 21C-22C]. In North

Carolina attempting to be a Registered Voter while being a felon is a Class I felony. *See* NCGS 163-106, 106.1, 106.5 163-275 [21C-25C, 33C-34C]. Appellant alleged discrimination/disenfranchisement of 1st, 14th amendment rights to run for Federal Office. *See* 5:22-CV-00059-BO. **This Court must *note* that Appellant was in prison when he filed this lawsuit and was not released until 7 December 2022**. One more critical fact that the Court must note is that during the filing of the initial lawsuit Appellant had his legal mail taken by Correctional Officers and had no legal material or references during the filing of the lawsuit and had to rely on his family via telephone for information, which was to little avail. This matter is being debated in a separate lawsuit. *See* 5:21-CT-3311-M.

- Final Judgment was given on 16th May 2022. [1A-12A] on the basis that Appellant to switch from Republican to Independent since there was one day left to register.
- Appellant timely filed a Motion for Reconsideration and Injunction to hold a Special Election. [64B-250B].
- The District Court denied the Motion for Reconsideration and Injunction on 11 May 2023. [13A-17A].
- Petitioner appealed both judgments which is currently pending in the 4th Circuit and the 4th Circuit has yet to rule on the Injunction to Order a Special Election. *See* 23-1535. Appellant filed a Writ of Certiorari pursuant to Rule 11 of this Court. See *Sharma v. Circosta*, 23-5011.

REASONS FOR GRANTING INJUNCITON

PRELIMINARY INJUNCTION

Standard of Review:

To obtain injunctive relief from a Circuit Justice, an applicant must demonstrate that "the legal rights at issue are 'indisputably clear.'" *Turner Broadcasting System, Inc. v. FCC,* 507 U.S. 1301, 1303, 113 S. Ct. 1806, 123 L. Ed. 2d 642 (1993) (Rehnquist, C. J., in chambers) (quoting *Communist Party of Ind. v. Whitcomb,* 409 U.S. 1235, 93 S. Ct. 16, 34 L. Ed. 2d 40 (1972) (Rehnquist, J., in chambers)). "To obtain temporary injunctive relief, a plaintiff must establish that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) injunctive relief is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

1.) LIKELIHOOD OF SUCCESS ON THE MERITS

"The appropriate standard governing constitutional challenges to specific provisions of state election laws begins with the balancing test that the Supreme Court first set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). As the Court put it in its most recent ballot access decision, that test directs that [a] court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth

Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick v. Takushi*, 112 S.Ct. 2059, 2063 (1992) (citations omitted). "Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus paper test" that will separate valid from invalid restrictions. *Storer*, supra, at 415 U. S. 730. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. (citations omitted)." *Anderson* at 789.

A.) BEING A REGISTERED VOTER IS A REQUISTE APPELLEES REQUIRE TO RUN FOR U.S. HOUSE OF REPRESENTATIVES

On the Candidacy Form it requires anyone to be a Registered Voter to run for U.S. House of Representatives, yet NCGS 163-106, 106.1, 106.5(a) [21C-22C,

23C, 25C] says that you can't be a candidate if you are not a Registered Voter. Due to Appellant's status as a Felon and the reality of NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(a) 106.5(b), 127.3 et seq, 275, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C] Appellant has and will be denied as well as penalized for trying to be a Registered Voter [133B] – thus the "Strict Scrutiny" test under *Anderson* is appropriate. This requirement of being a Registered Voter undoubtedly adds an additional qualification to run for U.S. House of Representatives which is mandated in Article 1 Section 2 clause 2 of the U.S. Constitution. As we made clear in *U. S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U. S., at 833-834; see also *Cook v. Gralike*, 531 U.S. 510, 523 (2001).

Kusper v. Pontikes, 414 U.S. 51 (1973) is highly instructive if not identical. In *Kusper* a voter was barred by an Illinois statute that did not allow her to switch parties and forced her to remain in a party for 23 months. The Supreme Court ruled in her favor and ruled the Illinois Statute unconstitutional. Likewise in Appellant's case he intended to run as a Republican Candidate for the 2022 midterms to serve in the 118th Congress, provided he got elected. Yet due to his status as an active felon and the requirement of NCGS 13-1 [13C] he would not regain his voting rights until September of 2023. Therefore he would be forced to wait until the 2024

midterms to run as a candidate for U.S. House of Representatives, due to Appellant's status as a felon. Appellant tried to comply with the statutes and he got denied to become a Registered Voter on account of him being a felon. See [133B]. "*But if they are, in fact, [felons], . . . they, as all other [felons], have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote [or whether the person is a felon] is constitutionally impermissible.*" *Blumstein* at 355. "*Section 1971(a)(1) provides that "[a]ll citizens of the United States who are otherwise qualified by law to vote . . . shall be entitled and allowed to vote at all . . . elections, without distinction of race, color,* ***or previous condition of servitude*** *. . . .the prohibitions of § 1971 encompass practices which have only an indirect effect on the worth of a citizen's vote in addition to those which directly affect the ability to cast a vote.*" *Washington v. Finlay*, 664 F. 2d at 926.

Appellant fails to see the logic of becoming a Registered Voter if he is the candidate to be voted in. "*The registration requirement has a discriminatory effect. It bars persons who are not registered voters from [running for U.S. House of Representatives], thereby excluding that group of persons from participating in core political speech. See Meyer, 486 U.S. at 421-22, 108 S.Ct. at 1891-92. The mandatory exclusion of unregistered [voters/candidates] also limits the number of voices to convey the proponent's message, limiting the audience the proponents can reach. Consequently, we apply exacting scrutiny. [Appellees] fail to identify a compelling state interest to which its registration requirement is narrowly tailored. Because*

[Appellees'] requirement that [candidates for U.S. House of Representatives] be registered voters is not narrowly tailored to a compelling state interest, we find it unconstitutionally impinges on free expression and reverse the district court." *American Constitutional Law Found. v. Meyer*, 120 F.3d 1092, 1100 (10th Cir. 1997). *"The requirement that [candidates for U.S. House of Representatives] be not merely voter eligible, but registered voters, it is scarcely debatable given the uncontested numbers decreases the pool of potential [candidates] as certainly as that pool is decreased by the prohibition of [candidates]. Both provisions 'limi[t] the number of voices who will convey [the initiative proponents'] message' and, consequently, cut down 'the size of the audience [proponents] can reach.'"* *Meyer*, 486 U.S., at 422, 423. In Appellant's case, as in *Meyer*, the requirement "imposes a burden on political expression that the State has failed to justify." Id., at 428. See *Buckley v. American Constitutional Law Foundation, Inc.* 525 U.S. 182, 194-95 (1999). *"The ease with which qualified voters may register to vote, however, does not lift the burden on speech at petition circulation time. Of course there are individuals who fail to register out of ignorance or apathy. See post, at 219-220. But there are also individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression."* *Buckley* at 195-96.

In *Meyer v. Grant*, 486 U.S. 414 (1988) the Supreme Court ruled that it was unconstitutional to criminalize pay to Petition Circulators. Likewise it is unconstitutional to criminalize the right to vote as it relates to being a requisite to run for U.S. House of Representatives. *"The statute burdens such speech in two*

ways: First, it limits the number of voices that will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of necessary signatures, thus limiting their ability to make the matter the focus of statewide discussion." Meyer v. Grant at 414. "*Unquestionably, whether [Appellant] should be [able to seek Ballot-Access] in [North Carolina] is a matter of societal concern that [appellant] has a right to [pursue] publicly without risking criminal sanctions. 'The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.' The First Amendment 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" Meyer v. Grant* at 421. "The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Anderson* at 786.

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied.' . . ." *Blumstein* at 341. "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty. *Dunn v. Blumstein*, 405 U.S. at 405 U. S. 343. 'Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' *NAACP v. Button*, 371 U.S. [415], 371

U. S. 438 [(1963)]. Moreover, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Sweezy v. New Hampshire, 354 U. S. 234, 354 U. S. 250 (1957); see *NAACP v. Button*, 371 U. S. 415, 371 U. S. 431 (1963). *Cousins v. Wigoda*, 419 U.S. at 487-488. "*The freedom of association protected by those Amendments includes partisan political organization. [NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution] places limits upon the group of [felons] whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association.*" *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 213-217 (1986).

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Anderson* at 801.

Appellant requests that the Court rule that NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq, 275, Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C], violates the 1st , 14th amendment,

Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution [2C-8C] as it pertains to running for U.S. House of Representatives.

B.) DEFENDANTS REQUIRE THAT CANDIDATES BE AFFILIATED WITH A POLITICAL PARTY FOR A 90-DAY PERIOD

Being affiliated with a political party for 90 days is another sophisticated and pernicious attempt to deny Appellant Ballot-Access which even applies to non-felons. *See* NCGS 163-106.1 [23C]. In order to be affiliated with a Political Party for 90 days: you have to be a Registered Voter. See NCGS 163-106, 106.1, 106.5(b) [21C-23C, 25C]; however felons can't be Registered Voters, thus NCGS 13-1, NCGS 163-275 and Article VI Section 2 Clause 3, Article VI Section 8 of the NC Constitution take effect [13C, 33C-34C, 9C-10C]. Due to Appellant's status as a Felon and the reality of NCGS 13-1, NCGS 163-106, 106.1, 106.5, 163-275 [13C, 21C-25C, 33C-34C] Appellant has and will be denied access to the ballot for U.S. House of Representatives– thus the "Strict Scrutiny" test under *Anderson* is appropriate.

Dunn v Blumstein, 405 U.S. 330 (1972) is highly persuasive if not identical here. In *Blumstein* a Tennessee law required residents to wait 15 months before they can vote and anybody who traveled outside of their districts would also have to wait 15 months. *Blumstein* at 330-331. Similarly in North Carolina for a person to run for Federal Office Defendants require that a candidate be affiliated

with a political party for 90-days to appear on the ballot. "The State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be knowledgeable about congressional, state, or even purely local elections." *Blumstein* at 358. In North Carolina it does not make sense to deny a felon the right to vote nor make a person affiliated with a political party for 90 days, just so that they can run for U.S. House of Representatives – that is an issue for voters to decide : not the government. Whether felon or not this 90 day requirement denies Ballot-Access. "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty." *Blumstein* at 343.

Appellees responding to the Initial Complaint [22B-26B] said that these restrictions are to ensure that only "serious candidates" appear on the ballot. A matter of how "serious" a candidate is, **is a matter for voters : not the government**. "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by [only allowing 'serious candidates' on the ballot] must be viewed with some skepticism." *Anderson v. Celebrezze*, supra, at 798. "Even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S., at 123-124. See also *Tashjian* at 224. "It is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint,

associational preference, or economic status." *Anderson* at 793. Even the District Court did not find Appellee's argument persuasive [10A].

"Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. [415], 371 U. S. 438 [(1963)]. *Anderson* at 806. "The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters." *Lubin v. Panish*, 415 U. S. 709, 415 U. S. 716 (1974)."The pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State." *Anderson* at 795."There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments. (citations omitted). The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. *Williams v. Rhodes*, 393 U. S. 23, 393 U. S. 30." *Kusper v Pontikes*, 414 at 56-57 (1973).

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Anderson* at 801.

Appellant requests that the Court rule that NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq, 275, Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C], violates the 1st , 14th amendment, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI

Clause 2 of the U.S. Constitution [2C-8C] as it pertains to run for U.S. House of Representatives.

C.) APPELLEES DENY FELONS FROM COMING ON THE BALLOT

A close reading of NCGS 163-106(e) shows that the no-felony requirement even applies to Federal Office as it clearly mentions NCGS 163-106.2 [24C]. When reading these statutes *in pari materia* with NCGS 163-106.5 [25C] and Article 6 Section 2 Clause 3 and Article 6 Section 8 of the North Carolina Constitution [9C-10C] there is no doubt felons are banned from coming on the ballot for Federal Office. This undoubtedly adds an additional qualification for U.S. House of Representatives than what is mandated in Article 1 Section 2 Clause 2 of the U.S. Constitution. As we made clear in *U. S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U. S., at 833-834; see also *Cook v. Gralike*, 531 U.S. 510, 523 (2001). This is the State dictating electoral outcomes and by seemingly saying that until Appellant is no longer a "wretched individual," at least to the Government's eyes, he is not allowed on the ballot. This is clearly the government devising a sophisticated and pernicious way to violate Federal Constitutional Rights. To deny a felon ballot access is no different than denying ballot-access based on one's ethnicity.

Carrington v. Rash, 380 U.S. 89 (1965) is identical to the situation at present. In *Carrington* the Texas constitution denied active servicemembers of the military from voting at all. See *Carrington* at 89-91. Article VI Section 2 Clause 3 of the NC Constitution [9C] denies felons the right to vote – even those who are paroled; Article VI Section 8 of the NC Constitution [10C] denies felons from running for office. There is no doubt that Appellees require that Appellant be a Registered Voter via NCGS 163-106, 106.5 [21C-22C, 25C] to apply for candidacy for Federal Office and due to Appellant's status as a felon he cannot exercise his right to run for U.S. House of Representatives due to NCGS 13-1, 163-106(e), 275 [13C, 21C-22C, 33C-34C]. Just like how the NC Constitution denies active felons the Right to vote is the same way the Texas Constitution denied active military servicemen the Right to vote. Appellant sees no distinction from *Carrington* and the case *sub judice*. The requirement of not being a felon, NCGS 163-106(e) [21C-22C], seems to say that until the government believes that Appellant is no longer a "wretched individual" he cannot run for Federal Office. "*But if they are, in fact, [felons], . . . they, as all other [felons], have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote [or whether the person is a felon] is constitutionally impermissible.*" *Blumstein* at 355. "*Section 1971(a)(1) provides that "[a]ll citizens of the United States who are otherwise qualified by law to vote . . . shall be entitled and allowed to vote at all . . . elections, without distinction of race, color,* ***or previous condition of servitude*** *. . . .the prohibitions of § 1971 encompass practices which have only an*

indirect effect on the worth of a citizen's vote in addition to those which directly affect the ability to cast a vote." Washington v. Finlay, 664 F. 2d at 926.

To make matters more serious it is a Class I felony for a felon to vote, let alone come on the ballot. *See* NCGS 163-106(e), 275 [21C-22C, 33C-34C]. The criminalization for felons to vote is no stranger in North Carolina as this has happened to several individuals. *See* "Alamance 12" https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html and "The Hoke County Case[s]" https://www.theguardian.com/us-news/2020/jul/21/voting-arrest-racist-law-north-carolina-lanisha-brachter as well as "Statistical Proof" **https://www.wfae.org/politics/2020-10-13/what-to-know-about-illegal-voting-in-north-carolina** and the "Board's Response" **https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-26_Court%20Order%20re%20Certain%20Felons.pdf ; https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf** [209B-242B]. Appellant has even been denied to be a Registered Voter on account of him being a felon. *See* [133B]. Therefore Appellant wouldn't be able to meet the statutory qualifications enunciated in NCGS 163-106, 106.5 [21C-22C, 25C] and would be denied access to the ballot – and even penalized for trying. Appellant has been to prison and is not trying to go back on account of him exercising a Federally Protected Constitutional Right. "It has long been established that a State may not impose a penalty upon those who exercise a right

guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied.' . . ." *Blumstein* at 341. "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty. *Dunn v. Blumstein*, 405 U.S. at 405 U. S. 343. Appellant requests that the Court rule that NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq, 275, Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C], violates the 1st , 14th amendment, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution [2C-8C] as it pertains to running for U.S. House of Representatives.

D.) THE PROBLEM WITH RUNNING AS AN UNAFFILIATED CANDIDATE

Appellees in their Brief to the Initial Complaint in the District Court recommended that Appellant could still file as an Unaffiliated Candidate [16B, 26B, 28B] to which the District Court agreed [10A-11A]. Appellees and the District Court seem to believe that "just being on the ballot" while sacrificing the party one chooses to run on, is perfectly constitutional. Appellant disagrees. Both Appellees' and the District Court's analysis seem to say: "If you want to appear on that ballot for *Federal Office* you got to sacrifice the party you intend to run on." "*In assuming that a signature-gathering process was the only available remedy, the courts below gave too little recognition to the [Statute] passed by the [North Carolina] Legislature*

making that very process unavailable to independent candidates for the office of [U.S. House of Representatives]. In taking that action, the [North Carolina] Legislature provided no means by which an independent [U.S. House] candidate might demonstrate substantial voter support. McCarthy v. Briscoe, 429 U.S. 1316, 1322. "For the candidate himself, it would mean undertaking the serious responsibilities of [independent] party status . . . such as the conduct of a primary, holding party conventions, and the promulgation of party platforms. But more fundamentally, the candidate, who is by definition a [partisan Republican] and desires to remain one, must now consider himself a[n] independent man, surrendering his [partisan] status. Must he necessarily choose the [independent] route if he wants to appear on the ballot in the general election? We think not." *Storer v. Brown*, 415 U.S. 724, 745-746 (1974).

Even if Appellant chose to go the Unaffiliated Candidate route he would *still* be denied on the ballot because he would still have to become a Registered Voter and not be a felon. *See* NCGS 163-106(e), 122 [21C-22C, 26C-28C]. Due to Appellant's status as a Felon he would be denied to become a registered voter and even penalized. *See* NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(a) 106.5(b), 275, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C]. The District Court contradicts itself in finding that Appellant would suffer future harm but still must file for candidacy [10A-11A] – essentially the District Court would induce Appellant to commit a Class I Felony just to have

standing. *See* NCGS 163-106(e), 275 [21C-22C, 33C-34C] ; *see also* Subsection E. *infra*. What is perplexing about the District Court's reasoning is that NCGS 163-106(e) [21C-22C] even mentions that it applies specifically to Unaffiliated Candidates who seek office via NCGS 163-122 [26C-28C]. The Unaffiliated Candidate route is only a pernicious method to keep Appellant off the Ballot, due to his status as a Felon, only to try again 2 years later, as Appellees said [16B]. This would be an intolerable result that violates the progeny of *Kusper v. Pontikes,* 414 U.S. 51 (1973).

The District Court ruled that Appellant's claim was not ripe due to the ability to run as an Unaffiliated Candidate [10A-11A]. If Appellant ran as an unaffiliated candidate he would have said so: but instead Appellant chose to run as a REPUBLICAN, to even which Appellees acknowledged [2B, 18B, 19B], and the filing date closed 4 March 2022, thus, making Appellant's matter Ripe for Disposition. More problems that arise for recommending Appellant to run as an Unaffiliated Candidate is that in North Carolina there is a semi-closed blanket primary: meaning that an unaffiliated voter could vote for either a Democrat or Republican but a Democrat/Republican voter can NOT vote for an Unaffiliated Candidate; not only would that syphon away Appellant's votes and confuse his constituents but Appellant would lose endorsements due to running as an Unaffiliated Candidate. Because the right to run for office is dependent upon the right of association, a candidate bringing a right-to-run claim must allege that "by running for Congress he was advancing the political ideas of a particular set of

voters." *Newcomb v. Brennan*, 558 F. 2d 825, 828 (7th Cir. 1977). "*On this point 'even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the [Republican] Party [simply because there was time to run as a different party].' Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U.S. at 123-124 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. 'And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational [or simply because there was time to run as a different party].*' Id. at 450 U. S. 124." *Tashjian* at 224.

The District Court's recommendation that Appellant run as an Unaffiliated Candidate not only conflicts with precedent but was/is unfair. The reason being that the District Court gave its Order on 16 May 2022 and the primaries were to begin on 17 May 2022 the next day, thus, the hurdles to get the amount of signatures in less than a day would be physically impossible for anybody. *See* NCGS 163-122 [26B-28B]. The District Court by recommending that Appellant switch from a Republican to an Independent just to have standing is a violation of Appellant's 1st and 14th amendment [6B, 7B, 8B] rights by allowing the government to choose the candidate when it should be the people.

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Anderson* at 801.

Appellant requests that the Court rule that NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq, 275, Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C], violates the 1st , 14th amendment, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution [2C-8C] as it pertains to running for U.S. House of Representatives.

E.) STANDING REQUIREMENTS

The District Court contradicts itself in finding that Appellant would suffer future harm but still must file for candidacy [10A-11A] – essentially the District Court would induce Appellant to commit a Class I Felony just to have standing. *See* NCGS 163-106(e), 275 [21C-22C, 33C-34C]. What is perplexing about the District Court's reasoning is that NCGS 163-106(e) [21C-22C] even mentions that it applies specifically to Unaffiliated Candidates who seek office via NCGS 163-122 [26C-28C].

The Fourth Circuit "along with several other circuits-has held that ' standing requirements are somewhat relaxed in First Amendment cases,' particularly regarding the injury-in-fact requirement." *Davison v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019), as amended (Jan. 9, 2019) (quoting *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013)). Here, Appellant alleges (1) he has a First Amendment right to run for U.S. House of Representatives, (2) a North Carolina statute[s] and part of the NC Constitution prevents him from filing candidacy infringes on that right, and

(3) he seeks declaratory and injunctive relief. Therefore, Appellant "must establish an ongoing or future injury in fact." *Kenny v. Wilson*, 885 F.3d 280, 287-88 (4th Cir. 2018) (citing *O 'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

The Supreme Court has recognized that an Article III injury may be sufficient for standing purposes by the threatened enforcement of a law. Appellant meets this very component by NCGS 13-1, NCGS 163-275 [13C, 33C-34C] and *Susan B. Anthony List*, 573 U.S. at 158-59. "When an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." Id. at 158 (citing *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ('[I]t is not necessary that [a plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights.')). The Supreme Court has 'permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent'; specifically, the Court has 'held that a plaintiff satisfies the injury- in-fact requirement where he alleges [1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [2] there exists a credible threat of prosecution thereunder.'" Id. at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

Regarding the second part of the Babbitt standard, "there is a credible threat of future enforcement so long as the threat is not ' imaginary or wholly speculative,' ' chimerical,' or ' wholly conjectural.'" *Kenny*, 885 F.3d at 287-885 (citing *Babbitt*, 442 U.S. at 302, *Steffel*, 415 U.S. at 459, and *Golden v. Zwick/er*, 394 U.S. 103, 109

(1969)). " [P]ast enforcement against the same conduct is good evidence that the threat of enforcement is not chimerical." Id. at 288 (quoting *Susan B. Anthony List*, 573 U.S. at 164). The enforcement of NCGS 163-275 and NCGS 13-1, to which Appellant is facing right this very moment, **has happened before**: see "Alamance 12" https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html and "The Hoke County Case[s]" https://www.theguardian.com/us-news/2020/jul/21/voting-arrest-racist-law-north-carolina-lanisha-brachter as well as "Statistical Proof" **https://www.wfae.org/politics/2020-10-13/what-to-know-about-illegal-voting-in-north-carolina** and the "Board's Response" **https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-26_Court%20Order%20re%20Certain%20Felons.pdf ; https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf** [209B-242B]. Threat of prosecution is especially credible when defendants have not "disavowed enforcement" if plaintiffs engage in similar conduct in the future. Id.; see also *Susan B. Anthony List*, 573 U.S. at 166; see also Appellee's Response to Initial Complaint [9B-13B, 20B-30B]. Furthermore, there is a presumption that a "non-moribund statute that facially restricts expressive activity by the class to which the plaintiff belongs presents such a credible threat." *Kenny*, 885 F.3d at 288 (quoting *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 710 (4th Cir. 1999)). "This presumption is particularly

appropriate when the presence of a statute tends to chill the exercise of First Amendment rights." Id.

It is undisputed that on February 7, 2022, Appellant timely filed a lawsuit alleging that defendants are imposing 3 additional qualifications which bar Appellant from running for Federal Congress. Due to Appellant's status as a felon pursuant to NCGS 13-1, NCGS 163-106, 106.5, 275, [13C, 21C-25C, 33C-34C] Appellant would not only be barred from seeking candidacy for U.S. House of Representatives but would also get arrested in the process. Under the statute, Appellant would be in jail for exercising a 1st amendment right. Thus, on February 7, 2022 when Appellant filed this lawsuit, Appellant faced a "future injury in fact" that was "certainly impending, or there was a substantial risk that the harm would occur." *See Susan B. Anthony List*, 573 U.S. at 158. Moreover, under *Babbitt*, Appellant established the first prong by showing he sought candidacy in the U.S. House of Representatives for the 2022 election, which implicates the First Amendment' s freedom of association, including "the rights to run for office, have one's name on the ballot, and present one's views to the electorate." *Washington v. Finlay*, 664 F.2d 913, 927-28 (4th Cir. 1981); cf *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) ("The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot ... "). NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(a) 106.5(b), 127.3 et seq, 275, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C] prevent

Appellant from running for U.S. House of Representatives due to his status as a Felon.

Appellant has also demonstrated the second prong of the *Babbitt* standard. Appellant would be arrested had he filed his notice of candidacy, he was subject to NCGS 13-1, NCGS 163-275 [13C, 33C-34C], and he was compelled to prepare a defense to the challenges pursuant to a statute that shifts the burden of persuasion onto the Appellant.

Appellant has satisfied the two *Babbitt* prongs.

Appellant believes he has satisfied the 1st prong of *Winter*.

2.) IRREPARABLE HARM

Infringement on the right to vote in the nominating phase of an election has long been held to cause irreparable harm of the sort necessitating injunctive relief. See *Gray v. Saunders*, 372 U.S. 368 (1963); *Rockefeller*, 917 F. Supp. At 166. There is no doubt that Appellant is suffering irreparable harm EVERY SINGLE DAY because the 118th Congress has started on 3 January 2023 – the very election Appellant sought to serve in. Deprivation of a constitutional right, even for a short period of time, constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). "When the harm alleged by the plaintiff is the deprivation of a constitutional right, the likelihood of success on the merits is so "inseparably linked" to the proving of an actual harm that the court may proceed directly to consider the merits of the plaintiff's action." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 511 (4th Cir.2002) (internal quotation marks omitted). As a general rule, "the denial of a

constitutional right ... constitutes irreparable harm for purposes of equitable jurisdiction." *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987).

NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(a) 106.5(b), 127.3 et seq, 275, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C] DENIES Appellant, and even criminalizes, the right to run for U.S. House of Representatives due to his status as a felon. "It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied.' . . ." *Blumstein* at 341. "*The States themselves have no constitutionally mandated role in the great task of the selection of [U.S. House of Representatives]. If the qualifications and eligibility of [candidates] to [Federal Office] were left to state law, 'each of the fifty states could establish the qualifications of its [federal members] to the various [state laws] without regard to [constitutional] policy, an obviously intolerable result.'" Wigoda* at 489-90.

Irreparable harm is everywhere and Appellant will continue to suffer every day since the 118th congress has started on 3 January 2023.

3.) BALANCE OF EQUITIES TIPS IN APPELLANT'S FAVOR

The balance of these equities favors granting injunctive relief, particularly where the Fourth Circuit's "precedent counsels that a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing

restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." See *Leaders of a Beautiful Struggle v. Baltimore Police Dep 't*, 2 F.4th 330, 346 (4th Cir. 2021). "The pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State." *Anderson* at 795. It is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Anderson* at 793.

There would be NO HARM TO APPELLEES AT ALL by granting this injunction. In the worst case scenario the Constitution would be : upheld/honored. Granting this injunction would require Defendants to adhere to the principles our founding fathers mandated in Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution [2C-5C]. Being a "felon" is a status: no more different than being White, Black, Asian, Hispanic, etc. Granting this injunction would make sure that Defendants follow the Supreme Law of the Land. To deny a felon on the ballot simply because of his "status" would be the same to deny any person on the ballot simply because of their ethnicity. As we made clear in *U. S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U. S., at 833-834; see also *Cook v. Gralike*, 531 U.S. 510, 523 (2001).

4.) INJUNCTION IN THE PUBLIC INTEREST

Upholding constitutional rights serves the public interest. *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F. 3d 249, 261 (4th Cir. 2003). "The right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). "The pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State." *Anderson* at 795 quoting *Cousins v. Wigoda*, 419 U. S. 477, 419 U. S. 490 (1975). "The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters." *Lubin v. Panish*, 415 U. S. 709, 415 U. S. 716 (1974).

There is no doubt that the ability to run for Federal Office is arguably one of the most critical rights in this Federal Constitutional Republic we call America. "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. *Williams v. Rhodes*, 393 U. S. 23, 30." *Kusper v. Pontikes*, 414 at 56-57 (1973). "*But where the differential treatment concerns a restriction on the right to seek public office - a right protected by the First Amendment - that Amendment supplies the federal interest in equality that may be lacking where the State is simply [denying a candidate on the ballot due to his "status" as a felon]. Such restrictions affect not only the expressional and associational rights of candidates, but those of voters as well. Voters generally assert*

their views on public issues by casting their ballots for the candidate of their choice. 'By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences.' See, e.g., Illinois State Bd. of Elections v. Socialist Workers Party, 440 U. S. 173 (1979)." Clements v. Fashing, 457 U.S. 957 at 986 (1982).

"The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Anderson* at 786. Being a "felon" is a status: no more different than being White, Black, Asian, Hispanic, etc. To deny a felon on the ballot simply because of his "status" would the same to deny any person on the ballot simply because of their ethnicity. "The achievement of the goal of the Clause [is] to prevent the mischief that would arise if state voters found themselves disqualified from participating in federal elections...." *Tashjian* Pp. 479 U. S. 225-229.

Appellant requests that the Court rule that NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 et seq, 275, Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [13C, 15C-31C, 33C-34C, 9C-10C], violates the 1st , 14th amendment, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution [2C-8C] as it pertains to running for U.S. House of Representatives.

The remedy that Appellant requests of the Court is to:

ORDER APPELLEES TO HOLD A SPECIAL ELECTION IN DISTRICT 13 OF NORTH CAROLINA FOR U.S. HOUSE OF REPRESENTATIVES FOR THE REMAINDER OF THE 118th CONGRESS AGAINST INCUMBENT WILEY NICKEL

5.) CAN A SPECIAL ELECTION STILL BE GRANTED?

Relief can still be granted by holding a Special Election in District 13 of North Carolina. *McCarthy v. Briscoe*, 429 U.S. 1316 (1976) controls this issue. In *McCarthy* the District Courts and COA ruled that time to be placed on the ballot had passed for a presidential election yet the Supreme Court said that it was not too late and placed him on the ballot. Appellant's case *sub judice* is no different than what happened in *McCarthy*. "This Court will normally accept findings of a district court, affirmed by a court of appeals, on factual considerations such as those underlying a determination of laches. But acceptance of findings of fact does not in this case require acceptance of the conclusion that violation of the applicants' constitutional rights must go unremedied." *McCarthy* at 1322. Since Appellant is only seeking election for U.S. House of Representatives, if this Court were to grant the injunction, it would only be an election for a single district – meaning there would be no confusion to voters and the cost would be minimum. Special Elections have happened quite frequently in this Country. Since the incumbent in District 13 is a Democrat and Appellant ran as a Republican there would be no need to host any primaries as those candidates did not suffer a ballot-access restriction – it

would only be an election against Appellant and Incumbent Wiley Nickel. To ensure that elections are fair and honest : the remedy is to hold a Special Election.

What is highly noteworthy is that Appellees themselves, in a separate matter, have refused to certify winner Mark Harris when he won the 2018 Midterms in District 9 of North Carolina and a Special Election was held in September of 2019 [313B-326B] – well into the 116th Congress. The point Appellant is trying to make is that this Court still has the authority to order a special election. See also NCGS 163-3, 182.13, 287 [14C, 32C, 35C].

Appellees argued in their reply to Appellant's Motion for Reconsideration that the issue is moot due to a winner already being seated for the 2022 Midterms [JA275]. "The Board's claim lacks merit. A case is moot 'when the issues presented are no longer `live' or the parties lack a legally cognizable interest in the outcome.' *Simmons v. United Mortg. Loan Inv., LLC*, 634 F.3d 754, 763 (4th Cir. 2011). There is, however, a well-established mootness exception for conduct 'capable of repetition, yet evading review.' *Fed. Election Comm'n v. Wise. Right to Life, Inc.*, 551 U.S. 449, 462, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007); see also *Miller v. Brown*, 503 F.3d 360, 364 n. 5 (4th Cir. 2007). This exception applies when '(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.' *Wise. Right to Life, Inc.*, 551 U.S. at 462, 127 S.Ct. 2652. Election-related disputes qualify as 'capable of repetition' when 'there is a reasonable expectation that the challenged provisions will be applied against the

plaintiffs again during future election cycles.' *N.C. Right to Life Comm. Fund for Indep. Political Expenditures v. Leake*, 524 F.3d 427, 435 (4th Cir. 2008). There is clearly such an expectation here..... As a result, [Appellant's] challenge fits comfortably into the mootness exception for conduct capable of repetition yet evading review." *Lux v. Judd*, 651 F.3d 396, 401 (2011).

Appellant's situation will most certainly happen in the future even if Appellant were not a felon. The issues of being denied Ballot-Access on the basis of being a Registered Voter and Affiliated with a Political Party for 90 Days violates the Constitution for all reasons stated in this motion.

RELIEF/CONCLUSION

WHEREFORE, Appellant reverently requests this Court to GRANT this Injunction and Order Appellees to hold a **Special Election for Appellant in District 13 of North Carolina for U.S. House of Representatives against Incumbent Wiley Nickel to serve in the remainder of the 118th Congress**, provided he gets elected.

/Sign/ Siddhanth Sharma

Siddhanth Sharma *Pro Se*

/Date/ 8-8-23

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CERTIFICATE OF FILING/SERVICE/WORD COUNT AND PENALTY OF PERJURY

I declare under penalty of perjury that the forgoing is true, correct, and complete to the best of my knowledge.

Appellant certifies, pursuant to Rule 33.2 that this Petition for Writ of Certiorari is in compliance with the word-count limit and is 8761 words.

Appellant certifies, pursuant to Rule 33.1 that this Petition is typed using 14-Point Century Schoolbook font and is Double-Spaced.

Appellant also certifies, pursuant to Rule 29, that a copy has been sent to ALL PARTIES via mail/hand delivery/E-mail as follows on 22 July 2023.

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